

McCarthy Tétrault

Ottawa

MEMORANDUM

AUG 30 1996

To: Robert Fenton
From: Lise Cardinal
Date: August 16, 1996
Re: The Brant County Board of Education v. Carol Eaton & Clayton Eaton

This is to confirm that the Application for Leave to Intervene by the Easter Seal Society has been served upon us today. I will send a copy in the overnight.



IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR THE PROVINCE OF ONTARIO)

B E T W E E N:

THE BRANT COUNTY BOARD OF EDUCATION

**Appellant
(Respondent)**

- and -

CAROL EATON and CLAYTON EATON

**Respondents
(Applicants)**

**APPLICATION FOR LEAVE TO INTERVENE
BY THE EASTER SEAL SOCIETY
(pursuant to Rule 18 of the *Rules of the Supreme Court of Canada*)
MOTION RECORD**

Eberts Symes Street & Corbett
200 - 8 Price Street
Toronto, Ontario
M4W 1Z4

Lang Michener
300 - 50 O'Connor Street
Ottawa, Ontario
K1P 6L2

Mary Eberts
Lucy K. McSweeney
(416) 920-3030
(416) 920-3033 (fax)

Eugene Meehan
(613) 232-7171
(613) 232-3191 (fax)

Solicitors for the proposed intervener
The Easter Seal Society of Canada

Ottawa agent for the proposed
intervener the Easter Seal Society

TO: THE REGISTRAR OF THE SUPREME COURT OF CANADA

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TO: THE REGISTRAR OF THE SUPREME COURT OF CANADA

AND TO: **Hicks Morley Hamilton**
30th Floor, TD Tower
Box 371, TD Centre
Toronto, Ontario
M5K 1K8

Christopher Riggs
(416) 864-7322

Solicitors for the appellant
and for the intervener
Ontario Public School Boards'
Association

AND TO: **Advocacy Resource Centre
for the Handicapped**
255 - 40 Orchard View Blvd.
Toronto, Ontario
M4R 1B9

Janet Budgell
(416) 482-8255

Solicitor for respondents

AND TO: **Attorney General for British
Columbia**
Parliament Buildings, Room 232
Victoria, British Columbia
V8V 1X4

(604) 387-1866

Solicitors for the AG for
British Columbia

Ogilvy, Renault
1600 - 45 O'Connor Street
Ottawa, Ontario
K1P 1A4

Mary Gleason
(613) 780-8661

Ottawa agent for the appellant
and for the intervener
Ontario Public School Boards'
Association

Gowling, Strathy & Henderson
2600 - 160 Elgin Street
Box 466, Station A
Ottawa, Ontario
K1N 8S3

Henry S. Brown, Q.C.
(613) 786-0139

Ottawa agent for the
respondents

Burke-Robertson
70 Gloucester Street
Ottawa, Ontario
K2P 0A2

V. Jennifer Mackinnon
(613) 236-9665

Ottawa agents for the
AG for British Columbia

AND TO: **Attorney General for Ontario**
720 Bay Street, 8th Floor
Toronto, Ontario
M5G 2K1

Dennis W. Brown
(416) 326-2220

Solicitors for the AG
for Ontario

AND TO: **Procureur général du Québec**
200 route de l'Eglise
Ste-Foy, Quebec
G1V 4M1

Solicitors for the AG
for Quebec

AND TO: **McMillian Binch**
P.O. Box 38
South Tower
Royal Bank Plaza
Toronto, Ontario
M5J 2T7

David W. Kent
(416) 865-7143

Solicitors for the interveners
Canadian Association for
Community Living, Confédération
des Organismes de Personnes
Handicapées du Québec, Council
of Canadians with Disabilities
and People First of Canada

Burke-Robertson
70 Gloucester Street
Ottawa, Ontario
K2P 0A2

Robert H. Houston
(613) 566-2058

Ottawa agent for the
AG for Ontario

Noel, Berthiaume
111, rue Champlain
Hull, Quebec
J8X 3R1

Sylvie Roussel
(819) 771-7393

Ottawa agent for the AG
for Quebec

Gowling, Strathy & Henderson
2600 - 160 Elgin Street
Box 466, Station A
Ottawa, Ontario
K1N 8S3

Henry S. Brown, Q.C.
(613) 786-0139

Ottawa agent for the interveners
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Community Living,
Confédération des Organismes
du Personnes Handicapées du
Québec, Council of Canadians
with Disabilities and People
First of Canada

AND TO: **Canadian Foundation for Children
Youth & the Law**
405 - 720 Spadina Avenue
Toronto, Ontario
M5S 2T9

Cheryl Milne
(416) 920-1633

Solicitors for the interveners
Canadian Foundation for Children,
Youth & the Law and Learning
Disabilities Association of
Ontario

AND TO: **McCarthy Tetrault**
4700 - TD Bank Tower
TD Centre
Toronto, Ontario
M5K 1E6

Ian C. Binnie
(416) 601-7725

Solicitors for the intervener
The Down Syndrome Association

**South Ottawa Community
Legal Services**
406 - 1355 Bank Street
Ottawa, Ontario
K1H 8K7

Chantal Tie
(613) 733-0140

Ottawa agent for the interveners
Canadian Foundation for
Children, Youth & the Law
and Learning Disabilities
Association of Ontario

McCarthy Tetrault
1000 - 275 Sparks Street
Ottawa, Ontario
K1R 7X9

Colin Baxter
(613) 238-2121

Ottawa agent for the intervener
The Down Syndrome
Association

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IN THE SUPREME COURT OF CANADA

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B E T W E E N:

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Appellant
(Respondent)

- and -

CAROL EATON and CLAYTON EATON

Respondents
(Applicants)

NOTICE OF MOTION

TAKE NOTICE that The Easter Seal Society will apply to a judge of this Court, at a date to be fixed by the Registrar, pursuant to subsection 18(2) of the *Rules of the Supreme Court of Canada* for an order granting leave to intervene in the present appeal or such further or other order that the said judge may deem appropriate.

AND FURTHER TAKE NOTICE that an application will be made pursuant to Rules 4 and 5 of the *Rules of the Supreme Court of Canada* to extend the time for filing and service of this application for leave to intervene.

AND FURTHER TAKE NOTICE that the following documents will be referred to in support of such motion:

- (a) the affidavit of Diane Hopkins sworn August 15, 1996, and exhibits thereto;
- (b) the affidavit of Shirley Clark sworn August 13, 1996, and exhibits thereto;
- (c) the Concise Memorandum of the Applicant for Leave to Intervene;

- (d) the Consent of the appellant;
- (e) the Consent of the respondents; and
- (f) such further or other material as counsel may advise and may be permitted.

AND FURTHER TAKE NOTICE that the said motion shall be made on the following grounds:

- (a) Rules 4, 5, 18(3)(a) and (c) of the Rules of the Supreme Court of Canada
- (b) the applicant formed the intention to seek intervention within the time prescribed by Rule 18(2) of the Rules of the Supreme Court of Canada for the filing of the applicant's motion for leave to intervene; the applicant was unfamiliar with the Court's processes and time requirements, and retained prior counsel to pursue intervention on its behalf on February 28, 1996; failure to file the application in the months following this retainer arose from inaction on the part of prior counsel retained by the applicant, on whom the applicant relied to prepare, serve and file the applicant's intervention materials; having identified that prior counsel was not in fact taking such steps, the applicant moved quickly to retain and instruct current counsel;
- (c) this difficulty is outlined in the affidavit of Shirley Clark and the applicants request a favourable exercise of discretion by this Honourable Court in extending the date of filing their application for leave to intervene;
- (d) the applicants take the record as they find it and do not seek to enlarge the issues on appeal;

- (e) The Easter Seal Society has a direct and substantial interest in the issues on appeal. The resolution of these issues will directly effect the Easter Seal Society and its members;
- (f) the focus of the submissions of the Easter Seal Society differs from that of the parties and the groups which have been granted intervenor status in this appeal;
- (g) both the appellant and the respondents have consented to the proposed intervention;
- (h) the applicant undertakes to draft its materials to avoid duplication of argument and materials in its submissions to the Court;
- (i) the issues raised in this appeal are important and complex and warrant granting the applicant leave to file a factum of up to 20 pages in length, and to make oral argument of not more than 15 minutes at the hearing of the appeal.

Dated at Toronto, Ontario this 15th day of August, 1996.

Eberts Symes Street & Corbett
200 - 8 Price Street
Toronto, Ontario
M4W 1Z4

Mary Eberts
Lucy K. McSweeney
(416) 920-3030
(416) 920-3033 (fax)

Solicitors for the proposed intervenor
The Easter Seal Society of Canada

Lang Michener
300 - 50 O'Connor Street
Ottawa, Ontario
K1P 6L2

Eugene Meehan
(613) 232-7171
(613) 232-3191 (fax)

Ottawa agent for the proposed
intervenor the Easter Seal Society

TO: THE REGISTRAR OF THE SUPREME COURT OF CANADA

AND TO: **Hicks Morley Hamilton**
30th Floor, TD Tower
Box 371, TD Centre
Toronto, Ontario
M5K 1K8

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(416) 864-7322

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AND TO: **Advocacy Resource Centre
for the Handicapped**
255 - 40 Orchard View Blvd.
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Parliament Buildings, Room 232
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1600 - 45 O'Connor Street
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Noel, Berthiaume
111, rue Champlain
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J8X 3R1

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Toronto, Ontario
M5K 1E6**

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- and -

CAROL EATON AND CLAYTON EATON

**Respondents
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**AFFIDAVIT OF DIANE HOPKINS
(in support of the application for intervention of the Easter Seal Society
(sworn August 15, 1996))**

I, Diane Hopkins, of the City of Scarborough in the Province of Ontario,
MAKE OATH AND SAY:

1. I am the Director of Child and Family Support at the Easter Seal Society and as such have knowledge of the matters to which I hereinafter depose.
2. I hold a Bachelor of Arts degree in Psychology and Political Science from York University and a Master of Social Work degree from the University of Toronto. I joined the Easter Seal Society in 1984 as a Co-ordinator of Community Services; in December 1995 I was appointed Director of Child and Family Support and have held that position since that time.
3. As Director of Child and Family Support I am responsible for the provision of management, support and direct services to the 8,097 children with disabilities who

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currently comprise the Easter Seal Society caseload. I am responsible for a total of approximately 100 staff across the province.

I. THE EASTER SEAL SOCIETY

(a) Founding and Objects

4. The Easter Seal Society was formed in 1922 and incorporated in 1930 as the Ontario Society for Crippled Children. A copy of our Supplementary Letters Patent, dated July 19, 1995, and an excerpt from our 1995 Annual Report containing the "Consolidated Financial Statements for the Year Ended December 31, 1995", are attached hereto as Exhibit "A". Pursuant to its by-laws, the organization may also be referred to as "The Easter Seal Society", "The Easter Seal Society, Ontario" or "Easter Seals". In 1997 we will celebrate 75 years of service. The Honourary patron of The Easter Seal Society is the Lieutenant Governor of Ontario, Henry N.R. Jackman. The Celebrity Spokespeople for The Society are Roger Abbott and Don Ferguson of CBC's Royal Canadian Air Farce.

5. The Easter Seal Society is a provincial organization assisting families who have children (age 0-19) with physical disabilities. At the present time there are 8,097 children on the caseload. Approximately seventy-five percent of the children have moderate to severe physical disabilities. All of the children assisted by the Easter Seal Society are restricted to some degree in their physical abilities as a result of a physical disability. These disabilities may have neurological, musculoskeletal or neuromuscular origins. The most common disabling conditions which affect the children are those related to cerebral palsy, hydrocephalus, muscular dystrophy, scoliosis, spina bifida, juvenile arthritis, injuries (including spinal cord injuries) and amputations. Many Easter Seals children have multiple disabilities requiring several types of surgery and medical intervention. In addition to a mobility restricting disability, many Easter Seals children also have learning, developmental, behavioral, visual and hearing disabilities.

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6. Through its head office in Don Mills and its 19 offices across the province, the Easter Seal Society provides a range of services to children with disabilities and their families including: pediatric nursing services; integrated preschools; camping; respite and recreation services; infant-toddler programs; parental support (the Parent to Parent link program); educational services and advocacy training for parents; the Parent Delegate program (providing chairmanship, leadership and advocacy skills training); advocacy at all government levels (both on behalf of Easter Seals and as part of coalitions); funding of a research institute and administration of a pioneering orthotic device program (known as the "Hart Walker") for children with cerebral palsy; and maintenance of a Resource Centre which includes online services and publishes provincial and regional newsletters; and provision of financial support to Easter Seal families. A 1995 publication of the Easter Seal Society titled "Just the Facts", which provides an overview of the organization and its activities, is attached hereto as Exhibit "B".

7. The Mission of the Easter Seal Society is as follows:

We are dedicated to helping children with physical disabilities achieve their full individual potential and future independence. Easter Seal people make a difference in the lives of the children and their families by providing direct services, programs, research, advocacy and public education. There is much more to do.

8. The objectives of the Easter Seal Society are:

- (i) to assist parents to access comprehensive programs and services for the rehabilitation of their children and young adults with physical disabilities;
- (ii) to stimulate the development of programs and services to meet the needs of children and young adults with physical disabilities;
- (iii) to assist children and young adults with physical disabilities to function in the community at the highest level at which they are capable;
- (iv) to promote a high level of awareness and acceptance of the physically disabled through public education and support of their rights;
- (v) to compile, analyze and exchange information on the incidence, distribution and needs of children and young adults with physical disabilities;



- (vi) to support research into causes, prevention and treatment of physically disabling conditions;
- (vii) to develop and conduct fundraising programs to support services; and
- (viii) to collaborate with children and young adults with physical disabilities, their parents, Government, service clubs, other voluntary organizations and volunteers in the attainment of these objectives.

(b) Easter Seals' Participation in Special Education Policy Development:

9. Since the late 1970's the Easter Seal Society has been involved in consultation with successive Ontario provincial governments regarding education issues for children with disabilities. This involvement has included the following:

- (i) In October 1981, Easter Seals and the Ministry of Community and Social Services co-sponsored a forum for the exchange of ideas about integration called "The Education and Integration of the Physically Handicapped Pre-Schooler";
- (ii) In October 1982, Easter Seals co-sponsored the conference "Physically Handicapped 1982" with the Ministry of Education. This conference provided an opportunity for discussions about special education issues among parents, professionals government representatives and the Easter Seal Society;
- (iii) In 1988 Easter Seals responded critically to the "Radwanski Report" calling for back-to-basics in teaching methods. Although the recommendations contained in this report were not followed by the government, its impact is still felt occasionally;
- (iv) In 1980, the Government of Ontario amended the *Education Act* with the passage of Bill 82, which required all school boards in the province to provide services to all students in their geographic area. In May 1984 the Parent Delegate Resource Program of the Easter Seal Society responded to Bill 82 by with a submission to the Ministry of Education entitled "A Statement of Concern Regarding Special Education in Ontario";
- (v) In September 1988 Easter Seals made submissions to the Select Committee of the Ontario Legislature on the need for school supports for 'exceptional' students;
- (vi) In March 1992 Easter Seals responded to the consultation paper on integration options for exceptional children to the Ministry of Education.

10. An important requirement of Bill 82 was that each school board to establish a Special Education Advisory Committee (SEAC) consisting of up to twelve representatives from associations for persons with disabilities. The role of a SEAC is to advise their Board of Trustees on matters affecting the establishment, development and delivery of special education programs, services and facilities for exceptional students. At that time, the Easter Seal Society started recruiting parents and nominating parents for SEAC positions. At the present time we have 68 parents sitting on SEAC's throughout the province. We now have formal training and follow-up training for these parents. Other Associations who have SEAC representatives are now asking for their parents to attend our training sessions.

11. In 1983, a provincial Parent Association Advisory Committee on Special Education Advisory Committees ("PAAC on SEAC") was established to provide a forum for sharing ideas and strategies and resolving common concerns relating to SEAC's throughout the province. PAAC on SEAC believes in the education of their children. They also believe that provincial parent associations are a valuable resource for elected school board officials, and for the community at large, in relation to decisions made regarding the provision of educational programs and services for exceptional pupils. Since its inception, Easter Seals has been a member of this committee. In 1995 the Ministry of Education asked PAAC on SEAC to revise the handbook for SEAC representatives since it has never been updated since 1985. A sub-committee, which included a representative of the Easter Seal Society, has been struck to do this work.

12. In 1985 or 1986 Easter Seals was invited by the Ministry of Education Advisory Council on Special Education to nominate a parent as a member of this Council. Easter Seals representation was actively sought by the Ministry because of our mandate to represent children with a broad range of physical disabilities, including multiple disabilities. The goal of the Council was to react to proposals/positions of the Ministry of Education when submitted; identify concerns in delivery of services; advise and make recommendations to The Ministry; and to submit an annual report with

recommendations to the Minister. Easter Seals held a position within this Council continuously for approximately ten years, until the Council was disbanded in December 1995 and restructured. We now are active in advising the representative on the newly formed Council who was appointed to represent people with physical disabilities.

13. In June 1995 the Easter Seal Society responded to the Ministry of Education and Training "Identification and Placement of Exceptional Pupils" (Regulation 305); and the Report of the Royal Commission on Learning; and the Ministry of Education draft document on Speech and Language Services. The Easter Seal Society supported the right for all "exceptional" students to have equal opportunity to access with (a) an appropriate identification; (b) special education programs and services; and (c) a full continuum of placement options. Easter Seals also stated that we believe the above must be based on the student's "exceptional" needs, a commitment to meeting those needs, and that any programs and services provided to children with physical disabilities must be acceptable to the childrens' parent(s)."

(c) The Easter Seal Society's Involvement with Other Ministries:

14. The Easter Seal Society is also a member of the following:

- (a) the Ontario Coalition for Children and Youth in Long Term Care - this is an Advisory Group which provides advice to the Ministries of Health, Education and Community and Social Services, as relevant, on services needed by children, youth and their families including School Health Support Services where chronic long term care is required;
- (b) the Minister's Advisory Group on Developmental Services (Ministry of Community and Social Services) - this group is looking at the design of the Guaranteed Support Plan, Childrens Services, and the Employment Services for Persons with Disabilities;
- (c) the Coalition on Family Support Services, which was established in 1989 as a result of the Doherty Reports (provincial studies);
- (d) the Provincial Coalition on Special Services at Home (SSAH), comprised of three provincial coalitions representing physically and developmentally disabled children and adults; this Coalition was established in 1990 to enhance the funding and services provided under the SSAH program, and

succeeded in obtaining an additional \$23 million in funding over a four-year period (1990-1994).

II. THE EASTER SEALS PHILOSOPHY OF PARENTAL CHOICE: PARENTS KNOW THEIR CHILD BEST

(a) Parental Expertise Deriving from Daily Involvement in the Life of their Physically Disabled Child:

15. It is unlikely that parents of able-bodied children can extrapolate from their own experience to understand the multi-faceted role of a parent whose child has a physical disability. Once a family learns that their child has a physical disability, they must quickly move from grieving for what they fear will be their child's reduced life opportunities, to becoming familiar with their child's medical conditions based on that individual child's disability. They must locate what information and services are available for their child in the community. These often include therapy services, augmentative and communications services, respite services, Ministry of Health Services, Assistive Devices Program for equipment, Special Services at Home funding, and many others.

16. The educational system is another area that really requires parents to become well informed before their disabled child reaches school age. They must learn about the structure of special education services for children with physical disabilities, and their role in decision making as identified in Bill 82, Regulation 305 and specifically, what School Health Support Services are and whether they will be planned for their child while the child is attending school. They then must investigate the different schools, often several schools within the same school board. Many parents of children on Easter Seals' caseload have told us of the difficulty of finding a school which will accept their disabled child. Reasons for this non-acceptance by schools may be that the school is not equipped to be physically accessible; or that there is no Education Assistant/Teachers Assistant (EA/TA) available at the school through the school board; or that the staff appear simply uncomfortable in dealing with children with disabilities, in particular those children who are medically fragile children and require frequent medical


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interventions. Parents must be familiar with, and prepared to educate others with respect to such matters as their child's mobility skills, feeding, drug schedules, toileting, catheterization, and transportation (both to and from school, and on school outings).

17. Many children are unable to attend school outings unless they are accompanied by a trained aid. A disabled child will often be unable to attend the outing unless: an aid is available to look after medical intervention; accessible means of transport can be arranged; and where the destination for the outing is itself physically accessible. The child's parents will often have to make these inquiries themselves in advance of the event, and may in the end have to leave work to accompany their child themselves. Without parental participation in many such activities, the opportunities for disabled students to participate fully in school field trips and outings are further reduced.

18. Additional emotional strain is placed on families where it is discovered that the disabled child in the family cannot attend the neighbourhood school with his or her siblings due to lack of accessibility and supports.

19. While their child is at school, parents must come to terms with the fact that their child will have an EA/TA who is toileting and/or catheterizing him/her. Safety issues and abuse issues are all concerns that parents must think about whenever a child has different individuals providing a range of support services in his/her life. If the school experiences a sudden shortage in the services it provides to its exceptional pupils, such as the absence of an EA/TA, or unavailability of transportation, parents are often relied on by the school to come to assist their child themselves. Parents responding to such requests often take time off from their jobs because they are concerned to ensure that their child's needs are properly attended to while in school. These types of demands on parents' time have resulted in some cases in parents giving up their employment altogether, causing financial hardship for the family. This level of involvement and reliance by the school on parents does not exist for parents of non-exceptional pupils,



who are not called on to care for their child during school time unless the child has a problem such as sickness or injury.

20. Throughout the lives of many children with disabilities, one or a series of surgical operations are necessary. When surgery takes place, children have to be away from school, sometimes for months, or for an entire school year. While the child is unable to attend school, parents have the primary responsibility for their daytime care, with the assistance of such School Health Support Services as they are able to secure, so the child can get some "home schooling". In such circumstances the children must spend extra time to catch up with their studies. Such extra time is usually provided at home by the parent(s). Extra help is required daily when the child has to withdraw from class for catheterization, therapy, and other medical procedures and appointments. All of the above situations can place extra responsibilities, and time constraints on the parent(s). In the process parents become expert in their child's needs related to health, education and overall wellbeing.

21. Every year, children move into the next grade within the school and this usually means a new teacher. This means that, once again, the child must adjust and the parents must educate the teacher and the new classmates as to the child's needs and ways. Where accommodations are required (e.g. where the new classroom is located on an physically inaccessible floor of the school), parents must have further meetings and discussion with the school.

22. Having a child with a physical disability also creates parenting challenges with the other children in the family. Most parents spend disproportionate amounts of their family time tending to the needs of their disabled child. As a result, the siblings of the disabled child often underachieve in school, sports and social events.

23. All of the above stress factors, including ongoing grieving which is common to parents who have children with disabilities, have huge impacts on the family,

especially on the parents' relationship. As a result, relationship breakdown and divorce occur in a high percentage of families, leading to a large number of sole support parents caring for their children with disabilities on their own, often in poverty.

24. Overall, parents are the experts on their disabled child's needs and abilities. By the time their child reaches school age, parents have developed skills in case management, record keeping, and have acted as nurses, educators, co-ordinators and facilitators among services (education, health, and social services), as leaders in meetings, and as advocates for their child's needs. It is this knowledge and these skills which Easter Seals believes entitle parents to be consulted in decisions affecting their child, including educational placements. It is the family that must live with the consequences of decisions: where an unsuitable placement occurs, it is the parents and the family to whom fall the responsibility of caring for the isolated child with no friends, or the sick child of whom too much is asked at school and who becomes more sick.

(b) Importance of the Role of Parents in Education Placement Decisions for their Physically Disabled Child

25. Consistent with the foregoing paragraph, the Easter Seal Society believes, and its work over 75 years has shown, that parents know their children best, and that its work in empowering and supporting parents of children with physical disabilities is the most important contribution Easter Seals makes to improve the lives of the children. Only parents know the whole history of their child - parents are the constant forces in their children's lives, even as teachers and other education personnel come and go. Parents are thereby in the unique position of understanding the child's needs, both physical (medication, stamina) and social (friends, abilities, strengths, etc). Parents are the connecting point among the many services - health, educational, surgical - with which their child comes in contact.

26. Easter Seals' support for parents was clear in 1993, when parents identified the need to have a stronger voice for families in the area of education. As a result the Easter Seal Society developed a Special Education Guidelines and Definitions Manual



so parent advocates could know their rights within the Education System as well as knowing the Easter Seal Society's position on educational issues. The manual was written by parents and staff and was approved as written by the Board of Directors. At the same time, the Board of Directors also approved the parents' request to establish an Education Sub-Committee as one of the Easter Seals Standing Committees.

27. At present there are over 400 parent delegates who have been trained by the Easter Seal Society and are skilled in advocacy on behalf of Easter Seals children. There are at present also 360 parent "links" who are parents trained by Easter Seals to provide support and outreach to other parents of children with disabilities. At present there are 68 parents across the province whom Easter Seals has trained as SEAC representatives. Parent advocacy programs run by Easter Seals are recognized throughout the disability community and other organizations (e.g the Spina Bifida and Hydrocephalus Association) are beginning to enrol their parent members in the Easter Seals parent training programs.

III. SUBMISSIONS TO BE MADE BY THE EASTER SEAL SOCIETY IF GRANTED LEAVE TO INTERVENE

28. This appeal asks the Court to identify the components of equality in education for children with disabilities.

29. It is an open question in this appeal whether the Court should elevate any one strategy for equality to the level of a constitutional presumption. The Easter Seal Society does not take a position on this issue.

30. If granted leave to intervene, the Easter Seal Society will offer the Court a set of standards which it believes must be included in any assessment of the adequacy or constitutionality of educational opportunities offered to children with disabilities. In



particular, Easter Seals will submit that the dignity and equality of treatment for children with disabilities requires:

- a) that informed parental choice be part of any decision made regarding educational placement for a child with a disability; parents of children with disabilities, whose special expertise arises from their involvement in their child's life as described above at paragraphs 15 through 24, must be equal partners with the school board in educational placement decisions;
- b) that a full range of educational options must be made available to pupils with physical disabilities including: regular class with monitoring, regular grade with additional resources and/or periodic withdrawal, special (self-contained) class, provincial schools (i.e. schools for deaf and hard of hearing students, schools for blind students, and schools for severely learning disabled students), and segregated schools;
- c) that sufficient resources must be allocated by school boards to accommodate disabled children.

IV. THE EASTER SEAL SOCIETY AS PROPOSED INTERVENER

(a) Significance of this Case to the Easter Seal Society

31. Easter Seals has a legitimate interest in the issues raised by this appeal. Seventy-five percent of the children on Easter Seals' caseload have moderate to severe physical disabilities, and many have multiple disabilities. Most of the children assisted by Easter Seals have been classified as "exceptional" within Ontario's education system. All of these children and their families have a direct interest in the outcome of this appeal.

(b) The Unique Perspective of Easter Seals

32. I believe that the Easter Seal Society brings a unique perspective and approach to the issues which have been raised in this appeal. I am advised by counsel and believe that none of the parties or interveners propose to address the issues in the appeal from the perspective of the expertise of parents of disabled children and the necessity for a central role for parents in decision making regarding special education

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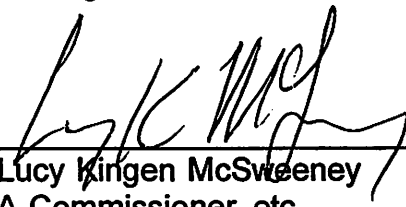
placements. Easter Seals' submissions will reflect this perspective and will accordingly be useful and different from those of other parties.

33. I believe that the extensive experience and expertise of the Easter Seal Society in matters relating to the educational needs of children with physical disabilities will be of assistance to the Court in adjudicating this matter. The Easter Seal Society has been working to support children with disabilities in Ontario for 74 years, and is recognized by the Government of Ontario, and within the disability communities, as a leading voice for families and children with disabilities.

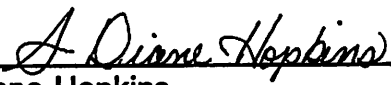
34. If granted leave to intervene, the Easter Seal Society seeks to make oral and written submissions at the hearing of the appeal. The Easter Seal Society will take the record as it stands and will not seek to add to it.

35. If granted leave to intervene, the Easter Seal Society will be mindful of submissions made by parties and other interveners and will seek to avoid duplication of argument and materials before the Court.

SWORN BEFORE ME at the City of Toronto)
)
 in the Municipality of Metropolitan Toronto)
)
 on August 15th, 1996.)



 Lucy Kingen McSweeney
 A Commissioner, etc.



 Diane Hopkins



"BE IT RESOLVED as a Special Resolution of the Corporation that:

1. The Corporation be and is hereby authorized to make application to the Lieutenant-Governor of the Province of Ontario for the issue of supplementary letters patent to provide as follows:

- (a) that the following words be deleted from article 4(4) of the supplementary letters patent of the Corporation filed on October 15, 1992:

"The affairs of the Corporation shall be managed by a Board of Directors, the majority of whom shall be members of Easter Seal service clubs."; and

- (b) that the following words be inserted in their place:

"The directors of the Corporation shall each serve a two (2) year term, and shall, if otherwise qualified, be eligible for re-election. Unless otherwise decided, in accordance with applicable law, no director shall serve for more than six (6) consecutive years, but this prohibition shall not apply to the President, Vice-President or Immediate Past President, the last of whom may also serve such further term as corresponds to the term of his or her immediate successor to the office of President. Any director who ceases to be a director after serving six (6) (or more) consecutive years shall thereafter be ineligible to serve on the board until a period of twelve (12) months has elapsed from the date of his or her retirement.

Provided however, and without limiting the generality of the foregoing, that directors of the Corporation who are elected by the general membership of the Corporation (pursuant to the Corporation's by-laws) shall serve on a rotating basis, one-half of whom shall be elected at each annual general meeting of members of the Corporation."

The directors and officers of the Corporation are hereby authorized and directed to do, sign, execute and deliver all things, deeds and documents necessary and desirable to give effect to the foregoing."

To Companies Branch, Ministry of Consumer and Commercial Relations
From: Charitable Property Division, Office of the Public Guardian and Trustee
In witness whereof, the Public Guardian and Trustee, on the day of the date of the above-mentioned Letters Patent, has caused this application to be signed by the Public Guardian and Trustee.
Page 2 of 3 Pages
Examiner

JUL 13 1995

The Easter Seal Society, Ontario. Incorporated as the Ontario Society for Crippled Children Consolidated Financial Statements for the Year Ended December 31, 1995

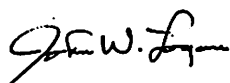
Responsibility for Financial Reporting

The accompanying consolidated financial statements of The Easter Seal Society, Ontario incorporated as the Ontario Society for Crippled Children, were prepared by management in accordance with generally accepted accounting principles.

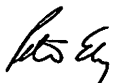
Management is responsible for the integrity and objectivity of the financial statements and has established systems of internal control which are designed to provide reasonable assurance that assets are safeguarded from loss or unauthorized use and to produce reliable accounting records for the preparation of financial information.

The Board of Directors is responsible for ensuring that management fulfils its responsibilities for financial reporting and internal control. The Board exercises its responsibilities through the Finance Committee, composed of members of the Board, who meet regularly with representatives of management and monitor the functioning of accounting and control systems. The Audit Committee meets with management and the external auditors to review the results of the auditing activity.

The external auditors have conducted an independent audit, in accordance with generally accepted auditing standards, and have expressed their opinion on the financial statements. Their report outlines the nature of their audit and their opinion on the fairness of the financial statements of The Society and the accounting principles followed in management's preparation thereof.



John Logan
Chair, Audit Committee



Peter Ely
Executive Director



Dr. Paul Truelove
Treasurer



Frank Copping CA
Director, Finance and
Administration

Auditors' Report

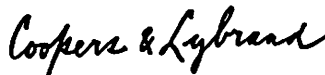
To the Members:

We have audited the consolidated balance sheet of The Easter Seal Society, Ontario incorporated as the Ontario Society for Crippled Children, as at December 31, 1995, the consolidated statement of revenues and expenditures, the consolidated statement of cash flows, and the consolidated statement of changes in net assets for the year then ended. These financial statements are the responsibility of The Society's management. Our responsibility is to express an opinion on these financial statements based on our audit.

Except as explained in the following paragraph, we conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In common with many charitable organizations, The Society derives part of its revenue from the general public in the form of donations which are not susceptible to complete audit verification. Accordingly, our verification of revenue from this source was limited to accounting for the amounts recorded in the records of The Society and we were not able to determine whether any adjustments might be necessary to donation revenues.

In our opinion, except for the effect of adjustments, if any, which we might have determined to be necessary had we been able to satisfy ourselves concerning the completeness of the donation revenues referred to in the preceding paragraph, these consolidated financial statements present fairly, in all material respects, the financial position of The Society as at December 31, 1995 and the results of its operations and the changes in its financial position for the year then ended in accordance with generally accepted accounting principles.



Chartered Accountants
Toronto, Ontario
March 15, 1996

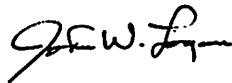
Consolidated Balance Sheet as at December 31, 1995

(In thousands of dollars)

	1995	1994
Current Assets		
Cash and short term deposits	\$ 1,089	\$ 1,741
Accounts receivable	263	175
Accrued investment income	192	136
Prepaid expenses	<u>154</u>	<u>593</u>
	1,698	2,645
Investments (note 3)	9,779	9,490
Capital Assets, net (note 4)	<u>4,095</u>	<u>3,301</u>
	<u>\$15,572</u>	<u>\$15,436</u>
Current Liabilities		
Accounts payable and accrued liabilities	\$ 1,568	\$ 1,477
Deferred revenue	<u>149</u>	<u>331</u>
	1,717	1,808
Deferred Contributions (note 5)	7,044	6,918
Trillium Stabilization Fund (note 6)	3,320	3,320
Net Assets		
Invested in capital assets	580	471
Restricted for endowment purposes	350	348
Internally restricted	1,696	1,655
Unrestricted	<u>865</u>	<u>916</u>
	<u>3,491</u>	<u>3,390</u>
	<u>\$15,572</u>	<u>\$15,436</u>

(see accompanying notes)

Approved by the Board


John Logan
Director

Dr. Paul Truelove
DirectorConsolidated Statement of Revenues and Expenditures
For the year ended December 31, 1995

(In thousands of dollars)

	1995	1994
Revenues		
Public Support (note 7)		
Easter Seal campaign & other direct mail	\$ 3,363	\$ 3,562
Volunteer, service club and corporate events	2,967	2,529
Games of chance	360	165
Service club camp contributions	593	607
Service club unexpended funds	111	204
Unrestricted bequests	<u>2,361</u>	<u>2,767</u>
	9,755	9,834
Government Grants	976	925
Trillium Foundation Grant (note 5)	390	595
Amortization of deferred contributions, children's services (note 5)	613	343
Amortization of deferred contributions, bequests for camp capital (note 5)	345	374
Investment income	1,053	1,001
Fees for programs, direct services, medical clinics and miscellaneous revenue	<u>1,114</u>	<u>975</u>
Total Revenues	<u>14,246</u>	<u>14,047</u>
Expenditures		
Community nursing services	3,554	3,797
Support to children and families by service clubs	2,098	2,106
Camping and recreation activities	2,140	2,093
Integrated preschools, specialized programs and community development	1,982	1,938
Public education, advocacy, preventions and government relations	939	933
Service club and volunteer support	1,066	858
Finance, administration and human resources	810	698
Fundraising operations	667	750
Amortization of capital assets	490	499
Easter Seal Research Institute grants	235	170
Children's support through other organizations	<u>166</u>	<u>165</u>
Total Expenditures	<u>14,147</u>	<u>14,007</u>

Excess of Revenues
over Expenditures for the Year

\$ 99 \$ 40

(see accompanying notes)

Consolidated Statement of Cash Flows
For the year ended December 31, 1995

(In thousands of dollars)

	1995	1994
Cash flows from (applied to) operating activities		
Excess of revenues over expenditures for the year	\$ 99	\$ 40
Decrease (increase) in working capital	204	(152)
Gain on sale of investments	(257)	(153)
Amortization of capital assets	490	499
Deferred contributions - operations	701	685
Amortization of camp capital, children's services and Trillium Foundation Grant	(1,348)	(1,312)
Net Cash applied to operating activities	(111)	(393)
Cash flows from financing and investing activities		
Deferred contributions received - camp capital	719	716
Endowment contributions	2	1
Purchase of capital assets	(1,284)	(380)
Net purchase of investments	(32)	(376)
Deferred interest income	54	59
Net Cash (used in) provided by financing and investing activities	(541)	20
Net Decrease in cash and short term deposits	(652)	(373)
Cash and short term deposits, beginning of year	1,741	2,114
Cash and short term deposits, end of year	\$ 1,089	\$ 1,741

(see accompanying notes)

Consolidated Statement of Changes in Net Assets
For the year ended December 31, 1995

(In thousands of dollars)

	Invested in Capital Assets	Restricted for Endowment Purposes	Internally Restricted	Unrestricted	1995 Total	1994 Total
Balance, beginning of year	\$ 471	348	1,655	916	\$3,390	\$3,271
Excess of revenues over expenditures for the year	(145)	35	41	168	99	40
Change in accounting policy - (note 2)	-	-	-	-	-	(227)
Endowment contributions	-	2	-	-	2	1
Interfund transfers including capital acquisitions	254	(35)	-	(219)	-	-
Donated land	-	-	-	-	-	305
Balance, end of year	\$ 580	350	1,696	865	\$3,491	\$3,390

(see accompanying notes)

Notes to Consolidated Financial Statements
For the year ended December 31, 1995

(Columnar amounts in thousands of dollars)

The Consolidated Financial Statements include the results of The Easter Seal Society, Ontario and The Easter Seal Research Institute.

1. **MANDATE** The Easter Seal Society, Ontario ("The Society") was incorporated in 1922 as the Ontario Society for Crippled Children and is a registered charity, number 0003285-11. The Society is dedicated to working in partnership with volunteers to help children and young adults with physical disabilities achieve their individual potential and future independence. Programs, direct services, research and public education are provided for the benefit of children, young adults and their families throughout the Province of Ontario.

The Easter Seal Research Institute of Ontario (the "Institute") is a registered charitable foundation, number 0470062-13. The Institute was established to provide grants for research which will benefit children and young adults with physical disabilities. The financial results of the Institute have been consolidated due to the economic dependence of the Institute on The Society. The Society also maintains influence over the affairs of the Institute through certain Board and officer appointments.

2. **SIGNIFICANT ACCOUNTING POLICIES** The Canadian Institute of Chartered Accountants issued new accounting recommendations for not-for-profit organizations in March 1996. These new recommendations address revenue recognition for contributions received or receivable, accounting for capital assets and collections, the consolidation of controlled and related entities and the presentation of financial statements. The Society decided to implement these recommendations in the current reporting period. As required, the recommendations have been applied on a retroactive basis and prior years have been restated. Adopting these recommendations resulted in the increase of excess revenues over expenditures by \$56,000 (1994 decrease of \$7,000) and the reclassification of certain components of net assets and deferred contributions.

The Society in 1995, changed its accounting policy for recording vacation pay. Vacation pay is now accrued in the year it is earned by the employees whereas previously it was expensed as incurred. The change has been applied on a retroactive basis and prior periods have been restated resulting in a decrease in opening unrestricted net assets of \$227,000.

The following is a summary of the significant accounting policies adopted in the preparation of these financial statements.

Investments

Investments are recorded at cost. When a decline in market value of investments is considered other than temporary, investments are written down to their market values.

Capital Assets

Capital assets purchased by The Society are recorded at cost and those donated to The Society are recorded at their fair market value on the date of acquisition. The carrying values of capital assets on the consolidated balance sheet are amortized at the following rates:

Camp buildings	10% declining balance
Camp and office equipment	20% declining balance
Automobiles and buses	30% declining balance
Computer equipment	16 2/3% to 33 1/3% straight line
Leasehold improvements	straight line over the term of the lease

Net assets

The funds "invested in capital assets" relate to The Society's investment in capital assets and building expansion programs. Contributions restricted for the purchase of capital assets are deferred and matched with the related amortization expense, and are disclosed as unamortized restricted bequests for camp capital.

Funds "restricted for endowment purposes" which include gifts, bequests and other special donations received by The Society in respect of which explicit restrictions exist on the use of the funds. Investment income earned on these restricted funds have been transferred to the general fund and are utilized for various children's programs and direct services.

"Internally restricted" net assets reflect the Research Fund which was established by The Society to provide investment income to assist with The Society's research programs through The Easter Seal Research Institute. Internally restricted funds also include the excess of revenues over expenditures of the Institute.

"Unrestricted" net assets represent the funds which are available for The Society's program delivery and administrative activities.

Revenue Recognition

Revenues are recorded on the accrual basis. This basis of accounting allows revenue to be recognized only when the amount is measurable and reasonable certainty of collection exists. Accordingly, due to their nature donation revenues are recorded when received.

Revenues received in advance for special fundraising activities are deferred until the event has occurred, at which time all fundraising revenues and related expenditures are reflected in the consolidated statement of revenues and expenditures.

Revenues from restricted bequests and donations and children's services are deferred and recognized as revenue in the year in which the related expenses are incurred.

Donations in kind

Donated goods are recorded in The Society's records as both a revenue and expenditure when the fair value is reasonably determinable and when they would normally be purchased by The Society and paid for if not donated. Donated capital assets are recorded as a direct increase to capital assets and net assets on the balance sheet. The value of donated services, facilities and volunteer efforts are neither quantified nor reflected in the financial statements.

Fundraising expenditures

Direct expenditures associated with the organization of fundraising events are deducted from the proceeds of the respective fundraising events in the public support section of the consolidated statement of revenues and expenditures.

Service club fundraising activities

A portion of the funds derived from the Easter Seal campaign and other community fundraising activities is retained by participating service clubs for the benefit of local children with physical disabilities. These funds are included as proceeds and reported in the public support section of the consolidated statement of revenues and expenditures and are included in the caption "support to children and families by service clubs" as an expenditure. Amounts raised by service clubs in earlier years which are not utilized for local purposes are remitted to The Society to fund provincial programs, and are recorded as a part of current revenue in the public support section in the year received as "service club unexpended funds".

3. INVESTMENTS

	1995		1994	
	Cost	Market Value	Cost	Market Value
Bonds	\$ 8,381	\$ 8,623	\$ 8,282	\$ 8,226
Equities	<u>1,398</u>	<u>1,773</u>	<u>1,208</u>	<u>1,557</u>
	<u>\$ 9,779</u>	<u>\$ 10,396</u>	<u>\$ 9,490</u>	<u>\$ 9,783</u>

The investment portfolio consists of the following fund balances:

	1995	1994
Unrestricted	\$ 884	\$ 79
Externally Restricted		
Trillium Stabilization Fund (note 6)	3,320	3,320
Children's services -		
restricted bequests & donations (note 5)	1,766	1,778
Capital fund (note 5)	1,700	1,974
Endowment Fund	350	348
Trillium Foundation Grant (note 5)	63	336
Internally Restricted		
Research Fund	<u>1,696</u>	<u>1,655</u>
	<u>\$ 9,779</u>	<u>\$ 9,490</u>

4. CAPITAL ASSETS

	Cost	Accumulated Amortization	1995	1994
Camp land	\$ 500	\$ -	\$ 500	\$ 500
Camp buildings	7,014	4,968	2,046	2,168
Camp and office equipment	1,874	1,477	397	451
Automobiles and buses	131	88	43	50
Computer equipment	663	496	167	100
Leasehold improvements	137	121	16	32
Construction in progress	<u>926</u>	<u>-</u>	<u>926</u>	<u>-</u>
	<u>\$ 11,245</u>	<u>\$ 7,150</u>	<u>\$ 4,095</u>	<u>\$ 3,301</u>

5. DEFERRED CONTRIBUTIONS

	Camp Capital	Trillium Foundation Grant	Children's Services	Subtotal
Balance, beginning of year	\$ 1,974	\$ 336	\$ 1,778	\$ 4,088
Donations received	719	117	584	1,420
Interest received	37	-	17	54
Transfer to operations	-	(390)	(613)	(1,003)
Purchase of capital assets	<u>(1,030)</u>	<u>-</u>	<u>-</u>	<u>(1,030)</u>
Balance, end of year	<u>\$ 1,700</u>	<u>\$ 63</u>	<u>\$ 1,766</u>	<u>\$ 3,529</u>
	Subtotal	Unamortized Bequests for Camp Capital	Total 1995 Deferred Contributions	Total 1994 Deferred Contributions
Balance, beginning of year	\$ 4,088	\$ 2,830	\$ 6,918	\$ 6,770
Donations received	1,420	-	1,420	1,401
Interest received	54	-	54	59
Transfer to operations	(1,003)	(345)	(1,348)	(1,312)
Purchase of capital assets	<u>(1,030)</u>	<u>1,030</u>	<u>-</u>	<u>-</u>
Balance, end of year	<u>\$ 3,529</u>	<u>\$ 3,515</u>	<u>\$ 7,044</u>	<u>\$ 6,918</u>

Trillium Foundation Grant

In 1992, the Trillium Foundation agreed to provide support to The Society for certain programs and projects to be undertaken during the period 1993 to 1995. During 1995, \$390,000 was expended for a cumulative total of \$1,892,000 as described below:

	1995	Cumulative Expenditures
Operations grants		
Community nursing service	\$ 100	\$ 700
Camping and recreational activities	20	200
	<u>120</u>	<u>900</u>
Program and project grants		
Camping and recreational activities	13	51
Family support and education	117	360
Volunteer training and development	72	259
Computerization and office automation	65	277
Public education and awareness	3	45
	<u>270</u>	<u>992</u>
	<u>\$ 390</u>	<u>1,892</u>
Balance unspent		<u>63</u>
Funding from Trillium Foundation		<u>\$ 1,955</u>

6. TRILLIUM STABILIZATION FUND

The Trillium Foundation provided funds to The Society during the period 1984 to 1988 to establish a stabilization fund. The Fund capital can only be utilized by The Society with the concurrence of the Foundation. Income earned on the investments related to the stabilization fund is available to be used at The Society's discretion. Income transferred to operations was \$261,000 (1994 \$367,000).

7. FUNDRAISING

Fundraising proceeds and the related expenditures are as follows:

	1995	1994
Fundraising proceeds	\$ 14,448	\$ 14,501
Less:		
Direct expenditures	2,041	1,537
Service club expenditures	402	458
Volunteer and corporate event expenditures	2,250	2,672
	<u>\$ 9,755</u>	<u>\$ 9,834</u>

During the year The Society and the Institute raised \$723,000 (1994 - \$320,000) in revenue from break open tickets with direct expenditures in the amount of \$410,000 (1994 - \$181,000). Net revenue from this program is recorded under the caption "games of chance" on the consolidated statement of revenues and expenditures which includes both break open ticket and bingo proceeds.

8. COMMITMENTS & CONTINGENT LIABILITIES

The present commitment for future payments of leased premises are as follows:

1996	\$ 659
1997	148
1998	133
1999	99
2000	55
2001	53
	<u>\$ 1,147</u>

The lease on the Provincial Office premises expires on November 30, 1996.

The Society has outstanding a \$50,000 letter of credit in favour of the Ontario Gaming Commission as required for the break open ticket license.

9. PENSIONS

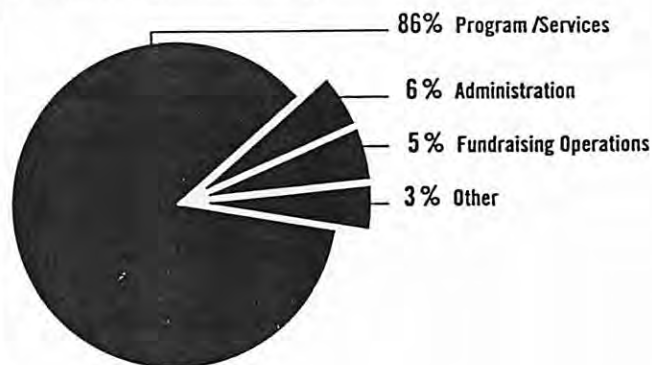
Substantially all of the employees of The Society are members of the Hospitals of Ontario Pension Plan which is a multi-employer final average payment contributory pension plan. Employer contributions made to the Plan during the year by The Society amounted to \$380,000 (1994 - \$394,000).

10. COMPARATIVE FIGURES

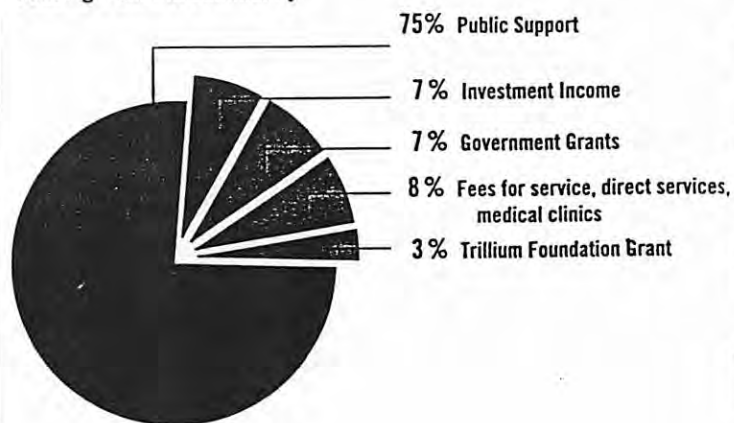
Certain of the comparative figures have been restated to conform with the current year's presentation.

Financial Profile

Contributions to the Community



Funding from the Community



Just the Facts

This is Exhibit B referred to in the
affidavit of DIANE HOPKINS
sworn before me, this 15th
day of August, 1996
[Signature]
COMMISSIONER FOR TAKING AFFIDAVITS



easter
seal
society

The Overview

Some facts and figures about Easter Seals.

The Easter Seal Society of Ontario has been helping children with physical disabilities since 1922. Thousands of children and young adults (up to age 19) and their families benefit directly from our services. An estimated 20,000 children in Ontario have physical disabilities. All of them and thousands of other special needs children are assisted by our public awareness, research and advocacy initiatives.

- 87 cents of every dollar contributed to The Society goes directly to providing services to children with physical disabilities, after direct fundraising expenses are considered.
- Easter Seals provides direct service to children and youth under 19 years of age who have neuromuscular, musculoskeletal or neurological conditions which limit mobility and/or physical function. Physical disabilities may be present at birth or result from diseases and accidents. The most common disabling conditions are cerebral palsy, spina bifida and neuromuscular disorders.
- Less than 7% of Easter Seal funding comes from government grants.
- More than 30% of Easter Seal families have incomes below the poverty line.
- More than 20% of Easter Seal families are headed by a single parent, assuming primary responsibility for the daily care of the child.
- The demand for Easter Seal funding is increasing as government funding to families decreases.
- Easter Seal staff serve families all over the province through a network of 17 district offices.
- More children with physical disabilities are being cared for in the home and, thanks to medical advances, living longer lives. They are also using more of the expensive technology and equipment that is now available to them.
- The shift from institutional care to community and in-home care has meant Easter Seal nurses are seeing more children with severe disabilities in their homes.
- Easter Seals saves taxpayers money by helping children and teens live at home with their families and become independent adults.
- Today, 74% of Easter Seal children are moderately to severely disabled and the number of medically fragile children (those who rely on life-sustaining routine and/or equipment) has increased by 30% since 1990.
- Our 400 Easter Seal parent delegates make up the largest advocacy network of its kind in Canada.
- More than 240 Rotary, Kiwanis, Lions, Kinsmen, and other service clubs, in addition to the Royal Canadian Legion, raise funds and provide direct services in partnership with The Society across Ontario. In 1994, service clubs dispersed about \$2.1 million to Easter Seal families for equipment, camp fees, transportation and other services.
- Easter "seals" were first issued in Ontario in 1947 and have become known as a symbol of support for children with physical disabilities. Although Easter "seals" are still mailed during the annual Spring campaign, fundraising activities take place year-round.

(Aussi disponible en français)

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Services at a Glance

An outline of the services we provide.

Easter Seals provides a wide array of services that go a long way toward making a better life for both children with physical disabilities and their families.

Nursing

A province-wide community nursing program provides direct, consultative service to families on the care of children with physical disabilities and how to access available services.

Camping

Experienced camp staff provide summer camp programs for children and families at six fully accessible camps across Ontario.

Financial Assistance to Families

Easter Seals helps families meet the costs of prescribed equipment such as wheelchairs, braces, communication devices, home modifications and other services such as camping programs. Government programs only cover a fraction of the costs.

Respite Care

Trained care givers provide one-on-one care so that parents can have a break from their daily care and children and youth can have the opportunity to develop independence, self-esteem and life skills.

Integrated Preschools

Two Easter Seal schools in Metro Toronto incorporate physiotherapy, speech therapy, creative play and education for preschoolers, with and without physical disabilities, all under one roof.

Transportation

Easter Seals helps fund transportation to hospitals, preschools and treatment centres.

Parent-to-Parent Links

More than 330 trained Easter Seal parents are linked to parents with common concerns to receive support and to share information.

Northern Clinics

Teams of paediatric health professionals provide consultation to Easter Seal children in communities throughout Northern Ontario. In 1995 visiting specialists saw more than 790 children.

Parent Delegates

A network of 400 specially trained parents work in partnership with professionals and the government to ensure that services meet the needs of children with physical disabilities and their families. Their work resulted in an \$9 million funding increase for the government's 1994/95 Special Services at Home program.

Family Education Workshops

Specialists conduct workshops for Easter Seal teens, their parents and siblings, on topics such as dealing with professionals, self-esteem and family relationships, funded by the Trillium Foundation.

Research

The Easter Seal Research Institute supports research and professional training in the prevention, treatment and management of physical disabilities in children through grants from The Easter Seal Society of Ontario.

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The Cost of Independence

The Easter Seal Society assists families with the costs of equipment, home renovations, and services such as camping and respite care, all required for a child's independence. Other services such as nursing and parent support programs are provided at no charge to children and their families.

Costs for equipment and home renovations:

(Note: as children grow, most equipment must be replaced)

power wheelchair	\$6,000 to \$20,000
* battery for power wheelchair	\$180 to \$300
manual wheelchair	\$1,600 to \$5,000
* orthopaedic shoes	\$55 to \$500
leg splints	\$1,200 to \$3,600
walker	\$150 to \$850
orthopaedic body support	\$860 to \$2,000
* head protection helmet	\$100
symbol communication board for a nonspeaking child or youth	\$550 to \$700
electronic voice communication system (touch talker)	\$7,000
computer to enable a child to communicate and keep up with school work	\$1,800 to \$3,500
* home ramp	\$2,000 to \$7,000
* porch lift	\$6,500 to \$8,000
* three-position hospital bed (mattress extra)	\$1,200 to \$2,300
* bath lift	\$3,000 to \$9,000
* car seat	\$500 to \$700
* transportation to medical appointments	\$25 to \$800

* No government assistance available for these items.

Costs to Easter Seals to provide services:

One week at a specially adapted Easter Seal camp	\$925
One weekend of professional one-on-one child care to give parents a respite from daily care	\$300
One day of physio and occupational therapy at an Easter Seal integrated preschool	\$210



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Nursing Service

Easter Seal Nurses, located in 17 district offices throughout Ontario, provide one-on-one service to more than 8,000 children and young adults (up to age 19) with physical disabilities and to their families. These nurses have community health nursing skills and specialize in paediatric rehabilitation.

Easter Seal Nurses:

- share information on
 - diagnosis and treatment
 - Easter Seal services and community resources available to meet the needs of families
 - financial resources for equipment, transportation and other costs
 - education issues, such as integration and school health support services
 - recreation options, such as integrated and special programs
- assist families in accessing community services
- promote community awareness of the needs of children with physical disabilities
- act as advocates to ensure the needs of children and their families are met
- provide emotional support to families
- monitor the progress of children and youth, encourage the development of independence, and assist with planning the transition from adolescence to adulthood
- encourage parents to be active members of the rehabilitation team
- act as a resource and provide support to Easter Seal parent delegates and other parent groups
- act as a resource to other community agencies on the needs of people with physical disabilities
- collaborate with treatment centres and other agencies to promote co-ordination of paediatric rehabilitation services
- organize diagnostic and cleft lip and palate clinics throughout Northern Ontario each year and, after the clinics, assist the families in carrying out the recommendations of the specialists.

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Turn over for a listing of Easter Seal District Offices

Easter Seal District Offices

Please note: all addresses are preceded by The Easter Seal Society.

Eastern Region: Offices in Kingston, Ottawa, and Peterborough.

Hamilton Region: Offices in Hamilton and Mississauga.

London Region: Offices in London, Waterloo and Windsor.

Northern Region: Offices in North Bay, Sault Ste. Marie, Sudbury, Thunder Bay, and Timmins.

Toronto Region: Offices in Toronto, Hugh MacMillan Rehabilitation Centre, the Hospital for Sick Children and Barrie.

Barrie
80 Bradford Street, Suite 102, Box 65
Barrie, Ont. L4N 6S7
(705) 737-2621

Hamilton
1030 Upper James Street,
Suite 203
Hamilton, Ont. L9C 6X6
(905) 385-5389 or 385-5380

Hospital for Sick Children
555 University Avenue, Room 6320
Toronto, Ont. M5G 1X8
(416) 813-5242

Hugh MacMillan Rehabilitation Centre
350 Rumsey Road
Toronto, Ont. M4G 1R8
(416) 425-6220 (ext. 641)

Kingston
797 Princess Street, Suite 205
Kingston, Ont. K7L 1G1
(613) 542-2408

Kitchener/Waterloo
500 Hallmark Drive
Waterloo, Ont. N2K 3P5
(519) 888-7679

London
779 Baseline Road East
London, Ont. N6C 5Y6
(519) 685-8694

Mississauga
790 Burnhamthorpe Rd. West, Unit 12A
Mississauga, Ont. L5C 4G3
(905) 949-8666

North Bay
222 McIntyre Street West, Suite 408
North Bay, Ont. P1B 2Y8
(705) 472-4320

Ottawa
1101 Prince of Wales Drive, Suite 105
Ottawa, Ont. K2C 3W7
(613) 226-3051

Peterborough
223 Aylmer Street North, Suite 07B
Peterborough, Ont. K9J 3K3
(705) 742-6435

Sault Ste. Marie
369 Queen Street East, Suite 104
Sault Ste. Marie, Ont. P6A 1Z4
(705) 256-6112

Sudbury
887 Notre Dame Avenue, Unit F
Sudbury, Ont. P3A 2T2
(705) 566-8858

Thunder Bay
507 North Lillie St.
Thunder Bay, Ont. P7C 4Y8
(807) 622-1401

Timmins
Suite 121, The 101 Mall
38 Pine Street North
Timmins, Ont. P4N 6K6
(705) 264-3005

Toronto Area
250 Ferrand Drive, Lower Concourse
Don Mills, Ont. M3C 3P2
(416) 421-8585

Windsor
500 Ouellette Avenue, Suite 910
Windsor, Ont. N9A 1B3
(519) 252-5769

Camping

Easter Seals provides a one- or two-week residential camping experience for 1,200 campers and about 100 families at six fully accessible camps. These camps provide the largest summer programs for campers with physical disabilities and their families in Ontario. Since the first camp opened in 1937, 51,000 campers have attended and had the experience of a lifetime.

Accessible

- Campers ages seven to 18 can make use of the water and the woods, use equipment specially built for them, meet friends and have a great time.

Exciting Programs

- Recreational swimming, canoeing, sailing, fishing, horseback riding, creative arts, music and drama, sports, adventure playgrounds, computers, out-trips and campfires are all part of the experience.

Well-Trained Staff

- Our enthusiastic counsellors and medical staff offer 24-hour care and are selected for their maturity, sensitivity and skills.

Independence and Life Skills

- All camp programs work towards developing independence, social skills and self-esteem in campers according to individual ability. In addition, sessions on life skills such as cooking and laundry are offered.

Off-season Rentals

- All Easter Seal camps are available for off-season rentals. Inquiries should be made to the appropriate camp superintendent or call The Easter Seal Society at the number below.

Other Camping Programs

Family Camp

- Families with a child under seven who have a disability can attend family camp sessions, where the families can enjoy a holiday together. They can also get together with other parents while their children are cared for by camp staff. This is the only camp of its kind in Ontario.

Leaders-In-Training Program

- Teens develop leadership skills and gain valuable experience while working with campers with physical disabilities.

Teen Independence Camping

- Life skills, social skills, career planning, disability awareness and learning how to advocate for themselves are the focus of this special camp program for teens.

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*Turn over for a listing of
Easter Seal Camps*

Easter Seal Camps



Blue Mountain Camp
RR 3
Collingwood, Ontario
L9Y 3Z2
705-445-3941
Fax 705-445-9105



Northwood Camp
Site #3, Box B-8
Sesekinika, Ontario
P0K 1S0
705-642-3414
Fax 705-642-3414



Lakewood Camp
RR 2
Wainfleet, Ontario
L0S 1V0
905-899-3043
Fax 905-899-3973



Woodedden Camp
RR 3
London, Ontario
N6A 4B7
519-471-6640
Fax 519-471-5388



Merrywood Camp
RR 5
Perth, Ontario
K7H 3C7
613-267-1244
Fax 613-264-8699



Camp Shebandowan
c/o Thunder Bay District Office
507 North Lillie St.
Thunder Bay, Ontario
P7C 4Y8
807-622-1401
Fax 807-623-1138

Community Services

The Easter Seal Society offers a number of community services which help children with physical disabilities and their families.

Child Support Services

Infant-Toddler Program

- Children from birth to two years are visited by Easter Seal consultants and therapists to assist with social, emotional, language, and skill development.

Integrated Preschools

- Assessment, physiotherapy and occupational therapy, speech therapy, creative play, educational games and transportation are provided at two Toronto locations.
- Preschoolers with physical disabilities interact with able-bodied children while developing important preschool skills.

Parent Support Services

Respite Care Programs

- Trained care givers provide one-on-one care to youngsters with disabilities so that parents and family members can have a period of relief.
- Age-appropriate programs, designed in consultation with the children and teen respiteers, focus on developing independence, self-esteem and life skills.

Parent-to-Parent Link Program

- A multi-agency program that matches trained parent volunteers with parents of children with special needs, each having common concerns.
- Parent volunteers provide an understanding ear, support and information.
- Easter Seals assisted in linking more than 150 parents in 1994 and gave advice and referrals to more than 500 parents.

Parent Delegate Resource Program

- A network of parent delegates develop their leadership, advocacy and communication skills while assisting other families in their community and advocating change in services at local, regional and provincial levels of government.
- Parent delegates have unique opportunities to learn and share information at conferences on such topics as special education, stress management, estate planning, siblings and home renovations.

Advocacy

- Specially trained parents of children with physical disabilities work in partnership with professionals and government to ensure that services meet the individual needs of the children and their families.
- Special Education Advisory Committee (SEAC) members represent to Boards of Education across Ontario the needs for educational programs and support services that will enable children with physical disabilities to attain an education.
- Easter Seal Parent Advocacy Committee (ESPAC) members address a range of issues including respite, equipment, therapy, services to the medically fragile, and long-term care.
- The Coalition For Family Support Services provides a united parent and professional partnership which advocates on a global scale.

Resource Centre

- Books and articles are available covering hundreds of topics such as parenting, advocacy, government legislation, community resources and disabling conditions.

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The Easter Seal Research Institute

The Easter Seal Research Institute is a non-profit corporation dedicated to funding research into the prevention, treatment and management of physical disabilities in children, as well as the training of health science researchers in Ontario.

- The Institute is managed by an independent, voluntary Board of Directors.
- A Grant Review Committee, consisting of seven leading health science researchers, evaluates all research and training applications.
- Originally the Conn Smythe Research Foundation, the Institute has invested more than \$3 million in research and training grants since its incorporation in 1976.

Funding is provided to:

- research projects (\$25 to \$30,000 per year up to two years)
- post-doctoral fellowships (\$38,000 for a period not to exceed two years)
- doctoral students (\$14,000 per year, renewable for an additional year)
- summer research students (\$3,000 each)

Hart Walker Orthosis

An example of exciting research funded by the Institute is the Hart Walker Orthosis (HWO). A two-year pilot study is being conducted at the Hugh MacMillan Rehabilitation Centre in Toronto to determine the effectiveness of the Walker for children with cerebral palsy. The study is looking at various physical and psycho-social issues associated with this orthotic device.

The HWO is a new device developed by British engineer David Hart to help and encourage children with cerebral palsy to learn to stand and walk without the use of their hands. The Walker is considered to be a trainer as it provides guidance and support while the child learns walking patterns. Independent mobility is the ultimate goal.

The HWO system is comprised of two main components, an orthosis or brace that fits around the child's hips and lower limbs, and a wheeled frame. To use the walker, the child is placed in the brace component which is then secured in the wheeled frame to a support attachment.

Many of the children in this study are showing improvements in strength, self-esteem and happiness and some are actually growing physically.

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institute



Funding research into
physical disabilities

Volunteers

Individual volunteers can:

- chair a task force or planning committee.
- provide office support, proof-read publications, or participate in group activities like mailings.
- serve on special event committees or be a "day-of" volunteer at one of our fundraising events.
- participate in our many events by collecting pledges or entering a team.

Corporate volunteers can:

- sponsor one of our high-profile Easter Seal fundraising events.
- enter a team in one of our fundraising events.
- organize a corporate fundraiser to send an Easter Seal child to camp.
- take advantage of tax deductions by buying tickets to our events.
- participate in Easter Seal product promotions and position your corporation as one that helps kids.
- sponsor a telephone answering panel on *Kids First!*, the Easter Seal telethon.
- donate goods or services as prizes or auction items for special events, and gain consumer profile.
- lend public relations, marketing and other business and professional expertise.
- speak to lawyers, investment brokers and others about our Planned Giving programs.

Service club partners can:

- raise funds to help children in your community.
- have a paint party or a "clean up the grounds day" at an Easter Seal camp.
- drive children to camp or medical appointments.
- pick up used wheelchairs, braces and other equipment and deliver it to another Easter Seal child.
- take Easter Seal children to an amusement park, sporting event or the zoo.
- organize a seminar on financial planning and wills for Easter Seal families.
- help to advocate for the needs of children with physical disabilities by writing to your local government representative.
- organize an Easter Seal Awareness Day in a mall or park. Ask the city to proclaim Easter Seal month and fly an Easter Seal flag at city hall.
- assist in the success of *Kids First!*, the Easter Seal telethon.
- sponsor a child from your community to attend an Easter Seal camp.
- take Easter Seal teens to a rock concert, sporting or theatre event.

Approximately 1/2 million volunteers contribute to the success of our programmes each year.

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1996 Fundraising Events Calendar

Date	Event	Location
Jan. 6 – Mar. 9	Snowarama	across Ontario
January 20	John D'Amico Skate	North Bay
January 28	John D'Amico Skate	Thunder Bay
January 27/28	Kids First! Easter Seal Telethon	Pembroke & Ottawa
January 31	.\$15,000 Money Madness BINGO	Milton Bingo Country
February 1	Conn Smythe Sports Celebrities Dinner & Auction	Metro Toronto Convention Centre
February 10	John D'Amico Skate	Milton
February 15	PodborSKI event	Heights of Horseshoe Ski & Country Club, Barrie
February 16	Easter Seals Gala Ball	Sheraton Toronto East Hotel & Towers
February 16	Benefit Performance <i>How to Succeed in Business Without Really Trying</i>	West Humber Collegiate, Etobicoke
February 17	Bell Celebrity Skate	Ottawa
February 18	Bell Celebrity Skate	Hamilton
March 2	.\$15,000 Money Madness BINGO	St. Thomas Bingo Country
March 3	Kids First! Easter Seal Telethon	CBC TV
Mar. 2,3,9,10,16,17	Timmy Tyke Hockey Tournament	North York Centennial Arena
Mar. 31	Timmy Tyke Tournament Finals	Maple Leaf Gardens, Toronto
March 16	Monte Carlo Night	Japanese Canadian Cultural Centre, Toronto

Turn over for a more events

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Date	Event	Location
April 6	\$15,000 Money Madness BINGO	Oakville Bingo Country
April 30	\$15,000 Money Madness BINGO	Milton Bingo Country
May 26	Persechini Easter Seals Run/Walk-a-thon	Newmarket
June 1	\$15,000 Money Madness BINGO	St. Thomas Bingo Country
June 8 & 9	Labatt 24 Hour Relay	Centennial Park, Etobicoke
June 18 (tentative)	Timmy Tyke Golf Tournament	Golf Haven Country Club, Gilford
June/July (TBA)	Kelsey's Fifth Annual Charity Golf Tournament	London, Ont.
July 1	\$25,000 Money Madness BINGO	Keele Street Bingo Country North York
July 14	Volvo Toronto Cup	Toronto Harbour Lionhead Golf & Country Club
July 15	Easter Seals Regatta Kelsey's Charity Golf Classic	
July	Labatt 24 Hour Relay	Windsor
August 6	Assistant Pro-Am Golf Tournament	Hockley Valley Resort
August 12	Women's Golf Classic for Tammy	Cardinal Golf Club, Kettleby
Sept.	Canadian Airlines Fly with Timmy & Tammy	Pearson International Airport
Sept. 5	Maple Downs Charity Pro Am Golf Tournament	Maple Downs Golf & Country Club
Sept. 5	Canadian Computer Charity Golf Classic	Lionhead Golf & Country Club
Sept. 28	\$15,000 Money Madness BINGO	Exhibition Place, Toronto
Sept. 30	\$15,000 Money Madness BINGO	Milton Bingo Country
October	An Evening of Eastern Enchantment (proceeds to Easter Seal Research Institute)	Toronto
October 12	\$15,000 Money Madness BINGO	Oakville Bingo Country
Nov/Dec (tentative)	Bell Celebrity Skate for Easter Seals	Barrie, Sudbury, Windsor
Dec.(tentative)	Bell/Bobby Orr Celebrity Skate for Easter Seals	Maple Leaf Gardens, Toronto
December 26	\$50,000 Boxing Day Blowout BINGO	Exhibition Place, Toronto

Glossary Of Common Conditions

The Easter Seal Society's mandate is to assist children and youth under the age of 19 years whose activity and independence are restricted as a result of a physical disability. These disabilities may have neurological, musculoskeletal or neuromuscular origins. Some of the more common diagnostic groups registered with The Society's Client Registry are noted below.

Amputations

The absence of a limb, or part of a limb, may be congenital (at birth) or caused through accident or illness. The cause for congenital amputations is unknown, as neither science nor medicine understands how or why a limb stops developing normally.

For congenital amputations, early fitting of artificial limbs, along with training to use them, is very important. For children with congenital amputations of the lower limb, the prosthesis is fitted when the child has developed standing balance. Congenital upper limb amputees are usually fitted when the baby has sitting balance. Frequent replacement is necessary during the child's growth period.

Cerebral Palsy

Cerebral palsy is a non-progressive disability in which children have difficulty with motor control of certain groups of muscles. The disabling effects of cerebral palsy range from very slight impairments of motor control to near-total impairment of voluntary movement.

Cerebral palsy is the result of a cerebral defect or injury to the area of the brain which controls movement, which may occur during the first five years of life. Cerebral palsy may also involve intellectual, sensory, behavioural and perceptual problems frequently found in combination with each other.

It is important to remember that people with cerebral palsy, no matter

how severe the degree of physical disability, do not necessarily have intellectual, or cognitive, impairments.

Cleft Lip and Palate

Cleft lip is a condition in which the upper lip fails to join during the prenatal period. It may or may not be associated with a defect in closure of the hard palate, the "roof" of the mouth. The cause is not known. Clefts of the lip and palate vary greatly in severity, but reconstructive surgery can often repair the cleft lip and/or palate so that it is undetectable. Treatment should be started early to prevent or minimize complications such as feeding difficulty, speech defects, hearing impairment, dental deterioration, or cosmetic disfigurement. Treatment may consist of surgical repair, dental care, speech therapy, orthodontia and guidance to help parents cope with social and psychological problems that may occur as a result of the condition.

Hydrocephalus

Hydrocephalus is the accumulation of cerebrospinal fluid in the ventricles of the brain. It is often treatable with the use of a shunt, a device implanted under the skin to drain the excess fluid to the abdomen. Hydrocephalus may be associated with spina bifida.

Injuries

This group includes multiple, physically disabling conditions resulting from brain injury, burns, fractures and spinal cord injuries.

Juvenile Arthritis

Juvenile arthritis is a painful inflammation of the joints, with onset during childhood. The cause is unknown and the outcome is dependent on the affected sites. Treatment consists of physiotherapy and medication. Consistent medical supervision is important.

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Glossary Of Common Conditions (continued)

Muscular Dystrophy

Muscular dystrophy is one of a group of neuromuscular disorders characterized by progressive weakness and wasting of the muscles that control body movement. Contrary to popular belief, muscular dystrophy can affect people of all ages, not just children. The specific disorders within this group vary in severity, age of onset and pattern of inheritance. Duchenne's muscular dystrophy, the most common form of muscular dystrophy in children, affects only boys. Early symptoms, such as falling, waddling gait and difficulty climbing stairs, develop at four to six years of age. Braces, surgery and physiotherapy help the child remain active. By about age 12, a child with Duchenne's muscular dystrophy will need a wheelchair as his condition progresses and he becomes more disabled. Medical technology has increased the life expectancy of young men who have Duchenne's muscular dystrophy.

Myotonic muscular dystrophy is a severe form of muscular dystrophy in which weakness of the hands and feet spreads to arms, shoulders, legs, and hips, as well as facial weakness and difficulty with speech. It affects both males and females.

Scoliosis

Scoliosis is a condition which may be present from birth, or idiopathic (cause unknown) occurring in adolescence. It results in a curvature of the spine. The idiopathic type is the most common, especially in girls, with onset between the ages of 11 and 13 years. With treatment, such as bracing, casts and surgery, the prognosis for scoliosis is good.

Spina Bifida

Spina bifida is a congenital abnormality in which the spinal column fails to close over the spinal cord, leaving it exposed and resulting in damage to the spinal cord nerves. It may be complicated by the protrusion of the spinal cord through the bony cleft of the spinal column.

Depending on the site and degree of the spinal column's failure to close, complete or partial paralysis of the lower limbs and loss of sensation may occur. Loss of bowel and bladder control may be associated with this condition. If there is interference with circulation of the spinal fluid, hydrocephalus may occur.

Early assessment, treatment and prevention of muscular atrophy due to paralysis are very important for children with spina bifida. Treatment consists of surgery, bracing, physiotherapy, and bowel and bladder management.

Preferred terms

Instead of...

Disabled, handicapped, crippled, lame
Crippled by, afflicted with, suffering from, victim of, deformed
Confined, bound, restricted or dependent on a wheelchair
Spastic (as a noun)
Physically challenged
Normal

Use...

Person(s) with a disability
Person who has...or,
Person with...
Person who uses a wheelchair
Person with cerebral palsy
Person with a physical disability
Able-bodied

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BRANT COUNTY BOARD OF EDUCATION

- and -

EATON

Appellant

Respondents

IN THE SUPREME COURT OF CANADA

AFFIDAVIT OF DIANE HOPKINS
(Sworn August 15, 1996)

Eberts Symes Street & Corbett
200 - 8 Price Street
Toronto, Ontario
M4W 1Z4

Mary Eberts
Lucy K. McSweeney
(416) 920-3030

Solicitors for the proposed intervener,
The Easter Seal Society

IN THE SUPREME COURT OF CANADA

(ON APPEAL FROM THE COURT OF APPEAL FOR THE PROVINCE OF ONTARIO)

BETWEEN:**THE BRANT COUNTY BOARD OF EDUCATION**Appellant
(Respondent)

- and -

CAROL EATON and CLAYTON EATONRespondents
(Applicants)**AFFIDAVIT OF SHIRLEY CLARK
(sworn August 13, 1996)**

I, Shirley Clark, of the City of Scarborough, in the Municipality of Metropolitan Toronto, make oath and say as follows:

1. I am the Senior Manager, Training and Information with the Child and Family Support Department The Easter Seal Society, Ontario ("TESS"), and as such have knowledge of the matters to which I hereinafter depose.
2. The Board of Directors of TESS made a decision to seek intervention status in the *Eaton* case in November 1995. This decision was reported in the minutes of the Board's meeting which were reported and circulated at TESS on January 22, 1996. Once I received the minutes, I was authorized to locate and retain a lawyer to pursue intervention status on behalf of TESS.
3. It took me a few weeks to gather names of lawyers who might be prepared to assist us on a *pro bono* basis.



4. In the 3rd week of February, 1996, I contacted Mr. Harry Radomski, of the law firm Goodman Phillips & Vineberg in Toronto. I spoke with Mr. Radomski on the telephone. He expressed an interest in the case, and indicated that he had represented an intervener when the case was argued in the Court of Appeal. He told me that he was prepared to represent TESS on a *pro bono* basis and seek leave to intervene for TESS in the Supreme Court of Canada ("SCC"). It was agreed that TESS would cover the costs of out-of-pocket or disbursement related expenditures.

5. I confirmed my telephone discussion with Mr. Radomski by a letter dated February 28, 1996. A true copy of this letter is attached hereto as Exhibit "A".

6. In my letter of February 28, 1996 I adverted to the fact that TESS has little experience with the court process and asked Mr. Radomski to "walk us" through the necessary steps for making an application for leave to intervene. In particular I understood that some sort of application had to be completed, and I asked Mr. Radomski to send the necessary forms to my attention.

7. I did not receive any correspondence from Mr. Radomski in the weeks following my letter of February 28, 1996. On March 18, 1996, I wrote to Mr. Radomski again to follow-up on my earlier letter. Once again, I asked him please to let me know whether there was anything that TESS needed to do in order for him to prepare our application for intervenor status. A true copy of this letter is annexed hereto as Exhibit "B".

8. Following my letter of March 18, 1996, I left several messages for Mr. Radomski at his offices. He returned some of my calls by leaving messages at my office. At no point, however, were we able to speak on the telephone directly with each other. In none of Mr. Radomski's telephone messages, was there any indication that myself or TESS needed to take any steps in order for the intervention application to be made on our behalf, nor any mention of the applicable deadlines for filing our materials.

WMS

By May 1996 I had not received any copies of correspondence or documents filed with the Court. I became concerned about the steps that Mr. Radomski was taking on TESS' behalf. Until this point I had been proceeding on the understanding that the application was being completed by Mr. Radomski on TESS' behalf and that we did not need to assist him in this process.

9. Sometime in early or mid May 1996, I spoke with counsel for the respondents, Janet Budgell. I have had occasion over the years to deal with Ms. Budgell on several matters related to the work of the Advocacy Resource Centre for the Handicapped ("ARCH") and TESS. Ms. Budgell mentioned to me that, although she had been served with many applications for intervenor status, she was not aware of any application for intervention being made by TESS. I was very worried after speaking with Ms. Budgell and I wrote to Mr. Radomski by letter dated May 27, 1996, a true copy of which is attached hereto as Exhibit "C".

10. I am not a confrontational person by nature, and although I was very concerned that Mr. Radomski had not kept us up to date on steps he was taking on behalf of TESS, I made a polite request for him "please call or fax me to let me know our status todate [sic]". I received a response to my letter within a few days by way of a telephone message left for me by Mr. Radomski. In this message he indicated that he was calling from an airport. He further indicated that he had bumped into a lawyer named David Kent, who was involved in the *Eaton* case as a lawyer for other interveners. He told me that Mr. Kent had informed him that many applications for intervenor status had already been filed. Mr. Radomski then stated that he did not think that TESS should pursue an intervention application.

11. I was very shocked at receiving this message from Mr. Radomski, as I had been under the impression that he had taken the necessary steps to file an intervention application on behalf of TESS following our retainer agreement in February, 1996. I telephoned Mr. Radomski's office and ask him to provide me with a statement in writing


WMS

confirming his telephone message. He did so, by facsimile transmitted letter dated June 7, 1996, a true copy of which is attached hereto as Exhibit "D". It was important to me that I have something in writing to show the members of the TESS Board of Directors, to whom I had indicated that the intervention application was proceeding under Mr. Radomski's direction.

12. At no time prior to the telephone message left by Mr. Radomski, referred to above at paragraph 9, was I made aware that there was a deadline or time limit in which TESS was required to file its application materials. Even after receiving Mr. Radomski's letter, attached as Exhibit "D", I was unaware of what the time remained for TESS to file its materials.

13. After receiving Mr. Radomski's letter of June 7, 1996, I discussed the issue of TESS' intervention with my Director, Ms. Diane Hopkins. We did not know what to do. Mr. Radomski's letter clearly indicated that in his opinion TESS could jeopardize the intervention application of others if we proceeded, as well as "waste" the Supreme Court's time. Of course we did not wish to do either of these things, however we continued to consider that TESS had a unique perspective to offer the Court on the issues in the appeal. We did not know whether there was now an absolute bar to our making an application to intervene, as Mr. Radomski's letter (Exhibit D) had suggested we were too late, but did not specify what the deadline for intervention applications was. We did not feel at this point that Mr. Radomski was representing us.

14. I had several discussions with Ms. Hopkins, regarding what we should next. These discussions happened over a period of weeks in mid-June 1996 during which TESS' staff and resources were committed to organizing an Annual General meeting which took place on June 27, 1996. We were still having these discussions when I took my annual vacation and was out of the office between Friday June 28th and Tuesday July 16, 1996.



15. On my return from vacation I contacted lawyer Mary Eberts, whose name had been given to me as a lawyer familiar with disability issues and appellate advocacy. Ms. Eberts and I had a series of telephone discussions over the following week regarding the possibility of Ms. Eberts and her office representing TESS in seeking intervention standing in the *Eaton* case. I was informed by Ms. Eberts that this application was now seriously late, and that a special motion would have to be brought by TESS in order to seek permission to file the application at all.

16. By July 23, 1996, I had received approval from my Director to retain Eberts Symes Street & Corbett on behalf of TESS to pursue this matter in the SCC. I therefore wrote to Mr. Radomski by letter dated July 25, 1996, a true copy of which is attached hereto as Exhibit "E", indicated that TESS was terminating its retainer with him. TESS' retainer of Ms. Eberts was subsequently confirmed.

17. I hope that the SCC will consider exercising its discretion to permit TESS to make its application for intervention, as it has been our intention to do so for some time. We retained counsel for this purpose in February, 1996. Our failure to take the appropriate steps in a more timely fashion was due to reliance on counsel who, it transpires, was not taking the steps which he had been retained to take on our behalf. I am informed by my counsel Lucy McSweeney and do believe that during the time Mr. Radomski was retained by TESS, between late February 1996 and July 25, 1996, other groups filed applications for intervenor status and were granted leave to intervene by the Court on June 18, 1996. Having clarified that our counsel was not in fact acting on our behalf as we had understood him to be, TESS moved quickly to identify and retain other counsel who were prepared to make the application as we requested.

18. In setting forth here the account of why our application is being filed so late, I am not seeking to criticize Mr. Radomski, with whom I have not at this time had a chance to discuss in detail why no steps were taken on our behalf. Perhaps Mr. Radomski misunderstood the retainer. On the other hand, we do wish to advise the

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Court of our long standing good faith intention to seek intervenor status, in the hope that we can realize these plans now, given that we do feel that we have a unique and important perspective to offer to the consideration of this case.

19 I make this affidavit in support of an application to extend the time for filing
and service of the application for leave to intervene of TESS, and for no other or
improper purpose.

**SWORN before me at the City
of Toronto, in the Municipality
Metropolitan Toronto, this 13th
day of August, 1996**

Lucy K. McSweeney
A Commissioner, etc.

Shirley Clark
Shirley Clark

LONG

easter
seal
society



February 28, 1996

Mr. Harry Radomksi
Goodman Phillips & Vineberg
250 Yonge Street
Eaton Tower
Suite 2400
P.O. Box 24
Toronto, Ontario
M5B 2M6

Exhibit A referred to in the
of Shirley Clark
before me, this 13th
day of August 1996
Commissioner for Taking Affidavits

Dear Harry:

On behalf of The Easter Seal Society, we would like to say "thank you" for your interest in acting as our legal council for Intervenor Status in the Eaton v. Brant County Board of Education case at the Supreme Court of Canada.

250 Ferrand Drive
Suite 200
Don Mills, Ontario
M3C 3P2

Telephone
416-421-8377
Fax
416-696-1035

As you are probably well aware, the Eaton family is on the Easter Seal Society caseload, and both parents are active in our parent program, The Parent Delegate Resource Program.

Since we have little experience as an agency with this legal process, we would ask that you "walk us" through the necessary steps. I understand from Janet Budgell, from ARCH, that we must put in an application form first. If you could start this process and send us the necessary forms, we will fill these out.

I would also like to clarify that you have agreed to this on a "pro bono" basis, which is what we have received approval for from The Easter Seal Society Board of Directors. If the expenses under "pro bono" surpass \$3,000 we would like to be informed beforehand before we proceed further.

As well, The Easter Seal Society is coming at this from the status of not supporting integration or segregation, but rather options for parents and their families.

Since we are having a hard time communicating via telephone, if we can converse by fax, we should work much quicker together.

If you have any information that you would like to share we us, please send to my attention at The Easter Seal Society.

Sincerely,

Shirley Cla

Shirley Clark, Parent Support and Resource Manager
The Easter Seal Society



March 18, 1996

Mr. Harry Radomski
Goodman Phillips & Vineberg
250 Yonge Street
Eaton Tower
Suite 2400
P.O. Box 24
Toronto, Ontario
M5B 2M6

This is Exhibit B referred to in the
affidavit of S. Clark
sworn before me, this 13th
day of August 1996
Lucy K. M.
COMMISSIONER FOR TAKING AFFIDAVITS

Dear Harry:

I am just writing to follow up with my February 28, 1996 fax to you.

I have not heard back and was just wondering if you received my fax? If yes, could you please let me know by phone or fax if there is anything that we need to do for you to get the Application for Intervenor Status in process?

Thank you.

Sincerely,

Shirley Clark

Shirley Clark
Parent Support and Resource Manager
Community Services Department
The Easter Seal Society

May 27, 1996

Mr. Harry Radomski
 Goodman Phillips & Vineberg
 250 Yonge Street, Eaton Tower
 Suite 2400
 P.O. Box 24
 Toronto, Ontario
 M5B 2M6

This is Exhibit referred to in the
 affidavit of
 sworn before me, this
 day of 1996

 COMMISSIONER FOR TAKING AFFIDAVITS

Dear Harry:

Hello Harry. How are you doing? Sorry that we have never been able to touch base via phone, however I do know that you and I have both tried many, many times. So, thought that this fax is the best way to communicate in the meantime.

As I mentioned in my voice mail from this past Friday, we are a bit concerned in that the application for Intervenor Status has not gone in yet. I was wondering why this is. The Easter Seal Society Board of Directors is looking for some action regarding the status and when I spoke to ARCH about other matters, they mentioned they had not seen our Intervenor application go through.

If there is a problem with this and we need to sit down to talk about it, perhaps we should schedule a meeting where I come to your office. If you think this is not necessary, could you please call or fax me to let me know our status today.

Thank you.

Sincerely,

Shirley Clark

Shirley Clark
 Parent Support and Resource Manager
 Community Services Department
 The Easter Seal Society

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GOODMAN PHILLIPS & VINEBERG

250 YONGE STREET • SUITE 2400 • TORONTO ONTARIO CANADA M5B 2M6 • (416) 979 2211 • FAX (416) 979 1234

Direct Line: 597-4142

June 7, 1996

BY FACSIMILE NO. (416) 696-1035

Ms Shirley Clark
Easter Seal Ontario
250 Ferrand Drive
Suite 200
Don Mills, Ontario
M3C 3P2

This is Exhibit D referred to in the
affidavit of S. Clark
sworn before me, this 13th
day of August 1996
L. J. McPherson
COMMISSIONER FOR TAKING AFFIDAVITS

Dear Ms Clark:

This is further to the many messages which we have exchanged and the message which I left for you indicating my view as to the possible intervention by Easter Seals in the Eaton case.

As I indicated in my telephone message to you, having spoken with David Kent, who acts for one of the proposed intervenors, and having seen a number of intervenor applications already filed, it appears that it would be extremely difficult to be successful in persuading the Supreme Court that there exists yet another distinct perspective which can be brought to bear upon the issues before the Court. It therefore appears to me that there would be little point in preparing an intervenor application and wasting the Court's time, with the possible adverse consequence that, with so many intervenor applications, the Court might limit the involvement of those granted intervenor status. This would have a prejudicial effect in terms of the overall participation of the intervenors in the hearing of the appeal.

I welcome any thoughts that you have with respect to the foregoing. I look forward to hearing from you.

Yours very truly,

GOODMAN PHILLIPS & VINEBERG


H.B. Radomski

HBR/nr

G25RADOMSKH175408.1

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easter
seal
society



July 25, 1996

Mr. Harry Radomski
Goodman Phillips & Vineberg
250 Yonge Street, Suite 2400
Toronto, Ontario
M5B 2M6

Dear Harry:

Thank you again for your letter of June 7, 1996 outlining your views on pursuing intervenor status for The Easter Seal Society with the Eaton case.

The Easter Seal Society has decided to continue in our efforts to pursue intervenor status, as has been our intentions since we contacted you in early February. We are therefore terminating our retainer with you and have retained other legal counsel who will be pursuing intervenor status on behalf of The Easter Seal Society.

Sincerely,

Shirley Clark
Senior Manager, Training & Information

This is Exhibit E referred to in the
affidavit of S. Clark
sworn before me, this 13th
day of August 1996
Lucy K. M.
COMMISSIONER FOR TAKING AFFIDAVITS

250 Ferrand Drive
Suite 200
Don Mills, Ontario
M3C 3P2

Telephone
416-421-8377
Fax
416-696-1035



BRANT COUNTY BOARD OF EDUCATION

- and -

EATON

Appellant

Respondents

IN THE SUPREME COURT OF CANADA

**AFFIDAVIT OF SHIRLEY CLARK
(Sworn August 13, 1996)**

**Eberts Symes Street & Corbett
200 - 8 Price Street
Toronto, Ontario
M4W 1Z4**

**Mary Eberts (x301)
Lucy K. McSweeney
(416) 920-3030**

**Solicitors for the proposed intervener,
The Easter Seal Society**

020 11

APPENDIX "B" - Authorities Referred to

Pont Viau (Cité) v. Gauthier Mfg. Ltd., [1978] 2 S.C.R. 516

Borowski v. AG. (Can.) (26 January 1988) [unreported]

Reference Re Workers' Compensation Act, 1983 (Nfld.), [1989] 2 S.C.R. 335

Canadian Council of Churches v. Minister of Employment and Immigration, [1992] 1 S.C.R. 236

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APPENDIX "A" - Statues Referred to

Rule 5 of the *Supreme Court Rules*

Rules 18(3)(a) and (c) of the *Supreme Court Rules*

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by any timetable imposed by the Court, and its intervention will cause no prejudice to the appellant or the respondents.

PART IV - ORDER REQUESTED

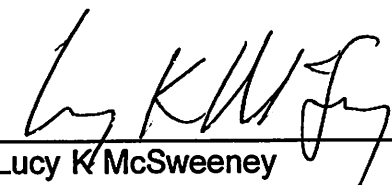
24. The Easter Seal Society respectfully seeks an order extending the time for it to bring this motion for leave to intervene on this appeal. It also seeks an order granting it leave to intervene on this appeal, to file a factum and to present oral argument at the hearing of the appeal.

All of which is respectfully submitted.

DATED: August 15, 1996



Mary Eberts



Lucy K. McSweeney

Solicitors for the proposed
intervener the Easter Seal
Society

20. The issues raised by this case have a significant impact on children with physical disabilities. The majority of children supported by The Easter Seal Society have moderate to severe physical disabilities and all have been classified as exceptional by their school boards on the basis of their disability. Accordingly, the outcome of this litigation will have a greater effect on children with physical disabilities and their families than other members of the general public.

Affidavit of Diane Hopkins, Motion Record, Tab 2, para. 31

21. The extensive experience and expertise of the Easter Seal Society in matters relating to the educational needs of children with physical disabilities will be of assistance to the Court in adjudicating this matter. The Easter Seal Society has been working to support children with disabilities in Ontario for 74 years, and is recognized by the Government of Ontario, and within the disability communities, as a leading voice for families and children with disabilities. In particular, the Easter Seal Society's broad expertise with respect to the educational needs of children with a wide range of physical disabilities, including multiple disabilities, cannot be matched by any of the other parties or interveners in this appeal.

Affidavit of Diane Hopkins, Motion Record, Tab 2, para. 33

22. The Easter Seal Society is well positioned to provide useful submissions from the perspective of the expertise of parents of disabled children and the necessity for a central role for parents in decision making regarding special education placements.

Affidavit of Diane Hopkins, Motion Record, Tab 2, para. 32

23. The Easter Seal Society does not propose to raise any new issues on this Appeal and will take the record as it stands. The Easter Seal Society will abide

16. Neither the appellant nor the respondents will suffer prejudice as a result of the time being extended for the bringing of this motion. Both the appellant and the respondents have consented to this application.

(b) The Motion for Leave to Intervene

17. A motion for leave to intervene should be granted where:

- (a) the moving party has an interest in the subject matter of the proceedings; and
- (b) the moving party will make submissions which will be useful and different from the submissions made by other parties.

Rules 18(3)(a) and (c) of the *Supreme Court Rules*

Reference Re Workers' Compensation Act, 1983 (Nfld.),
[1989] 2 S.C.R. 335 at p. 339

18. A party is able to satisfy the second branch of the test if it "has a history of involvement in the issue giving the applicant an expertise which can shed fresh light or provide new information on the matter".

Reference Re Workers' Compensation Act, supra at 340

19. The Rules regarding applications to intervene have been relied in appeals which involve the interpretation of the *Canadian Charter of Rights and Freedoms* and human rights legislation. Public interest organizations should be granted intervenor status, particularly on issues of public importance which affect their members.

Canadian Council of Churches v. Minister of Employment and Immigration, [1992] 1 S.C.R. 236 at 256

11. Having decided to pursue intervention standing in this appeal, the Easter Seal Society retained counsel for this purpose in February 1996.

Affidavit of Shirley Clark, Motion Record, Tab 3, paras. 4,5
and Exhibit "A" thereto

10 12. The Easter Seal Society believed that its counsel was pursuing and filing an application for leave to intervene until late May, 1996 when it learned that its counsel had not in fact taken such steps.

Affidavit of Shirley Clark, Motion Record, Tab 3, paras. 10,
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20 13. During the period from late February 1996 to July 1996 time when counsel was retained by the Easter Seal Society to pursue intervention status on its behalf, other groups filed applications for leave to intervene and several were granted leave to intervene by order of the Court on June 18, 1996.

Affidavit of Shirley Clark, Motion Record, Tab 3, para. 17

14. Upon receipt of written confirmation of counsel's inactivity and without the benefit of information about the time-lines involved in the appeal, The Easter Seal Society decided to retain other counsel to prepare and file its application since retaining new counsel, the Easter Seal Society and its new counsel have moved swiftly to prepare and file its motion record and application.

30 *Affidavit of Shirley Clark*, Motion Record, Tab 3, paras. 13-
16 and Exhibit "D" thereto

15. All counsel in the appeal were made aware of The Easter Seal Society's intention to seek leave to appeal by letter dated August 2, 1996.

PART III - THE ISSUES

7. The issues on this motion are characterized as follows:
- (a) should this Honourable Court extend the time to permit the Easter Seal Society to bring this motion for leave to intervener in this appeal; and
 - (b) should the Easter Seal Society be granted leave to intervene in this appeal?

PART IV - THE ARGUMENT**(a) Extending the Time for Bringing this Motion**

8. Rule 5 of the *Supreme Court Rules* provides:

5. Notwithstanding anything in these Rules, but subject to any other Act, the Court or a judge, or the Registrar when authorized by these Rules, may at any time extend or abridge the time for doing any act or taking any proceeding.

Rule 5 of the *Supreme Court Rules*

9. The Court is hesitant to penalize an appellant where the applicant itself acted with diligence and delay is the fault of counsel.

Pont Viau (Cité) v. Gauthier Mfg. Ltd., [1978] 2 S.C.R. 516 at 527

10. Once delay is recognized, counsel must move diligently.

Borowski v. AG. (Can.) (26 January 1988) [unreported]

education and placement. By the time their child reaches school age, parents have developed skills in case management, record keeping, and have acted as nurses, educators, co-ordinators and facilitators among services (education, health, and social services), as leaders in meetings, and as advocates for their child's needs. In most cases they have become the best friend of their challenged child.

*Affidavit of Diane Hopkins, Motion Record, Tab 2, paras.
15-27*

The Proposed Intervention

6. The appeal involves many issues of importance which will have a profound effect on children with physical disabilities in the area of education and other aspects of their daily lives. If leave to intervene is granted, Easter Seals will submit that the dignity and equality of treatment for children with disabilities requires:

- a) that informed parental choice be part of any decision made regarding educational placement for a child with a disability; parents of children with disabilities, whose special expertise arises from their involvement in their child's life as described above at paragraphs 15 through 24, must be equal partners with the school board in educational placement decisions;
- b) that a full range of educational options must be made available to pupils with physical disabilities including: regular class with monitoring, regular grade with additional resources and/or periodic withdrawal, special (self-contained) class, provincial schools (i.e. schools for deaf and hard of hearing students, schools for blind students, and schools for severely learning disabled students), and segregated schools;
- c) that sufficient resources must be allocated by school boards to accommodate disabled children.

*Affidavit of Diane Hopkins, Motion Record, Tab 2, paras.
28-30*

those related to cerebral palsy, hydrocephalus, muscular dystrophy, scoliosis, spina bifida, juvenile arthritis, injuries (including spinal cord injuries) and amputations.

Affidavit of Diane Hopkins, Motion Record, Tab 2, paras. 4,5

10 3. Included in the broad range of services provided by the Easter Seal Society to children with disabilities and their families are: pediatric nursing services; integrated preschools; camping; respite and recreation services; infant-toddler programs. Easter Seals also provides education and training to parents with respect to special education issues. The Easter Seal Society is dedicated to helping children with physical disabilities achieve their full individual potential and future independence.

Affidavit of Diane Hopkins, Motion Record, Tab 2, paras. 6, 7

20 **Easter Seals Participation in Special Education Policy Development**

4. Easter Seals has been working with government and in the community to develop and improve special education services for children with disabilities since the 1970's. Easter Seals has been consulted by the Government of Ontario, and has organized conferences and had representation on many committees and coalitions addressing special education issues.

Affidavit of Diane Hopkins, Motion Record, Tab 2, paras. 9-14

30 **The Role of Parents in Education Decisions Affecting their Disabled Child**

5. The Easter Seal Society believes that parents are the experts on their disabled child's needs and abilities, and that their personal and in-depth knowledge of their own child entitles them to be consulted decisions related to their child's

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR THE PROVINCE OF ONTARIO)

B E T W E E N:

THE BRANT COUNTY BOARD OF EDUCATION

**Appellant
(Respondent)**

- and -

CAROL EATON AND CLAYTON EATON

**Respondents
(Applicants)**

CONCISE MEMORANDUM OF THE APPLICANT FOR LEAVE TO INTERVENE

PART I - THE NATURE OF THE APPLICATION

1. The Easter Seal Society ("Easter Seals") has brought this motion to obtain an order extending the time to bring this motion for leave to intervene and for an order granting it leave to intervene in this appeal.

Notice of Motion dated August 15, 1996, Motion Record,
Tab 1

PART II - THE FACTS

2. The Easter Seal Society was formed in 1922. It is a provincial organization which provides assistance to families who have children (age 0-19) with physical disabilities. At the present time there are 8,097 children on the caseload. Approximately seventy-five percent of the children have moderate to severe physical disabilities. The most common disabling conditions which affect the children are

BRANT COUNTY BOARD OF EDUCATION

- and -

EATON

Appellant

Respondents

IN THE SUPREME COURT OF CANADA

CONCISE MEMORANDUM OF THE APPLICANT
FOR LEAVE TO INTERVENE

Eberts Symes Street & Corbett
200 - 8 Price Street
Toronto, Ontario
M4W 1Z4

Mary Eberts (x301)
Lucy K. McSweeney
(416) 920-3030

Solicitors for the proposed intervener,
The Easter Seal Society

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**HICKS MORLEY HAMILTON
STEWART STORIE
BARRISTERS & SOLICITORS**

ANDREA F. RASO
DIRECT DIAL (416) 864-7309

THIRTIETH FLOOR
TORONTO-DOMINION TOWER
BOX 371, T-D CENTRE
TORONTO, CANADA
M5K 1K8

TELEPHONE (416) 362-1011
FAX (416) 362-8680

August 15, 1996

VIA FACSIMILE - 920-3033

Mr. Lucy McSweeney
Eberts Symes & Street
Barristers and Solicitors
8 Prince Street, Suite 200
Toronto, Ontario
M4W 1Z4

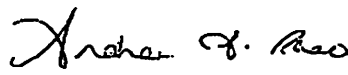
Dear Ms. McSweeney:

**Re: Brant County Board of Education v. Eaton
Intervention by Easter Seal Society
Supreme Court of Canada File #24688**

In response to your voicemail message and fax of August 14, 1996, The Brant County Board of Education consents to the Easter Seal Society's application for leave to intervene in the above-noted matter.

Yours very truly,

BJB/vak


per. Brenda J. Bowlby

Court File No. 24888

IN THE SUPREME COURT OF CANADA

(ON APPEAL FROM THE COURT OF APPEAL FOR THE PROVINCE OF ONTARIO)

BETWEEN:

THE BRANT COUNTY BOARD OF EDUCATION

Appellant
(Respondent)

- and -


CAROL EATON and CLAYTON EATON

Respondents
(Applicants)

CONSENT

TAKE NOTICE THAT the Respondents, Carol Eaton and Clayton Eaton, consent to the application for leave to Intervene of the Easter Seal Society.

DATED AT TORONTO, this 15th day of August, 1996.



Janet Budgell
Advocacy Resource Centre
for the Handicapped
255 - 40 Orchard View Blvd.
Toronto, Ontario
M4R 1B9

(416) 482-8255

Solicitor for respondents

IN THE MATTER s. 13 of Part I of *The Judicature Act, 1986*, c. 42, S.N. 1986;

IN THE MATTER OF ss. 32 and 34 of *The Workers' Compensation Act, 1983*, c. 48, S.N. 1983;

AND IN THE MATTER OF a Reference of the Lieutenant-Governor in Council to the Court of Appeal for its hearing, consideration and opinion on the constitutional validity of ss. 32 and 34 of *The Workers' Compensation Act, 1983*.

INDEXED AS: REFERENCE RE WORKERS' COMPENSATION ACT, 1983 (NFLD.) (APPLICATION TO INTERVENE)

File No.: 20697.

1988: December 7; 1989: February 13.

Present: Sopinka J.

MOTION FOR LEAVE TO INTERVENE

Practice — Application to intervene — Applicant contesting constitutionality of similar provisions in another province — Attorney General of that province intervening as of right — Factors to be considered in according individual right to intervene — Supreme Court Act, R.S.C. 1970, c. S-19, s. 55(4) — Rules of the Supreme Court of Canada, SOR/83-74, s. 18(3)(a). (c) — Canadian Charter of Rights and Freedoms, s. 15 — Constitution Act, 1982, s. 52(2) — Workers' Compensation Act, 1983, S.N. 1983, c. 48, ss. 32, 34 — Workers Compensation Act, R.S.B.C. 1979, c. 437, ss. 10, 11.

The Attorney General of Newfoundland presented a reference to the Newfoundland Court of Appeal on the issue of the constitutionality of ss. 32 and 34 of *The Workers' Compensation Act, 1983* which provided that the right of compensation for injuries arising in the course of a worker's employment was limited to that specifically provided for by the Act. An injured worker, who brought a challenge of similar provisions in British Columbia, applied to intervene pursuant to Rule 18 of the *Rules of the Supreme Court of Canada*. At issue is whether this application satisfied the requirements of Rule 18(3)(a) and (c) that the intervener have an interest and that the intervener's submissions be useful and different from those of the other parties.

DANS L'AFFAIRE de l'art. 13 de la partie I de *The Judicature Act, 1986*, chap. 42, S.N. 1986;

^a DANS L'AFFAIRE des art. 32 et 34 de *The Workers' Compensation Act, 1983*, chap. 48, S.N. 1983;

^b ET DANS L'AFFAIRE d'un renvoi adressé par le lieutenant-gouverneur en conseil à la Cour d'appel sur la constitutionnalité des art. 32 et 34 de *The Workers' Compensation Act, 1983*.

^c RÉPERTORIÉ: RENVOI: WORKERS' COMPENSATION ACT, 1983 (T.-N.) (DEMANDE D'INTERVENTION)

N° du greffe: 20697.

^d 1988: 7 décembre; 1989: 13 février.

Présent: Le juge Sopinka.

REQUÊTE EN AUTORISATION D'INTERVENTION

^e *Pratique — Demande d'intervention — Contestation par le requérant de la constitutionnalité de dispositions semblables dans une autre province — Intervention de plein droit du procureur général de cette province — Facteurs à considérer pour accorder à un individu le droit d'intervenir — Loi sur la Cour suprême, S.R.C. 1970, chap. S-19, art. 55(4) — Règles de la Cour suprême du Canada, DORS/83-74, art. 18(3)a). c) — Charte canadienne des droits et libertés, art. 15 — Loi constitutionnelle de 1982, art. 52(2) — Workers' Compensation Act, 1983, S.N. 1983, chap. 48, art. 32, 34 — Workers Compensation Act, R.S.B.C. 1979, chap. 437, art. 10, 11.*

^h Le procureur général de Terre-Neuve a adressé un renvoi à la Cour d'appel de Terre-Neuve sur la constitutionnalité des art. 32 et 34 de *The Workers' Compensation Act, 1983*, qui prévoient que le droit à une indemnité pour les blessures subies par un travailleur dans l'exercice de ses fonctions est limité à ce que la Loi prévoit expressément. Une personne qui a subi des blessures et qui conteste des dispositions semblables en Colombie-Britannique a demandé l'autorisation d'intervenir conformément à l'art. 18 des *Règles de la Cour suprême du Canada*. La question est de savoir si cette requête satisfait aux exigences des al. 18(3)a) et c) des Règles selon lesquelles l'intervenant doit avoir un intérêt et présenter des allégations utiles et différentes de celles des autres parties.

Held: The motion for leave to intervene should be allowed.

Involvement in a similar case may satisfy the criterion that there be an interest in the litigation. "Any interest" extends to an interest in the outcome of an appeal when the determination of a legal issue in that appeal will be binding on other pending litigation to which the applicant is a party. Some courts, however, have declined to exercise their discretion to grant this status on the basis of similar interest alone. Here, the aura of unfairness about a party in litigation, which involved similar issues, facing an opponent who has the right to intervene in this appeal should be remedied by granting the motion to intervene absent other criteria dictating a contrary conclusion.

That other counsel would argue the constitutional issues was not a disqualifying factor. An applicant who has a history of involvement in the issue may have an expertise which can shed fresh light or provide new information on the matter.

Cases Cited

Referred to: *Piercey v. General Bakeries Ltd.* (1986), 31 D.L.R. (4th) 373; *Norcan Ltd. v. Lebrock*, [1969] S.C.R. 665; *Solosky v. The Queen*, [1978] 1 F.C. 609; *Re Schofield and Minister of Consumer and Commercial Relations* (1980), 28 O.R. (2d) 764; *Law Society of Upper Canada v. Skapinker*, [1984] 1 S.C.R. 357.

Statutes and Regulations Cited

Canadian Charter of Rights and Freedoms, s. 15.
Constitution Act, 1982, s. 52(2).
Rules of the Supreme Court of Canada, SOR/83-74, s. 18 (a), (c).
Supreme Court Act, R.S.C. 1970, c. S-19, s. 55(4).
Workers Compensation Act, R.S.B.C. 1979, c. 437, ss. 10, 11.
Workers' Compensation Act, 1983, S.N. 1983, c. 48, ss. 32, 34.

Authors Cited

Crane, Brian. *Practice and Advocacy in the Supreme Court*. Vancouver: Continuing Legal Education Society of British Columbia, 1983.

MOTION for leave to intervene in an appeal from an opinion pronounced by the Newfoundland

Arrêt: La demande d'autorisation d'intervenir est accueillie.

Le fait d'être dans une situation semblable peut satisfaire au critère de l'existence d'un intérêt dans le litige. L'expression «tout intérêt» vise un intérêt dans l'issue d'un pourvoi si la réponse donnée à la question de droit soumise doit s'appliquer à un autre litige en cours auquel le requérant est partie. Certains tribunaux ont cependant refusé d'exercer leur pouvoir discrétionnaire d'accorder ce statut sur le seul fondement d'un intérêt semblable. En l'espèce, il faut dissiper l'impression d'injustice que subirait la partie dont le litige comporte des questions semblables et dont l'adversaire a le droit d'intervenir dans ce pourvoi en accueillant la demande d'intervention, en l'absence d'autres critères dictant une conclusion contraire.

Le fait qu'un autre avocat débattrait les questions constitutionnelles en litige ne contribue pas à faire perdre qualité pour agir. Le requérant qui a fait face à la question peut avoir acquis une connaissance approfondie qui puisse lui permettre d'apporter un point de vue nouveau ou de fournir des renseignements supplémentaires à son sujet.

Jurisprudence

Arrêts mentionnés: *Piercey v. General Bakeries Ltd.* (1986), 31 D.L.R. (4th) 373; *Norcan Ltd. v. Lebrock*, [1969] R.C.S. 665; *Solosky c. La Reine*, [1978] 1 C.F. 609; *Re Schofield and Minister of Consumer and Commercial Relations* (1980), 28 O.R. (2d) 764; *Law Society of Upper Canada c. Skapinker*, [1984] 1 R.C.S. 357.

Lois et règlements cités

Charte canadienne des droits et libertés, art. 15.
Loi constitutionnelle de 1982, art. 52(2).
Loi sur la Cour suprême, S.R.C. 1970, chap. S-19, art. 55(4).
Règles de la Cour suprême du Canada, DORS/83-74, art. 18a), c).
Workers Compensation Act, R.S.B.C. 1979, chap. 437, art. 10, 11.
Workers' Compensation Act, 1983, S.N. 1983, chap. 48, art. 32, 34.

Doctrine citée

Crane, Brian. *Practice and Advocacy in the Supreme Court*. Vancouver: Continuing Legal Education Society of British Columbia, 1983.

REQUÊTE en autorisation d'intervention dans un pourvoi formé contre une opinion prononcée

Court of Appeal¹ (1988), 67 Nfld. & P.E.I.R. 16, 44 D.L.R. 501, on a reference to determine the constitutional validity of ss. 32 and 34 of *The Workers' Compensation Act, 1983*. Motion granted.

D. Geoffrey Cowper, for the applicant.

W. G. Burke-Robertson, Q.C., for the respondent.

The following are the reasons for the Order delivered by

SOPINKA J.—This application to intervene arises in an appeal from a reference which was directed to the Newfoundland Court of Appeal by the Newfoundland Lieutenant-Governor in Council (*Reference re Validity of Sections 32 and 34 of the Workers' Compensation Act, 1983* (1987), 44 D.L.R. (4th) 501 (Nfld. C.A.)) The reference has its roots in the case of *Piercey v. General Bakeries Ltd.* (1986), 31 D.L.R. (4th) 373 (Nfld. S.C.T.D.) Samuel Piercey was an employee of General Bakeries Ltd. allegedly in the course of his employment, when he was electrocuted. It was alleged by his wife, Mrs. Shirley Piercey, that her husband's death was due to the negligence of his employer, General Bakeries Ltd.

In the Trial Division of the Newfoundland Supreme Court, Mrs. Piercey argued that the employer could not rely upon ss. 32 and 34 of *The Workers' Compensation Act, 1983*, S.N. 1983, c. 48, which provide that the right to compensation for injuries arising in the course of a worker's employment is limited to that specifically provided for by the Act. Mrs. Piercey claimed that ss. 32 and 34 of *The Workers' Compensation Act, 1983* were of no force and effect under s. 52(2) of the *Constitution Act, 1982* as they violated s. 15 of the *Canadian Charter of Rights and Freedoms*.

The trial judge, Hickman C.J., agreed that the provisions unjustifiably denied the right of access to the courts which was held to be an element of s. 15 equality rights. However, Hickman C.J. also held that Mrs. Piercey was unable to rely upon the

¹ An appeal from the judgment of the Newfoundland Court of Appeal was dismissed: see [1989] 1 S.R.C. 922.

par la Cour d'appel de Terre-Neuve¹ (1988), 67 Nfld. & P.E.I.R. 16, 44 D.L.R. 501, dans un renvoi portant sur la validité constitutionnelle des art. 32 et 34 de *The Workers' Compensation Act, 1983*. Requête accueillie.

D. Geoffrey Cowper, pour la requérante.

W. G. Burke-Robertson, c.r., pour l'intimé.

Version française des motifs de l'ordonnance rendus par

LE JUGE SOPINKA—Cette demande d'intervention est présentée dans le cadre d'un pourvoi relatif à un renvoi adressé à la Cour d'appel de Terre-Neuve par le lieutenant-gouverneur en conseil de Terre-Neuve (*Reference re Validity of Sections 32 and 34 of the Workers' Compensation Act, 1983* (1987), 44 D.L.R. (4th) 501 (C.A.T.-N.)) Le renvoi tire son origine de la décision *Piercey v. General Bakeries Ltd.* (1986), 31 D.L.R. (4th) 373 (D.P.I.C.S.T.-N.) Samuel Piercey était un employé de General Bakeries Ltd. qui, allégué-t-on, a été électrocuté dans l'exercice de ses fonctions. Son épouse, M^{me} Shirley Piercey, a allégué que le décès de son époux était dû à la négligence de son employeur, General Bakeries Ltd.

Devant la Division de première instance de la Cour suprême de Terre-Neuve, M^{me} Piercey a fait valoir que l'employeur ne pouvait invoquer les art. 32 et 34 de *The Workers' Compensation Act, 1983*, S.N. 1983, chap. 48, qui prévoient que le droit à une indemnité pour les blessures subies par un travailleur dans l'exercice de ses fonctions est limité à ce que la Loi prévoit expressément. Madame Piercey soutenait que les art. 32 et 34 de *The Workers' Compensation Act, 1983* étaient inopérants en vertu du par. 52(2) de la *Loi constitutionnelle de 1982* parce qu'ils violaient l'art. 15 de la *Charte canadienne des droits et libertés*.

Le juge de première instance, le juge en chef Hickman, a reconnu que les dispositions niaient de manière injustifiable le droit d'accès aux tribunaux qui a été considéré comme une composante des droits à l'égalité garantis par l'art. 15. Cependant,

¹ Un pourvoi formé contre le jugement de la Cour d'appel de Terre-Neuve a été rejeté: voir [1989] 1 R.C.S. 922.

Charter as her husband's death occurred on July 22, 1984, prior to April 17, 1985 when s. 15 came into force. It was held that s. 15 could not apply retrospectively.

As the opinion of Hickman C.J. on the constitutionality of ss. 32 and 34 of *The Workers' Compensation Act, 1983* was *obiter dictum*, there was no ground upon which the Crown could appeal. Mrs. Piercey did not appeal. As a result, a Reference on this issue was directed to the Newfoundland Court of Appeal.

In the Court of Appeal, the Attorney General of Newfoundland presented the Reference. Acting as interveners by original order or by subsequent leave were: the Workers' Compensation Commission of Newfoundland and Labrador; la Commission de la santé et de la sécurité au travail du Québec; the Attorney General of Nova Scotia; the Workers' Compensation Board of New Brunswick; the Workers' Compensation Board of Manitoba; the Attorney General of British Columbia; the Workers' Compensation Board of British Columbia; the Workers' Compensation Board of Prince Edward Island; the Workers' Compensation Board of Alberta; the Workers' Compensation Board of Yukon; the Canadian Manufacturers Association; the Canadian Labour Congress; the Newfoundland and Labrador Federation of Labour; Canadian National Railways; Marine Atlantic Limited; General Bakeries Limited, and Shirley Piercey. All but Mrs. Piercey supported the legislation. The Court of Appeal held that ss. 32 and 34 of *The Workers' Compensation Act, 1983* were not inconsistent with s. 15(1) of the *Charter*. In addition, Goodridge C.J.N. held that s. 15 does not apply to causes of action arising before April 17, 1985.

This application by Mr. Cowper is on behalf of Suzanne Côté to intervene in this case pursuant to Rule 18 of the *Rules of the Supreme Court of Canada*, SOR/83-74. The applicant is an injured

il a également conclu que M^{me} Piercey ne pouvait invoquer la *Charte* parce que le décès de son époux était survenu le 22 juillet 1984, soit avant l'entrée en vigueur de l'art. 15, le 17 avril 1985. Il a conclu que l'art. 15 ne pouvait s'appliquer rétroactivement.

Comme l'opinion du juge en chef Hickman sur la constitutionnalité des art. 32 et 34 de *The Workers' Compensation Act, 1983* était une opinion incidente, il n'existait aucun moyen sur lequel Sa Majesté pouvait fonder un appel. Madame Piercey n'a pas interjeté appel. En conséquence, la question a fait l'objet d'un renvoi à la Cour d'appel de Terre-Neuve.

En Cour d'appel, le procureur général de Terre-Neuve a présenté le renvoi. Agissaient comme intervenants en vertu de l'ordonnance initiale ou par autorisation subséquente: la Workers' Compensation Commission of Newfoundland and Labrador, la Commission de la santé et de la sécurité au travail du Québec, le procureur général de la Nouvelle-Écosse, la Commission des accidents du travail du Nouveau-Brunswick, la Commission des accidents du travail du Manitoba, le procureur général de la Colombie-Britannique, la Workers' Compensation Board of British Columbia, la Workers' Compensation Board of Prince Edward Island, la Workers' Compensation Board of Alberta, la Workers' Compensation Board of Yukon, l'Association des manufacturiers canadiens, le Congrès du travail du Canada, la Newfoundland and Labrador Federation of Labour, la Compagnie des chemins de fer nationaux du Canada, Marine Atlantic Limited, General Bakeries Limited et Shirley Piercey. Tous, sauf M^{me} Piercey, appuyaient les dispositions en cause. La Cour d'appel a conclu que les art. 32 et 34 de *The Workers' Compensation Act, 1983* n'étaient pas incompatibles avec le par. 15(1) de la *Charte*. En outre, le juge en chef Goodridge de Terre-Neuve a conclu que l'art. 15 ne s'appliquait pas aux causes d'action ayant pris naissance avant le 17 avril 1985.

M^c Cowper, agissant pour le compte de Suzanne Côté sollicite par la présente requête l'autorisation d'intervenir en l'espèce conformément à l'art. 18 des *Règles de la Cour suprême du Canada*,

person who has brought a challenge of similar British Columbia provisions (ss. 10 and 11 of the *Workers Compensation Act*, R.S.B.C. 1979, c. 437) based on the unconstitutionality of a statutory bar to private compensation. The action of Mrs. Côté has been stayed by an order of the British Columbia Supreme Court pending the outcome of this appeal. Mr. Cowper has been retained by several other plaintiffs who are in circumstances similar to Suzanne Côté and who wish to have him present argument in this appeal.

Our Rule 18 gives this Court a wide discretion in deciding whether or not to allow a person to intervene as well as the discretion to determine the terms and conditions of the intervention. As well, s. 55(4) of the *Supreme Court Act*, R.S.C. 1970, c. S-19, provides for submissions from persons interested in a reference.

The criteria for the exercise of this discretion were the subject of considerable argument on this motion. Counsel were understandably handicapped because these criteria have, perhaps purposely, not been commented on by this Court in recent cases. Threshold requirements are set out in Rule 18(3)(a) and (c). These criteria can be summarized as follows: (1) an interest and (2) submissions which will be useful and different from those of the other parties.

The application was resisted principally on the basis that having a similar case does not satisfy the interest requirement. It was also argued that the applicant has not demonstrated that his argument will differ from that of Mrs. Piercey's counsel.

(1) Interest

One of the few authorities in this Court on the exercise of the Court's discretion is *Norcan Ltd. v. Lebrock*, [1969] S.C.R. 665, in which Pigeon J. held that any interest is sufficient, subject always to the exercise of discretion. From the cases cited by Justice Pigeon, it is apparent that having a

DORS/83-74. La requérante est une personne qui a subi des blessures et qui conteste des dispositions semblables en Colombie-Britannique (les art. 10 et 11 de la *Workers Compensation Act*, R.S.B.C. 1979, chap. 437) en invoquant l'inconstitutionnalité d'une interdiction légale d'obtenir une indemnité autre que celle prévue par la loi. La Cour suprême de la Colombie-Britannique a ordonné la suspension de l'action de M^{me} Côté en attendant l'issue du présent pourvoi. Les services de M^c Cowper ont été retenus par plusieurs autres demandeurs qui sont dans une situation semblable à celle de Suzanne Côté et qui souhaitent qu'il plaide dans le cadre du présent pourvoi.

L'article 18 des Règles confère à notre Cour un vaste pouvoir discrétionnaire pour décider s'il y a lieu d'autoriser ou non une personne à intervenir ainsi que le pouvoir discrétionnaire de fixer les modalités de l'intervention. De même, le par. 55(4) de la *Loi sur la Cour suprême*, S.R.C. 1970, chap. S-19, prévoit que des personnes intéressées peuvent être entendues dans un renvoi.

Les critères de l'exercice de ce pouvoir discrétionnaire ont fait l'objet d'un long débat dans la présente requête. Les avocats étaient naturellement désavantagés du fait que, peut-être à dessein, notre Cour n'a pas commenté ces critères dans des affaires récentes. Les exigences minimales sont énoncées aux al. 18(3)a) et c) des Règles. Ce sont en résumé: (1) un intérêt et (2) des allégations qui seront utiles et différentes de celles des autres parties.

L'opposition à la demande repose principalement sur l'argument que le fait d'être dans une situation semblable ne satisfait pas à l'exigence de l'intérêt. On a également soutenu que la requérante n'a pas démontré que son argumentation serait différente de celle de l'avocat de M^{me} Piercey.

i (1) L'intérêt

Un des rares arrêts que notre Cour a rendus sur l'exercice de son pouvoir discrétionnaire est *Norcan Ltd. v. Lebrock*, [1969] R.C.S. 665, dans lequel le juge Pigeon a conclu que tout intérêt suffit, sous réserve toujours de l'exercice du pouvoir discrétionnaire. Il ressort de la jurisprudence

similar case can satisfy this requirement. The discretion, however, will not ordinarily be exercised in favour of an applicant just because the applicant has a similar case. Indeed it has been held in some courts that this is not a sufficient interest. See *Solosky v. The Queen*, [1978] 1 F.C. 609, and *Re Schofield and Minister of Consumer and Commercial Relations* (1980), 28 O.R. (2d) 764 (C.A.)

I agree with Pigeon J. that "any interest" extends to an interest in the outcome of an appeal when a legal issue to be determined therein will be binding on other pending litigation to which the applicant is a party. Although this is usually a tenuous basis upon which to base an application for intervention, in this appeal Mr. Cowper's client is in the unenviable position of facing an opponent in the British Columbia litigation, the Attorney General of British Columbia, who has the right to intervene in this appeal. There is an aura of unfairness about this which should be remedied by granting this application unless the other criteria dictate the contrary conclusion. This unfairness is exacerbated by the imbalance of representation in favour of those supporting the constitutionality of the legislation which would occur if the applicant were denied the right to intervene.

(2) Useful and Different Submissions

This criteria is easily satisfied by an applicant who has a history of involvement in the issue giving the applicant an expertise which can shed fresh light or provide new information on the matter. As stated by Brian Crane in *Practice and Advocacy in the Supreme Court*, (British Columbia Continuing Legal Education Seminar, 1983), at p. 1.1.05: "an intervention is welcomed if the intervener will provide the Court with fresh information or a fresh perspective on an important constitutional or public issue". It is more difficult for a private litigant to demonstrate that his or her argument will be different. This submission is usually met by the response that the able and

citée par le juge Pigeon que le fait d'être dans une situation semblable peut satisfaire à cette exigence. Cependant, le pouvoir discrétionnaire ne sera habituellement pas exercé en faveur d'un requérant seulement parce qu'il est dans une situation semblable. Certains tribunaux ont même conclu que cela ne constitue pas un intérêt suffisant. Voir *Solosky c. La Reine*, [1978] C.F. 609, et *Re Schofield and Minister of Consumer and Commercial Relations* (1980), 28 O.R. (2d) 764 (C.A.)

Je suis d'accord avec le juge Pigeon que «tout intérêt» vise un intérêt dans l'issue d'un pourvoi si la réponse donnée à la question de droit soumise doit s'appliquer à un autre litige en cours auquel le requérant est partie. Cela est ordinairement considéré comme une justification assez faible d'une demande d'intervention, mais la cliente de M^c Cowper en l'espèce se trouve dans la situation peu enviable d'avoir comme adversaire dans son litige en Colombie-Britannique le procureur général de la Colombie-Britannique qui, lui, a le droit d'intervenir en l'espèce. Cette situation dégage une impression d'injustice qui devrait être dissipée en accueillant la présente demande, à moins que les autres critères ne dictent une conclusion contraire. Cette injustice serait accentuée par la surabondance de représentation des tenants de la constitutionnalité des dispositions en cause si on refusait à la requérante le droit d'intervenir.

(2) Des allégations utiles et différentes

Ce critère est largement respecté lorsque le requérant a fait face à la question et en a acquis une connaissance approfondie qui peut donc lui permettre d'apporter un point de vue nouveau ou de fournir des renseignements supplémentaires à son sujet. Comme l'a affirmé Brian Crane dans *Practice and Advocacy in the Supreme Court*, (British Columbia Continuing Legal Education Seminar, 1983), à la p. 1.1.05: [TRADUCTION] «une intervention est bienvenue lorsque l'intervenant peut fournir à la Cour des renseignements nouveaux et un point de vue nouveau sur une importante question constitutionnelle ou publique». Il est plus difficile pour un particulier de démontrer que ses allégations seront différentes. On répond habituellement à cet argument que l'avocat

experienced counsel already in the case will cover all bases.

In my opinion this is not a disqualifying factor here. The only party advancing the position taken by the applicant will be Mrs. Piercey. Her interest in the outcome is somewhat tenuous given the conclusion at trial that s. 15 could not be invoked to retroactively apply to a cause of action arising prior to April 17, 1985. Unlike Mrs. Piercey, the applicant has a definite stake in the outcome. In my view, the applicant can add to the effective adjudication of the issue by ensuring that all the issues are presented in a full adversarial context. This need for an adversarial relationship was one of the factors considered by this Court when granting applicant intervener status in *Norcan, supra*, and in *Law Society of Upper Canada v. Skapinker*, [1984] 1 S.C.R. 357.

In the circumstances of this case, therefore, I grant leave to the applicant and others in similar circumstances represented by Mr. Cowper to intervene in this appeal. Pursuant to Rule 18, the applicant may file a factum and present oral argument to be limited to not more than fifteen minutes. There will be no costs of the application.

Motion granted.

Solicitors for the applicant: Russell & DuMoulin, Vancouver.

Solicitor for the respondent: The Attorney General of Newfoundland, St. John's.

compétent et expérimenté déjà inscrit au dossier traitera de toutes les aspects de la question.

À mon avis, cela ne contribue pas à faire perdre qualité pour agir en l'espèce. La seule partie qui soutient la même thèse que la requérante est M^{me} Piercey. Son intérêt dans l'issue du pourvoi est quelque peu négligeable étant donné la conclusion, formulée en première instance, que l'art. 15 ne peut s'appliquer rétroactivement à une cause d'action ayant pris naissance avant le 17 avril 1985. Contrairement à M^{me} Piercey, la requérante a un enjeu précis dans le résultat. À mon avis, la requérante peut contribuer à l'efficacité du processus de décision dans ce litige en assurant que toutes les questions litigieuses sont présentées dans un contexte pleinement contradictoire. Cette nécessité d'un rapport contradictoire est un des facteurs dont cette Cour a tenu compte quand elle a accordé au requérant le statut d'intervenant dans les affaires *Norcan*, précitée, et *Law Society of Upper Canada c. Skapinker*, [1984] 1 R.C.S. 357.

Dans les circonstances de la présente affaire, j'accorde donc à la requérante et aux autres personnes qui se trouvent dans une situation semblable et qui sont représentées par M^c Cowper, l'autorisation d'intervenir dans ce pourvoi. Conformément à l'art. 18 des Règles, la requérante peut produire un mémoire et plaider pendant une durée maximale de quinze minutes. Il n'y aura pas d'adjudication de dépens relativement à la requête.

Requête accueillie.

Procureurs de la requérante: Russell & DuMoulin, Vancouver.

Procureur de l'intimé: Le procureur général de Terre-Neuve, St. John's.

The Canadian Council of
Churches *Appellant*

Conseil canadien des Églises *Appelant*

v.

a c.

Her Majesty The Queen and The Minister
of Employment and
Immigration *Respondents*

Sa Majesté la Reine et le ministre de
l'Emploi et de l'Immigration *Intimés*

and

b et

The Coalition of Provincial Organizations of
the Handicapped, The Quebec Multi Ethnic
Association for the Integration of
Handicapped People, League for Human
Rights of B'Nai Brith Canada, Women's
Legal Education and Action (LEAF) and
Canadian Disability Rights Council
(CDRC) *Interveners*

c La Coalition des Organisations Provinciales
d Ombudsman des Handicapés, l'Association
multi-ethnique pour l'intégration des
personnes handicapées du Québec, la Ligue
des droits de la personne de B'Nai Brith
Canada, le Fonds d'action et d'éducation
juridiques pour les femmes (FAEJ) et le
Conseil canadien des droits des personnes
handicapées (CCDPH) *Intervenants*

INDEXED AS: CANADIAN COUNCIL OF CHURCHES v.
CANADA (MINISTER OF EMPLOYMENT AND
IMMIGRATION)

e RÉPERTORIÉ: CONSEIL CANADIEN DES ÉGLISES c.
CANADA (MINISTRE DE L'EMPLOI ET DE
L'IMMIGRATION)

File No.: 21946.

N° du greffe: 21946.

1991: October 11; 1992: January 23.

f 1991: 11 octobre; 1992: 23 janvier.

Present: La Forest, L'Heureux-Dubé, Sopinka,
Gonthier, Cory, Stevenson and Iacobucci JJ.

Présents: Les juges La Forest, L'Heureux-Dubé,
Sopinka, Gonthier, Cory, Stevenson et Iacobucci.

ON APPEAL FROM THE FEDERAL COURT OF APPEAL g

EN APPEL DE LA COUR D'APPEL FÉDÉRALE

*Standing — Public interest group — Immigration Act
amendments making provisions with respect to determi-
nation of refugee status more stringent — Public interest
group active in work amongst refugees and immigrants
— Action commenced to challenge constitutionality of
Act under the Charter — Whether standing should be
granted to challenge provisions — Immigration Act,
1976, S.C. 1976-77 — Canadian Charter of Rights and
Freedoms, s. 7.*

*Qualité pour agir — Groupe d'intérêt public — Modi-
fications de la Loi sur l'immigration qui rendent plus
stricte la détermination du statut de réfugié — Groupe
d'intérêt public actif chez les réfugiés et les immigrants
— Action intentée pour contester la constitutionnalité de
la Loi en vertu de la Charte — Faut-il reconnaître au
groupe qualité pour agir aux fins de la contestation des
dispositions? — Loi sur l'immigration de 1976, S.C.
1976-77 — Charte canadienne des droits et libertés,
art. 7.*

The Canadian Council of Churches is a federal corpo-
ration which represents the interests of a broad group of
member churches including the protection and resettlement
of refugees. The Council had expressed its concerns about the refugee determination process in the
proposed amendments to the *Immigration Act, 1976*

Le Conseil canadien des Églises est une société à
charte fédérale qui représente les intérêts d'un vaste
groupe d'Églises membres, y compris la protection et le
rétablissement des réfugiés. Le Conseil a fait connaître
aux membres du gouvernement et aux comités parlemen-
taires chargés de l'étude du projet de loi ses préoccupations.

(which later came into force on January 1, 1989) to members of the government and to the parliamentary committees considering the legislation. These amendments changed the procedures for determining whether applicants came within the definition of a Convention Refugee.

The Council sought a declaration that many, if not most, of the amended provisions violated the *Canadian Charter of Rights and Freedoms* and the *Canadian Bill of Rights*. The Attorney General of Canada brought a motion to strike out the claim on the basis that the Council did not have standing to bring the action and had not demonstrated a cause of action. The application to strike out was dismissed at trial but to a large extent was granted on appeal. Appellant appealed and respondents cross-appealed. At issue here is whether the appellant should be granted status to proceed with an action challenging, almost in its entirety, the validity of the amended *Immigration Act, 1976*.

Held: The appeal should be dismissed; the cross-appeal should be allowed.

Recognition of the need to grant public interest standing, whether because of the importance of public rights or the need to conform with the *Constitution Act, 1982*, in some circumstances does not amount to a blanket approval to grant standing to all who wish to litigate an issue. A balance must be struck between ensuring access to the courts and preserving judicial resources. The courts must not be allowed to become hopelessly overburdened as a result of the unnecessary proliferation of marginal or redundant suits brought by well-meaning organizations pursuing their own particular cases.

Status has been granted to prevent the immunization of legislation or public acts from any challenge. Public interest standing, however, is not required when it can be shown on a balance of probabilities that the measure will be subject to attack by a private litigant. The principles for granting public standing set forth by this Court, while they should be given a liberal and generous interpretation, need not and should not be expanded.

cupations relativement au processus de détermination du statut de réfugié, prévu dans les modifications proposées à la *Loi sur l'immigration de 1976* (entrées en vigueur le 1^{er} janvier 1989). Ces modifications portaient sur les dispositions visant à déterminer si un requérant est un réfugié au sens de la Convention.

Le Conseil a cherché à faire déclarer qu'un grand nombre sinon la plupart des dispositions modifiées contrevenaient à la *Charte canadienne des droits et libertés* et à la *Déclaration canadienne des droits*. Le procureur général du Canada a déposé une requête en radiation de la demande au motif que le Conseil n'avait pas qualité pour intenter l'action et qu'il n'avait pas démontré une cause d'action. Cette demande a été rejetée en première instance, mais a en grande partie été accueillie en appel. L'appellant se pourvoit devant notre Cour et les intimés ont présenté un pourvoi incident. Le présent pourvoi vise à déterminer si l'appellant a qualité pour agir dans une action portant, en grande partie, sur la validité des modifications apportées à la *Loi sur l'immigration de 1976*.

Arrêt: Le pourvoi est rejeté. Le pourvoi incident est accueilli.

La reconnaissance de la nécessité d'accorder qualité pour agir dans l'intérêt public dans certaines circonstances, que ce soit à cause de l'importance des droits publics ou de la nécessité de se conformer à la *Loi constitutionnelle de 1982*, ne signifie pas que l'on reconnaît pour autant qualité pour agir à toutes les personnes qui désirent intenter une poursuite sur une question donnée. Il est essentiel d'établir un équilibre entre l'accès aux tribunaux et la nécessité d'économiser les ressources judiciaires. Il ne faut pas que les tribunaux deviennent complètement submergés en raison d'une prolifération inutile de poursuites insignifiantes ou redondantes intentées par des organismes bien intentionnés dans le cadre de la réalisation de leurs objectifs.

La reconnaissance de la qualité pour agir a pour objet d'empêcher que la loi ou les actes publics soient à l'abri des contestations. Il n'est pas nécessaire toutefois de reconnaître qualité pour agir dans l'intérêt public lorsque, selon une prépondérance des probabilités, on peut établir qu'un particulier contestera la mesure. Il n'est pas nécessaire d'élargir les principes régissant la reconnaissance de la qualité pour agir dans l'intérêt public, mais il faut les interpréter d'une façon libérale et souple.

Three aspects of the claim must be considered when public interest standing is sought. First, is there a serious issue raised as to the invalidity of legislation in question? Second, has it been established that the plaintiff is directly affected by the legislation or, if not, does the plaintiff have a genuine interest in its validity? Third, is there another reasonable and effective way to bring the issue before the Court?

Although the claim at issue made a sweeping attack on most of the many amendments to the Act, some serious issues as to the validity of the legislation were raised. Appellant had a genuine interest in this field. Each refugee claimant, however, has standing to initiate a constitutional challenge to secure his or her own rights under the *Charter* and the disadvantages faced by refugees as a group do not preclude their effective access to the court. Many refugee claimants can and have appealed administrative decisions under the statute and each case presented a clear concrete factual background upon which the decision of the court could be based. The possibility of the imposition of a 72-hour removal order against refugee claimants does not undermine their ability to challenge the legislative scheme. The Federal Court has jurisdiction to grant injunctive relief against a removal order. Given the average length of time required for an ordinary case to reach the initial "credible basis" hearing, there is more than adequate time for a claimant to prepare to litigate the possible rejection of the claim.

Cases Cited

Considered: *Gouriet v. Union of Post Office Workers*, [1978] A.C. 435; *Australian Conservation Foundation Incorporated v. Commonwealth of Australia* (1980), 28 A.L.R. 257; *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464 (1982); *Finlay v. Canada (Minister of Finance)*, [1986] 2 S.C.R. 607; referred to: *Thorson v. Attorney General of Canada*, [1975] 1 S.C.R. 138; *Nova Scotia Board of Censors v. McNeil*, [1976] 2 S.C.R. 265; *Minister of Justice of Canada v. Borowski*, [1981] 2 S.C.R. 575; *Toth v. Minister of Employment and Immigration* (1988), 86 N.R. 302; *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959.

On doit tenir compte de trois aspects lorsqu'il s'agit de déterminer s'il y a lieu de reconnaître la qualité pour agir dans l'intérêt public. Premièrement, la question de l'invalidité de la loi en question se pose-t-elle sérieusement? Deuxièmement, a-t-on démontré que le demandeur est directement touché par la loi ou qu'il a un intérêt véritable quant à sa validité? Troisièmement, y a-t-il une autre manière raisonnable et efficace de soumettre la question à la cour?

Bien que la déclaration en l'espèce attaque la plupart des nombreuses modifications apportées à la Loi, elle soulève certaines questions sérieuses quant à la validité de la loi. L'appelant avait un intérêt véritable à cet égard. Cependant, tous les demandeurs du statut de réfugié au pays ont qualité pour contester la constitutionnalité de la loi afin de faire assurer le respect des droits que leur garantit la *Charte*, et les désavantages que subissent les réfugiés en tant que groupe ne les empêchent pas d'utiliser efficacement l'accès qu'ils ont aux tribunaux. De nombreux demandeurs du statut de réfugié peuvent interjeter appel contre les décisions administratives prises en vertu de la loi et ils l'ont fait; chaque dossier renfermait un contexte factuel concret sur lequel le tribunal pouvait fonder sa décision. Le fait qu'un demandeur de statut risque d'être renvoyé dans un délai de 72 heures ne restreint pas sa possibilité de contester la loi. La Cour fédérale a compétence pour accorder une injonction relativement à une mesure de renvoi. Compte tenu du temps qui s'écoule en moyenne avant la tenue du premier palier d'audience visant à déterminer si la revendication possède «un minimum de fondement», un demandeur a plus de temps que nécessaire pour préparer une poursuite relative à l'éventuel rejet de sa revendication.

Jurisprudence

Arrêts examinés: *Gouriet c. Union of Post Office Workers*, [1978] A.C. 435; *Australian Conservation Foundation Incorporated c. Commonwealth of Australia* (1980), 28 A.L.R. 257; *Valley Forge Christian College c. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464 (1982); *Finlay c. Canada (Ministre des Finances)*, [1986] 2 R.C.S. 607; arrêts mentionnés: *Thorson c. Procureur général du Canada*, [1975] 1 R.C.S. 138; *Nova Scotia Board of Censors c. McNeil*, [1976] 2 R.C.S. 265; *Ministre de la Justice du Canada c. Borowski*, [1981] 2 R.C.S. 575; *Toth c. Ministre de l'Emploi et de l'Immigration* (1988), 86 N.R. 302; *Hunt c. Carey Canada Inc.*, [1990] 2 R.C.S. 959.

preted as a mechanistic application of a technical requirement. Rather it must be remembered that the basic purpose for allowing public interest standing is to ensure that legislation is not immunized from challenge. Here there is no such immunization as plaintiff refugee claimants are challenging the legislation. Thus the very rationale for the public interest litigation party disappears. The Council must, therefore, be denied standing on each of the counts of the statement of claims. This is sufficient to dispose of the appeal. The respondents must also succeed on their cross-appeal to strike out what remained of the claim as the plaintiff council does not satisfy the test for standing on any part of the statement of claim. I would simply mention two other matters.

Intervener Status

It has been seen that a public interest litigant is more likely to be granted standing in Canada than in other common law jurisdictions. Indeed if the basis for granting status were significantly broadened, these public interest litigants would displace the private litigant. Yet the views of the public litigant who cannot obtain standing need not be lost. Public interests organizations are, as they should be, frequently granted intervener status. The views and submissions of interveners on issues of public importance frequently provide great assistance to the courts. Yet that assistance is given against a background of established facts and in a time frame and context that is controlled by the courts. A proper balance between providing for the submissions of public interest groups and preserving judicial resources is maintained.

Review of the Statement of Claim to Determine if it Discloses a Cause of Action

In light of the conclusion that the appellant has no status to bring this action, there is no need to consider the statement of claim in detail. Had it

pas être interprétée comme le résultat d'une application mécaniste d'une exigence technique. On doit plutôt se rappeler que l'objet fondamental de la reconnaissance de la qualité pour agir dans l'intérêt public est de garantir qu'une loi n'est pas à l'abri de la contestation. En l'espèce, la loi ne l'est pas puisque des demandeurs du statut de réfugié la conteste. En conséquence, le motif à la base même de la reconnaissance à une partie de la qualité pour agir dans l'intérêt public disparaît. Le Conseil n'a donc pas qualité pour agir relativement à chacun des énoncés de la déclaration. Cela suffit pour trancher le présent pourvoi. En outre, les intimés doivent avoir gain de cause dans leur pourvoi incident visant à faire annuler les dispositions restantes de la demande puisque le Conseil demandeur ne répond au critère de la qualité pour agir pour aucune partie de la déclaration. Je ne mentionnerais que deux autres questions.

L'intérêt pour agir de l'intervenant

On a soutenu qu'une partie d'intérêt public a plus de chances de se voir reconnaître qualité pour agir au Canada que dans les autres pays de common law. En effet, si l'on élargissait sensiblement la qualité pour agir, ces parties d'intérêt public supplanteraient les particuliers. Toutefois, le point de vue de ces parties qui ne peuvent se faire reconnaître qualité pour agir ne doit pas nécessairement passer inaperçu. Des organismes de défense de l'intérêt public se voient souvent accorder, à bon droit, le statut d'intervenant. Les opinions et les arguments des intervenants sur des questions d'importance publique sont souvent d'une aide considérable pour les tribunaux. Cette aide est apportée en fonction de faits établis et dans des délais et suivant le contexte que déterminent les tribunaux. On maintient alors un juste équilibre entre la possibilité pour les groupes d'intérêt public de présenter leurs arguments et la nécessité d'économiser les ressources judiciaires.

Examen de la déclaration pour déterminer s'il existe une cause d'action

Étant donné la conclusion que l'appelant n'a pas d'intérêt pour intenter la présente action, il n'est pas nécessaire d'examiner la déclaration en détail.

Cité de Pont Viau *Appellant*;

and

Gauthier Mfg. Ltd. *Respondent*.

1977: November 9; 1978: February 7.

Present: Ritchie, Pigeon, Dickson, Beetz and Pratte JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC

Civil procedure — Appeal — Inscription in appeal not served within the time limits — Special leave to appeal — Meaning of "impossible for him to act sooner" — Code of Civil Procedure, arts. 484, 494, 495, 502, 523.

Respondent and several other parties, including the Union Canadienne Compagnie d'Assurance ("Union"), brought actions for damages against appellant as the result of a fire. For purposes of proof and hearing, respondent's action was joined with that of Union and both were allowed by judgments delivered on the same day. Appellant filed an inscription in appeal against the two judgments within the prescribed time limits. This inscription was served upon Union's counsel, which were incorrectly identified as counsel for both Union and respondent. After the time limit for filing the appeal had expired, respondent filed a motion for dismissal of the appeal on the grounds that the inscription had not been served upon respondent or his counsel, as required by art. 495 C.C.P. Appellant then filed a motion based on art. 523 C.C.P. for leave to serve the inscription despite the fact that the time limit had expired. Both motions were heard at the same time by the Court of Appeal, which allowed the motion for dismissal of appeal and dismissed the motion under art. 523 C.C.P. Hence the appeal to this Court.

Held: The appeal from the decision allowing the motion for dismissal of appeal is dismissed and the appeal from the decision dismissing the motion for special leave to appeal is allowed.

The Court of Appeal was obliged to allow the motion for dismissal of appeal since one of the steps essential to the bringing of an appeal, namely service upon the opposing party or its counsel, was missing: this is not a formality that the Court could allow to be corrected.

The second part of art. 523 C.C.P. specifies that the discretionary power of the Court to grant leave to appeal after the time limit has expired is subject to the exist-

Cité de Pont Viau *Appelante*;

et

Gauthier Mfg. Ltd. *Intimée*.

1977: 9 novembre; 1978: 7 février.

Présents: Les juges Ritchie, Pigeon, Dickson, Beetz et Pratte.

EN APPEL DE LA COUR D'APPEL DU QUÉBEC

Procédure civile — Appel — Inscription en appel non signifiée dans les délais — Permission spéciale d'appeler — Sens de «impossibilité d'agir plus tôt» — Code de procédure civile, art. 484, 494, 495, 502, 523.

L'intimée et plusieurs autres parties, dont l'Union Canadienne Compagnie d'Assurance («l'Union»), ont intenté des actions en dommages-intérêts contre l'appelante à la suite d'un incendie. Les actions de l'intimée et de l'Union ont été jointes, aux fins d'enquête et d'audition, et, par jugement rendu le même jour, ont été accueillies. L'appelante a déposé une inscription en appel contre ces deux jugements dans les délais requis; cette inscription fut signifiée aux avocats de l'Union qui furent erronément désignés comme les procureurs à la fois de l'Union et de l'intimée. Après l'expiration du délai d'appel, l'intimée a présenté une requête pour rejet d'appel pour le motif que l'inscription n'avait pas été signifiée à l'intimée ni à ses procureurs, ainsi que le requiert l'art. 495 C.p.c. Pour sa part, l'appelante, invoquant le bénéfice de l'art. 523 C.p.c., a présenté une requête pour lui permettre de signifier l'inscription malgré l'expiration du délai. Les deux requêtes ont été entendues en même temps par la Cour d'appel qui a accueilli la requête pour rejet d'appel et rejeté la requête en vertu de l'art. 523 C.p.c. D'où le pourvoi en cette Cour.

Arrêt: Le pourvoi contre l'arrêt accueillant la requête de rejet d'appel est rejeté et le pourvoi contre l'arrêt rejetant la requête pour permission spéciale d'appeler est accueilli.

La Cour d'appel devait nécessairement accueillir la requête pour rejet d'appel puisqu'il manquait un élément essentiel à la formation de l'appel soit la signification à la partie adverse ou à son procureur: il ne s'agit pas d'une formalité dont la Cour peut permettre la correction.

La seconde partie de l'art. 523 C.p.c. précise que lorsqu'il s'agit d'accorder une permission d'appeler après l'expiration des délais, le pouvoir discrétionnaire de la

ence of two prior conditions: application must be made within six months of the judgment and the party must show "that in fact it was impossible for him to act sooner". Article 523 C.C.P. is new law. Under the old *Code of Civil Procedure* the time limit for appeal was a strict time limit and once it expired, the right of appeal was definitely forfeited. The new *Code of Civil Procedure* corrected this situation and laid down a less rigorous rule regarding extension of time limits. Where an appeal is involved, the applicant does not have to prove that the action was absolutely impossible, only that it was relatively impossible. In the case at bar foreclosure was due solely to the error of appellant's counsel. The party itself acted with diligence and it is not clear what more it could have done in order to act sooner. The impossibility of acting must be assessed from the point of view of the person who will have to bear the consequences of the foreclosure if he is not relieved from them. The Court of Appeal was therefore obliged to exercise the discretion provided for in art. 523 C.C.P. in favour of the foreclosed party.

Lord v. The Queen (1901), 31 S.C.R. 165; *Blanchette v. Duval* (1938), 65 Que. K.B. 333; *Girouard v. Beaudoin*, (1928) 35 R.L.n.s. 446; *Desrosiers v. Blanchard* (1924), 27 R.P. 67; *Vocisano v. Canada File and Tool Works, Limited* (1925), 38 Que. K.B. 536; *Morin v. Lacasse*, [1953] Que. Q.B. 738; *Beaubien v. Laframboise* (1925), 40 Que. K.B. 194; *Joy Oil Limited v. McColl Frontenac Oil Co. Ltd.*, [1943] S.C.R. 127, referred to.

APPEAL from a decision of the Court of Appeal allowing the motion for dismissal of the appeal from a judgment of the Superior Court: appeal dismissed. Appeal from a decision of the Court of Appeal dismissing a motion for special leave to appeal: appeal allowed.

François Mercier, Q.C. and Michel Dagenais, for the appellant.

Paul Gélinas, Q.C., and Jean Guérin, Q.C., for the respondent.

The judgment of the Court was delivered by

PRATTE J.—The appellant is appealing, with leave of this Court, from the judgments delivered by the Court of Appeal of the Province of Quebec on May 27, 1976, which dismissed (i) its appeal against the final judgment of the Superior Court (Prévost J.) dated February 12, 1976 and (ii) its

¹ [1976] S.C. 269.

Cour est assujetti à l'existence de deux conditions préalables: la demande doit être faite dans les six mois du jugement et la partie doit démontrer «qu'elle a été, en fait, dans l'impossibilité d'agir plus tôt». L'article 523 C.p.c. est de droit nouveau. Sous l'ancien *Code de procédure civile*, le délai d'appel était un délai de forclusion dont l'expiration entraînait la perte définitive du droit d'appel. Le nouveau *Code de procédure civile* a corrigé cette situation et a édicté, en matière de prorogation de délai, une règle moins rigoriste. En matière d'appel, le requérant n'a pas à prouver une impossibilité absolue, mais seulement une impossibilité relative. En l'espèce, la forclusion a été encourue uniquement à cause de l'erreur des procureurs de l'appelante. La partie elle-même a agi avec diligence et on ne voit pas ce qu'elle aurait pu faire elle-même pour agir plus tôt. L'impossibilité d'agir doit s'apprécier du point de vue de celui qui aura à supporter les conséquences de la forclusion s'il n'en est pas relevé. La Cour d'appel devait donc exercer la discrétion prévue à l'art. 523 C.p.c. de façon favorable à la partie forclosée.

Arrêts mentionnés: *Lord c. La Reine* (1901), 31 R.C.S. 165; *Blanchette c. Duval* (1938), 65 B.R. 333; *Girouard c. Beaudoin* (1928), 35 R.L.n.s. 446; *Desrosiers c. Blanchard* (1924), 27 R.P. 67; *Vocisano c. Canada File and Tool Works, Limited* (1925), 38 B.R. 536; *Morin c. Lacasse*, [1953] B.R. 738; *Beaubien c. Laframboise* (1925), 40 B.R. 194; *Joy Oil Limited c. McColl Frontenac Oil Co. Ltd.*, [1943] R.C.S. 127.

POURVOI contre un arrêt de la Cour d'appel accueillant la requête de rejet d'appel d'un jugement de la Cour supérieure: pourvoi rejeté. Pourvoi contre un arrêt de la Cour d'appel refusant une requête pour permission spéciale d'appeler: pourvoi accueilli.

François Mercier, c.r., et Michel Dagenais, pour l'appelante.

Paul Gélinas, c.r., et Jean Guérin, c.r., pour l'intimée.

Le jugement de la Cour a été rendu par

LE JUGE PRATTE—L'appelante se pourvoit, avec l'autorisation de cette Cour, contre les jugements rendus par la Cour d'appel de la province de Québec le 27 mai 1976 qui l'ont déboutée (i) de l'appel qu'elle avait formé contre le jugement final de la Cour supérieure (le juge Prévost) en date du

¹ [1976] C.S. 269.

applies for special leave to appeal under this article does not have to prove that the action was absolutely impossible, only that it was relatively impossible.

It is impossible to specify in advance every situation that might constitute a relative impossibility. Each case must be decided according to its own particular circumstances, since the impossibility in question is really one of fact.

In the case at bar foreclosure was due solely to the error of appellant's counsel. The party itself acted with diligence and I do not see what more it could have done in order to "act sooner".

It is argued, however, that the impossibility referred to in art. 523 C.C.P. is not that of the party but rather that on the party's counsel. I do not agree with this submission. The last part of art. 523 C.C.P. was enacted in favour of the party itself in order to temper the strictness of the automatic forfeiture of the right of appeal when the holder of this right—the party itself—was unable to act in time. The impossibility to act must therefore be assessed from the point of view of the person who will have to bear the consequences of the foreclosure if he is not relieved from it.

Moreover, by choosing the criterion of impossibility "in fact" the legislator has indicated that the impossibility should be assessed in actual fact, irrespective of any fiction. However, it is solely on the basis of a legal fiction that counsel's possibility to act can be said to be that of the party. This is clearly not what is intended by the latter part of art. 523 C.C.P.: the existence of a real impossibility, "in fact", cannot be denied because of a fiction whereby the possibility to act of the agent would be held to be that of the principal.

Furthermore, it cannot be objected, as expressed by Montgomery J.A., that "a successful litigant has the right to regard the judgment in his favour as final if no inscription in appeal is served upon him within thirty days". This statement may have been accurate under the old *Code of Civil Procedure*, but it is not accurate under the new *Code*. Article 523 C.C.P. specifically empowers the

cle n'a pas à prouver une impossibilité absolue, mais seulement une impossibilité relative.

Il n'est pas possible de préciser à l'avance chacun des faits d'où peut résulter l'impossibilité relative; chaque espèce doit être jugée selon les circonstances qui lui sont propres, puisque c'est vraiment d'une impossibilité de fait qu'il s'agit.

Dans l'espèce qui nous est soumise, la forclusion a été encourue uniquement à cause de l'erreur des procureurs de l'appelante. La partie elle-même a agi avec diligence et je ne vois pas ce qu'elle aurait pu faire elle-même pour «agir plus tôt».

Mais, dit-on, l'impossibilité dont parle l'art. 523 C.p.c. n'est pas celle de la partie, mais plutôt celle de ses procureurs. Je ne suis pas d'accord avec cette prétention. La dernière partie de l'art. 523 C.p.c. a été édictée en faveur de la partie elle-même de façon à tempérer la rigueur de la déchéance automatique du droit d'appel lorsque le titulaire de ce droit—la partie elle-même—n'a pu agir à temps. L'impossibilité d'agir doit donc s'apprécier du point de vue de celui qui aura à supporter les conséquences de la forclusion s'il n'en est pas relevé.

D'ailleurs en choisissant le critère de l'impossibilité «en fait», le législateur a voulu indiquer que l'impossibilité doit s'apprécier concrètement, en dehors de toute fiction. Or, c'est uniquement par suite d'une fiction légale que l'on pourrait dire que la possibilité d'agir des procureurs est celle de la partie; ce n'est clairement pas ce qu'envisage la dernière partie de l'art. 523 C.p.c.: l'on ne saurait nier l'existence d'une impossibilité réelle, «en fait», en invoquant une fiction suivant laquelle la possibilité d'agir d'un représentant devrait être tenue comme celle du représenté.

On ne peut non plus objecter, comme le fait le juge Montgomery que [TRADUCTION] «La partie à un litige, qui a eu gain de cause, a le droit de considérer le jugement prononcé en sa faveur comme définitif si aucun avis d'appel ne lui est signifié dans un délai de trente jours». Cette affirmation, si elle pouvait être exacte sous l'ancien *Code de procédure civile*, ne l'est pas sous le

Court File No. 24668

BRANT COUNTY BOARD OF EDUCATION

- and -

EATON

Appellant

Respondents

IN THE SUPREME COURT OF CANADA

APPLICATION FOR LEAVE TO INTERVENE

Eberts Symes Street & Corbett
200 - 8 Price Street
Toronto, Ontario
M4W 1Z4

Mary Eberts (x301)
Lucy K. McSweeney
(416) 920-3030

Solicitors for the proposed intervenor,
The Easter Seal Society