

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

BETWEEN:

THE BRANT COUNTY BOARD OF EDUCATION

Applicant

- and -

CAROL EATON AND CLAYTON EATON

Respondents

- and -

**ONTARIO ASSOCIATION FOR COMMUNITY LIVING,
CANADIAN DISABILITY RIGHTS COUNCIL, and
ATTORNEY GENERAL OF ONTARIO**

Intervenors

MOTION RECORD

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Solicitors for the Intervenors,
The Down Syndrome Association
of Ontario

B E T W E E N :

THE BRANT COUNTY BOARD OF EDUCATION

and

CAROL EATON AND CLAYTON EATON

Court File No. 24668

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF
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Proceeding Commenced at
TORONTO

NOTICE OF MOTION

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Canadian Disability Rights Council

AND

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Ontario Association for Community Living

AND

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**ONTARIO ASSOCIATION FOR COMMUNITY LIVING,
CANADIAN DISABILITY RIGHTS COUNCIL, and
ATTORNEY GENERAL OF ONTARIO**

Intervenors

NOTICE OF MOTION

**TAKE NOTICE THAT THE DOWN SYNDROME ASSOCIATION
OF ONTARIO, ("the Association"), will apply to a Judge of this Court, at a date to
be fixed by the Registrar, pursuant to Section 18(2) of the *Rules of the Supreme Court
of Canada*, and Rule 5 of the *Supreme Court Rules*, for an Order extending the time
for the Association to bring this Motion for Leave to Appeal and for an Order
granting Leave to Intervene in the within Appeal or such further and other relief as to
this Honourable Court seems just.**

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

- (1) the Affidavit of Louise Bailey sworn on April 26, 1996;
- (2) the Notice of Appeal dated November 14, 1995; and
- (3) such further and other material as counsel may advise and this Honourable Court may permit.

AND FURTHER TAKE NOTICE THAT the said Motion shall be made on the following grounds.

- (1) The Association is a Provincial organization comprised primarily of parents of children with Down Syndrome. The interests of children with Down syndrome will be directly affected by the final determination of the issues raised by this Appeal. The Association has a significant interest in the issues to be determined on the Appeal;
- (2) The Association can offer assistance to the Court by way of argument with respect to the interpretation of the *Education Act*, R.S.O. 1990, c. E.2 in accordance with the *Canadian Charter of Rights and Freedoms*,

Part 1 of the *Constitution Act*, 1982 and the *Ontario Human Rights Code*, R.S.O. 1990, c.H.19;

- (3) The Association has been an active participant in reforming Ontario's education system with a view to providing an education to students with disabilities in an integrated setting;
- (4) The Association's intervention will not delay or prejudice the determination of the rights of the parties to the Appeal;
- (5) The parties to this Appeal will not be prejudiced by an Order extending the time to permit the Association to bring this Motion for Leave to Intervene in this Appeal;
- (6) Rules 18 and 5 of the *Rules of the Supreme Court of Canada*.
- (7) Such further and other grounds as counsel may advise and this Honourable Court permit.

DATED at Toronto, Ontario this 24th day of April, 1996.

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CANADIAN DISABILITY RIGHTS COUNCIL, and
ATTORNEY GENERAL OF ONTARIO**

Intervenors

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AND

TO: **ATTORNEY GENERAL FOR ONTARIO**

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Solicitors for the Attorney General for Ontario

THE BRANT COUNTY BOARD OF EDUCATION

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Court File No. 24668

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AFFIDAVIT OF LOUISE BAILEY

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Intervenors

AFFIDAVIT OF LOUISE BAILEY

**I, LOUISE BAILEY, of the town of Thornhill, in the County of York, MAKE OATH AND
SAY:**

1. I am the Chairperson of the Integration Committee of the Down Syndrome Association of Ontario and I therefore have knowledge of the matters deposed to below.
2. The Down Syndrome Association of Ontario, ("the Association"), seeks to intervene in this Appeal as a friend of the Court. This Appeal raises a number of issues which are of National importance for children and adults with Down Syndrome.

3. The Association seeks leave to present oral and written submissions to the Court on the issues referred to in the subsequent paragraphs of this Affidavit.

The Association

4. The Association is a Provincial organization comprised of 19 local Down Syndrome Associations. It was formed in February, 1985, to advocate on behalf of children and adults with Down Syndrome primarily in the areas of education and healthcare reform.

5. Almost all of the Association's members are parents of children with Down Syndrome. The Association is administered by a Board of Directors who are selected from each of the local organizations. It is funded exclusively by annual dues paid to it by its member groups and has no paid staff.

6. Attached as Exhibit "A" to this Affidavit is a list of the local Down Syndrome Associations which comprise the membership of the Association.

7. The mandates of the Association include:

- a. To promote increased knowledge, understanding and awareness of Down Syndrome on the part of the public, the medical profession and those persons personally affected by Down Syndrome;

- b. To collect and collate existing information, be it technical, general or otherwise, in respect of Down Syndrome and to make such information available to the public at large;
 - c. To provide a forum for the full and free discussion by all persons concerned about Down Syndrome including (but without being limited to) diagnosis, treatment, education, living accommodations, and available financial assistance, public or otherwise; and
 - d. To foster and encourage increased research into all aspects of Down Syndrome and improving in any manner whatsoever the educational opportunities and standard of living for those with Down Syndrome.
8. Attached as Exhibit "B" to this Affidavit is a copy of the Association's bylaws.

The Association's Participation in Education Reform

9. Since its inception, the Association has been active in lobbying the Ontario Government to reform the Provincial education system. On February 19, 1985, the Association gave a presentation to the Standing Committee on Administration of Justice of the Ontario legislature. This presentation dealt with the effects that segregated educational programs had on children with Down Syndrome. The Association proposed a series of reforms to be made to Bill 82

which would bring its provisions in line with Section 15 of the *Canadian Charter of Rights and Freedoms* and the provisions of the *Ontario Human Rights Code*.

10. Following the Association's presentation before the Legislative Standing Committee on the Administration of Justice, I was asked to participate, on behalf of the Association, as a chairperson of the All Party Working Group on Integration in Education. This committee consisted of representatives of all three major political parties and members of down syndrome organizations. The roles of the committee were to educate members of the legislature about barriers to integration which existed and still exist in the education system, to persuade each of the three political parties to adopt an integration focused education policy, and to hold forums for members of the legislature on integration in education.

11. The Association has also acted as a consultant to the Ministry of Education by participating in stakeholder meetings with Ministry personnel, representatives of other disability groups and school boards to develop a fully integrated education system. These meetings eventually led to the Ministry's decision to develop Regulation 305 under the *Education Act*. This regulation would provide that a school board would have to place a student with a disability in a regular, chronologically age appropriate classroom, in a neighborhood school with supports and services as required, unless the child's parent(s) chose to place him or her in a segregated classroom.

12. Although Regulation 305 has not yet been issued, the substance of the regulation is widely supported by the current Minister of Education, Ministry personnel, and disability groups.

The Proposed Intervention

13. The Association seeks leave to intervene in support of the position advanced by the Respondents. The Appeal involves many issues of importance which will have a profound effect on people with Down Syndrome in the area of education and other aspects of their daily lives.

14. Integrated education provides a vehicle by which children with Down Syndrome can interact with other members of society, gain self-confidence and self-worth, develop the skills to financially support themselves later in life, and learn other skills which permit them to conduct their other activities of daily living independently. The Association proposes to make submissions regarding the appropriate effects that the *Charter and the Ontario Human Rights Code* may have on the rights and interests of people with Down Syndrome which relate to their participation in the education system.

15. The Association does not seek leave to intervene on any of the issues surrounding Emily Eaton's educational circumstances or to review the evidence which was put before the Special Education Tribunal. Instead, the Association only seeks leave to make submissions on the

interrelationship between the *Education Act*, R.S.O. 1990, C. E-4, the *Ontario Human Rights Code* and Sections 1 and 15 of the *Canadian Charter of Rights and Freedoms*.

16. The Association proposes to make the following submissions if leave to intervene is granted:

- a. The provisions of the *Education Act* must be interpreted in accordance with Section 15 of the *Charter* and the provisions of the *Ontario Human Rights Code*;
- b. The interpretation given to Section 15 of the *Charter* and the *Ontario Human Rights Code* should require a school board to place a child in a regular, chronologically age appropriate classroom, unless the board can establish that such a placement would constitute an undue hardship;
- c. The onus of proof should be placed on the school board to establish that the educational placements it provides to children with disabilities is not discriminatory;
- d. Section 15 of the *Charter* and the provisions of the *Ontario Human Rights Code* require a school board to provide whatever support is necessary to permit children with a mental disability to participate fully in a regular, chronologically age appropriate classroom setting;

- e. It is not justifiable in a free and democratic society to deny a child with a mental disability access to education conducted in a regular classroom in the absence of the board's ability to prove undue hardship; and
- f. Section 15(2) of the *Canadian Charter of Rights and Freedoms* should not be used to deny the benefits associated with an integrated education to people with disabilities without their consent.

17. As a result of the tendency still to segregate children with Down Syndrome, these children have been denied access to experiences and opportunities that are currently available to other Canadians. These children have had to bear the stigma of being separated from the mainstream student community more so than other disabled children. They have been deprived of other benefits in education traditionally granted to other Canadians with disabilities because of the obvious visible characteristics associated with their condition.

18. People with Down Syndrome, like other Canadians who have a mental disability, have historically suffered significant disadvantages in their attempts to obtain an integrated education. For example, many children with Down Syndrome have been denied access to their neighborhood school that they would otherwise be able to attend in favour of placing them in a segregated classroom. Schools have sometimes resisted integration by refusing to provide adequate support or by refusing to advance children with Down Syndrome into age appropriate grades. Many parents have had to convert to Roman Catholicism to permit their child with

Down Syndrome to obtain an integrated education. Many parents have had to move across the country to provinces which provide integrated education for students with Down Syndrome. Families within Ontario have had to move to school districts who are more supportive of integration in education.

19. Prior to 1975, it was routine to institutionalize children with Down Syndrome. The educational needs of Children with Down Syndrome only came under the jurisdiction of the Ministry of Education with the enactment of Bill 82. Under this new regime, they were only offered a segregated education in special classes. Their capabilities were often devalued and their educational programs were structured to promote a life of dependence on others. It was only with the advent of infant stimulation programs and their increasing participation in community activities that educators and parents began to realize the educational potential of children with Down Syndrome. The issues raised by this Appeal will have a profound impact on the future directions taken to educate children with Down Syndrome and on the societal perceptions of their capabilities.

20. Although some children with Down Syndrome have been placed in regular classrooms, these children have often been removed from the classroom to participate in activities which have little or no educational value. Children with Down Syndrome have been, for example, asked to assist the janitor in the performance of his or her job responsibilities rather than receiving educational instruction in a regular classroom.

21. In the past decade, integration of children with Down Syndrome into various community groups such as Guides, Scouts, local community parks and recreation programs, art, music and dance programs has increased dramatically. Similarly it is common practice that young children with Down Syndrome are included in public and private childcare centres as well as private nursery schools and junior kindergartens. Only the education system has not adopted a similarly progressive attitude towards integration. The resolution of the issues raised by this Appeal will necessarily affect the rights of children with Down Syndrome and their ability to participate in these community activities and to receive other societal benefits enjoyed by other Canadians.

22. I believe that the Association's intervention in this Appeal will not prejudice either the Appellant or the Respondents.

23. The Association only became aware of this Appeal after the deadline for filing a Motion for Leave to Intervene had expired. I do not believe that this delay has caused either the Appellant or the Respondents to suffer any prejudice.

24. I undertake on behalf of the Association, to comply with any timetables proposed by the Court for filing documents and making oral submissions.

25. The Association therefore requests that the time be extended to permit the Association to have this Honourable Court consider this Motion for Leave to Intervene, that the Motion for

Leave to Intervene be heard and leave to intervene be granted. The Association will seek no order as to costs in respect of this Motion or its intervention in the Appeal.

SWORN BEFORE ME at the City
of North York, in the Municipality
of Metropolitan Toronto, on the
26th day of April, 1996.

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LOUISE BAILEY

A Commissioner for Taking Affidavits



ROBERT J. FENTON



Down Syndrome Association of Ontario

P.O.D.S. (Parents of Down Syndrome)
Barrie, Ontario

Down Syndrome Association of Brantford and District

Chatham F.R.I.E.N.D.S.

Durham Down Syndrome Association

Guelph Kids

Halton Down Syndrome Association

Down Syndrome Association of Hamilton

Kingston Down Syndrome Association

Parent to Parent,
London, Ontario

The Peel Caring Network for Challenged Kids
Mississauga, Ontario

Down Syndrome Caring Parents,
Niagara, Ontario

Nipissing Down Syndrome Society
North Bay, Ontario

Down Syndrome Association National Capital Region
Ottawa, Ontario

Peterborough C.H.A.N.G.E.S

Quinte Down Syndrome Support Group

Sault Ste. Marie Down Syndrome Society

Sudbury Down Syndrome Association

Parent to Parent for Down Syndrome
Thunder Bay, Ontario

Down Syndrome Association of Metropolitan Toronto

Waterloo Regional Down Syndrome Society

Up About Down,
Windsor, Ontario

Down Syndrome Association of York Region

Building Inclusive Schools

13 Birchcliffe Crescent, RR 24 Orillia, Ontario L3V 0K4 Phone 705 329 3318 Fax 705 329 6479

December 1, 1995

We are pleased to announce the selection of the following schools to participate with us for the remainder of the 1995-96 school year:

PROJECT SCHOOLS:

C.H.Norton Public School, Burlington (Central Region)
 St. John Bosco School, Barry's Bay (Eastern Region)
 Arthur Henderson Public School, Bruce Mines (Midnorthern Region)
 École Secondaire Thériault, Timmins (NorthEastern Region)
 Ignace School-elementary/secondary, Ignace (NorthWestern Region)
 Ursuline College "The Pines", Chatham (Western Region)

Managed by:
 The Coalition
 for Inclusive
 Education

ASSOCIATE SCHOOLS:

Dundas Public School, Toronto
 Spruce Glen Public School, Huntsville

Down Syndrome
 Association of
 Ontario

Integration Action
 Group

Ontario
 Association for
 Community
 Living

People First
 Ontario

Youth
 Involvement
 Ontario

Funded by:

Ontario Ministry
 of Education
 and Training

Canadian
 Association
 for Community
 Living

We wish to thank all of the schools that applied, and the people who helped to review the proposals. Project and application information was sent to every Ontario school, with the assistance of the Ministry of Education and Training. Thus, we know that schools and communities throughout the province are anticipating information from this Project to assist them to support students with intellectual disabilities to learn in regular classrooms, participating in their natural neighbourhood schools. In the late spring of 1996, we will again invite applications, so that we can provide support to another six schools around Ontario.

We look forward to meeting so many people who are committed to improving educational opportunities, as we assist with the following:

- establishing and delivering professional development for teachers, through consultation with other teachers and school staff, families, self-advocates, students and community members and services
- developing a network of resource people in each Ministry Region, who can help schools, themselves, and identify other people to provide practical assistance. Regional Resource Teams will grow over the three years of the Project, and remain available to assist all schools.

- communicating about challenges faced and strategies discovered.

We know WHY all students benefit from inclusive education: our task is now HOW to provide the appropriate support to students and teachers.

For further information please contact Marilyn Dolmage
 Project Co-ordinator

BY-LAW NUMBER 5

A By-Law Relating Generally to the Conduct of the Affairs of the Down's Syndrome Assoc. of Ontario (the "Corporation")

WHEREAS the Corporation was incorporated by Letters Patent effective February 4, 1985; and

WHEREAS the Corporation was incorporated for the following objects:

1. To promote increased knowledge, understanding and awareness of Down Syndrome on the part of the public, the medical profession and those persons personally affected by Down Syndrome.
2. To collect and collate existing information, be it technical, general or otherwise, in respect of Down Syndrome and to make such information available to the public at large.
3. To provide a forum for the full and free discussion by all persons concerned about Down Syndrome including (but without being limited to) diagnosis, treatment, education, living accommodations, and available financial assistance, public or otherwise.
4. To foster and encourage increased research into all aspects of Down Syndrome and improving in any manner whatsoever the educational opportunities and standard of living for those with Down Syndrome.
5. For the attainment of the above objects to receive from time to time and maintain a fund or funds and other property and to apply from time to time all or part thereof and the income therefrom.

BE IT ENACTED AS a by-law of the Corporation as follows:

1.00 INTERPRETATION

1.01 In this by-law and all other by-laws and resolutions of the Corporation unless the context otherwise requires:

- .01 the singular includes the plural;
- .02 the masculine gender includes the feminine;
- .03 "Board" means the board of directors of the Corporation;
- .04 "Corporation" means the Down's Syndrome Assoc. of Ontario;
- .05 "Corporations Act" means the Corporations Act, R.S.O. 1980, Chapter 95, and any statute amending or enacted in substitution therefor, from time to time;
- .06 "documents" includes deeds, mortgages, hypothecs, charges, conveyances, transfers and assignments of property, real or personal, immovable or movable,

Page 2

agreements, releases, receipts and discharges for the payment of money or other obligations, conveyances, transfers and assignments of shares, bonds, debentures or other securities and all paper writings;

- .07 "Executive Officers" means the persons who hold the offices enumerated in Section 5.01;
 - .08 "Local Association" means a local association consisting primarily of parents of people with Down Syndrome or of people with Down Syndrome which is a member of the Corporation and is entitled to elect a director of the Corporation;
 - .09 "Past President" means the person whose term of office as President has most recently expired and who is willing to serve as such;
 - .10 "organization" means an organization which the Board approves for membership;
 - .11 "special resolution" means a resolution passed by the directors and confirmed with or without variation by at least two-thirds of the votes cast at a general meeting of the members of the Corporation duly called for that purpose, or, in lieu of such confirmation, by the consent in writing of all the members entitled to vote at such meeting.
- 1.02 All terms defined in the Corporations Act have the same meanings in this by-law and all other by-laws and resolutions of the Corporation.

2.00 HEAD OFFICE

The head office of the Corporation shall be in the Municipality of Metropolitan Toronto, in the Province of Ontario, and at such place therein as the Board may from time to time determine.

3.00 SEAL

The seal which is impressed hereon shall be the corporate seal of the Corporation.

4.00 BOARD

- 4.01 Board. The affairs of the Corporation shall be managed by a Board which unless changed by special resolution shall be composed of 13 elected directors.
- 4.02 Elected Directors. Subject to the qualifications in Article 6.00 all directors shall be elected for two year terms in the manner set out in Article 6.00 and shall hold office until their successors have been elected and qualified.

Page 3

4.03 Qualifications. Each director shall

- .01 be at the date of, or become within ten (10) days after, his election, and thereafter remain throughout his term, a member of the Corporation who is qualified by the terms of Section 8.08 to hold office;
- .02 be at least eighteen (18) years of age; and
- .03 not be an undischarged bankrupt.

If a person ceases to be a member of the Corporation who is qualified by the terms of Section 8.08 to hold office, or becomes bankrupt, he thereupon ceases to be a director, and the vacancy so created may be filled in the manner prescribed in Section 4.04.

- 4.04 Vacancies.** So long as a quorum of the directors remains in office, a vacancy on the Board may be filled by the directors. In the event the position of director representing any Local Association becomes vacant the remaining directors may fill such vacancy by appointing a person to represent such Local Association. If the Local Association is able to nominate a replacement director to represent it the Board shall fill the vacancy with such person. If no quorum of directors exists, the remaining directors shall forthwith call a general meeting of members to fill the vacancies on the Board.

- 4.05 Removal of Directors.** The members entitled to vote may, by resolution passed by at least two-thirds (2/3) of the votes cast at a general meeting of which notice specifying the intention to pass the resolution has been given, remove any director before the expiration of his term of office, and may, by a majority of the votes cast at that meeting, elect any person in his stead for the remainder of his term.

Any director who fails to attend three (3) successive directors meetings shall be deemed to have resigned.

- 4.06 Quorum.** A quorum for the transaction of business at meetings of the Board shall be the smallest whole number that is not less than two-fifths (2/5) of the Board.

- 4.07 Meetings.** Meetings of the Board and of the Executive Committee (if any) may be held at any place within or outside Ontario, as designated in the notice calling the meeting. Meetings of the Board may be called by the President, any Vice-President or the Secretary or any two (2) directors.

The location of meetings which are held in Ontario shall be rotated throughout Ontario and the directors shall attempt to combine such meetings with meetings with local groups to encourage broad participation and exchange of ideas and information.

- 4.08 Notice.** Subject to the provisions of Section 4.09, notice of Board meetings shall be delivered, mailed or telephoned to each director not less than fourteen (14) days before the meeting is to take place, except in emergency circumstances when notice of a Board meeting may be delivered, mailed or telephoned to each director not less than one (1) day before the meeting is to take place. Inability to contact a director in such circumstances shall not invalidate such notice. The statutory declaration of the Secretary or President that notice has been given pursuant to this by-law shall be sufficient and conclusive evidence of the giving of such notice. No formal notice of a meeting is necessary if all the directors are present or if those absent have signified their consent to the meeting being held without notice and in their absence.

Page 4

- 4.09 Regular Meetings. The Board may appoint one or more days in each year for regular meetings of the Board at a place and time named; no further notice of the regular meetings need be given. The Board shall hold a meeting within seven (7) days following the annual meeting of the Corporation for the purpose of organization, the electing and appointing of officers and the transaction of any other business.
- 4.10 Voting. Questions arising at any meeting of the Board shall be decided by a majority vote. At all meetings of the Board, every question shall be decided by a show of hands unless a poll on the question is required by the Chairman or requested by any director. A declaration by the Chairman that a resolution has been carried and an entry to that effect in the minutes is conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against the resolution.
- 4.11 Remuneration of Directors. The directors of the Corporation shall serve without remuneration.
- 4.12 Indemnities to Directors. Every director and officer of the Corporation and the heirs, executors and administrators, and estate and effects, respectively, of such directors and officers shall from time to time and at all times, be indemnified and saved harmless, out of the funds of the Corporation, from and against,
- .01 all costs, charges and expenses whatsoever which the director or officer sustains or incurs in or about any action, suit or proceeding which is brought, commenced or prosecuted against such director or officer for or in respect of any act, deed, matter or thing whatsoever made, done or permitted by such director or officer in or about the execution of the duties of such office; and
 - .02 all other costs, charges and expenses which he sustains or incurs in or about or in relation to the affairs thereof, except the costs, charges or expenses occasioned by his own wilful neglect or default.
- 4.13 Protection of Directors and Officers. No directors or officers of the corporation shall be liable for the acts, receipts, neglects or defaults of any other director or officer or employee or for joining in any receipt or act for conformity or for any loss, damage or expense happening to the Corporation through the insufficiency or deficiency of title to any property acquired by the Corporation or for or on behalf of the Corporation or for the insufficiency of any security in or upon which any of the money of or belonging to the Corporation shall be placed out or invested or for any loss or damage arising from the bankruptcy, insolvency or tortious act of any person, firm or corporation with whom or which any moneys, securities or effects shall be lodged or deposited or for any other loss, damage or misfortune whatever which may happen in the execution of the duties of his respective office or trust or in relation thereto unless the same shall happen by or through his own wrongful and wilful act or through his own wrongful and wilful neglect or default.
- 4.14 Responsibility for Acts. The directors for the time being of the Corporation shall not be under any duty or responsibility in respect of any contract, act or transaction whether or not made, done or entered into in the name or on behalf of the Corporation, except such as shall have been submitted to and authorized or approved by the Board.
- 4.15 Ex-Officio Directors. The Past President shall be ex-officio a director of the Corporation.

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- 4.16 Others Present. Such others as the Board may from time to time by resolution determine, may be invited to attend and to speak at meetings of the Board, but shall not be entitled to vote thereat.
- 4.17 Distribution of Minutes. Minutes of meetings of the Board shall be prepared as promptly as possible and be distributed to all members in good standing.

5.00 OFFICERS

- 5.01 Executive Officers. There shall be a President, up to three Vice-Presidents and a Treasurer who shall be elected by the Board from among their number, and the Past President. The Board shall appoint a Secretary who need not be a director. No person may hold more than one office, other than the offices of Secretary and Treasurer.
- 5.02 President. The President shall be elected for a two year term and the individual holding such office may seek re-election for one succeeding two year term, but thereafter shall not be eligible to seek re-election until another person has in the interim held the office of President. To the extent possible successive Presidents should not be representatives of the same Local Association. The President shall, when present, preside at all meetings of the Board, the Executive Committee (if any) and members. The President shall supervise the affairs and operations of the Corporation, act as the public spokesperson for the Corporation, sign all documents requiring his signature and have the other powers and duties from time to time prescribed by the Board or Incident to his office.
- 5.03 Vice-President. During the absence or inability of the President to act his duties and powers may be exercised by the First Vice-President or failing him the Second or any other Vice-President. If such Vice-President exercises any of those duties or powers, the absence or inability to act of the President shall be presumed with reference thereto. Such Vice-President shall also perform the other duties from time to time prescribed by the Board or Executive Committee (if any) or Incident to his office.

If the President is serving a second term or has indicated the intention not to seek re-election the board shall elect one of the Vice Presidents as President Elect and such President Elect shall become the next President unless the Board on the expiry of the outgoing President's term elects another director as President.

- 5.04 Secretary. The Secretary shall be ex officio clerk of the Board or Executive Committee (if any) and shall attend all meetings of the Board and of the Executive Committee (if any) to record all facts and minutes of those proceedings in the books kept for that purpose. He shall give all notices required to be given to members and to directors. He shall be the custodian of the corporate seal of the Corporation and of all books, papers, records, correspondence and documents belonging to the Corporation and shall perform the other duties from time to time prescribed by the Board or Executive Committee (if any) or Incident to his office.
- 5.05 Treasurer. The Treasurer shall keep full and accurate accounts of all receipts and disbursements of the Corporation in proper books of account and shall deposit all moneys or other valuable effects in the name and to the credit of the Corporation in the bank or banks from time to time designated by the Board or Executive Committee (if any). He shall disburse the funds of the Corporation under the direction of the Board or Executive Committee (if any), taking proper vouchers therefor and shall render to the Board or

Executive Committee (if any), whenever required of him, an account of all his transactions as Treasurer and of the financial position of the Corporation. He shall co-operate with the auditors of the Corporation during any audit of the accounts of the Corporation and perform the other duties from time to time prescribed by the Board or Executive Committee (if any) or incident to his office.

- 5.06 Past President. The Past President shall perform from time to time the duties prescribed by the Board, and may perform such additional duties as may be requested of him by the President.
- 5.07 Executive Director. The Board may appoint an Executive Director who shall hold office at the pleasure of the Board. Subject to any duties or responsibilities imposed or any directions given from time to time, the Executive Director shall be the Chief Operating Officer of the Corporation responsible for all operations of the Corporation.
- 5.08 Other Officers. The Board may appoint other officers, including without limitation, Honorary Officers, and agents (and with such titles as the Board may prescribe from time to time) as it considers necessary and all officers shall have the authority and perform the duties from time to time prescribed by the Board. The Board may also remove at its pleasure any such officer or agent of the Corporation. The duties of all other officers of the Corporation appointed by the Board of Directors or Executive Committee (if any) shall be such as the terms of their engagement call for or the Board or Executive Committee (if any) prescribes.

6.00 ELECTION OF BOARD

- 6.01 Election of Directors. Subject to the provisions of the Corporations Act, directors, other than ex-officio directors, if any, shall be elected by members entitled to vote at the annual meeting.
- 6.02 Re-Election. A director, if otherwise qualified, is eligible for re-election.
- 6.03 Elections.
- .01 Each Local Association shall be considered a separate group for purposes of the Corporations Act and each Local Association shall be entitled to elect one director to the Board to hold office for two years (except in the first year when some of the directors will be elected only for one year) or until their successors are elected;
- .02 At the meeting of members at which this by-law is enacted a number of directors equal to the number of directors as provided in Section 4.01 shall be elected and thereafter at each annual meeting a number of directors equal to the number of directors whose terms are expiring plus any vacancies shall be elected; and

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- .03 The Local Associations at the time of enactment of this by-law, listed alphabetically, are as follows:

| | | |
|-----|---|--------------|
| 1. | C.H.A.N.G.E..S. (Children and Adults for Normalization, Growth, Equality and Socialization) | Peterborough |
| 2. | Down Syndrome Association National Capital Region | Ottawa |
| 3. | Down Syndrome Association of Hamilton | |
| 4. | Down Syndrome Association of Metropolitan Toronto | |
| 5. | Down Syndrome Association of York Region | |
| 6. | Down Syndrome Caring Parents | Niagara |
| 7. | Durham Down Syndrome Association | |
| 8. | Halton Down Syndrome Association | |
| 9. | Parent to Parent | London |
| 10. | Nipissing Down Syndrome Society | North Bay |
| 11. | P.O.D.S. (Parents of Down Syndrome) | Barrie |
| 12. | Sudbury Down Syndrome Association | |
| 13. | Waterloo Regional Down Syndrome Society | |

Those Local Associations with an odd number opposite their name shall in 1990 elect a director for a term of one year only whereas those Local Associations with an even number opposite their name shall in 1990 elect a director for a two year term. Thereafter all new Local Associations shall be given the next sequential number and shall initially elect a director for a one year or two year term as appropriate. All other directors shall be elected for two year terms.

6.04 Nominations. Candidates for the office of director shall include:

- .01 the slate of candidates for office presented by the Nominating Committee, or if there is no Nominating Committee, by the Executive Committee; and
- .02 the persons whose names are put in nomination by any Local Association at any time before nominations are closed at the meeting of members at which the election of directors is held.

6.05 Election Method. Where:

- .01 the number of candidates nominated is equal to the number of offices to be filled, the Secretary of the meeting shall cast a single ballot electing that number of candidates for the offices; and
- .02 the number of candidates nominated is greater than the number of offices to be filled, the election shall be by ballot.

6.06 Forms. The Board shall prescribe the form of nomination paper and the form of a ballot.

7.00 EXECUTIVE COMMITTEE

- 7.01 **Constitution.** The Board, whenever it consists of more than six (6), may from time to time elect from among its number an Executive Committee consisting of such number of members, not less than three (3), as the Board may by resolution determine; preferably, though not necessarily, the Executive Committee shall be composed of the Executive Officers. Each member of the Executive Committee shall serve during the pleasure of the Board and, in any event, only so long as he shall be a director. The Board may fill vacancies in the Executive Committee by election from among its number. If and whenever a vacancy shall exist in the Executive Committee, the remaining members may exercise all its powers so long as a quorum remains in office.
- 7.02 **Powers.** During the intervals between the meetings of the Board, the Executive Committee shall possess and may exercise (subject to any regulations which the Board may from time to time impose) all the powers of the Board in the management and direction of the affairs and business of the Corporation in such manner as the Executive Committee shall deem best for the interest of the Corporation in all cases in which specific directions shall not have been given by the Board.
- 7.03 **Procedures.** Subject to Sections 7.04, 7.05 and 7.06 and to any regulations imposed from time to time by the Board, the Executive Committee shall have power to fix its quorum at not less than a majority of its members and may fix its own rules of procedure from time to time. The Executive Committee shall keep minutes of its meetings in which shall be recorded all action taken by it, and at least a summary thereof shall be submitted to the Board at least annually.
- 7.04 **Quorum.** No business may be transacted by the Executive Committee except at a meeting of its members at which a quorum of the Executive Committee is present.
- 7.05 **Place of Business.** Meetings of the Executive Committee may be held at the head office of the Corporation or at any other place within or outside Ontario as specified in the notice calling the meeting.
- 7.06 **Other Directors Present.** Each director who is not a member of the Executive Committee shall be entitled to speak but not to vote at any meeting of the Executive Committee at which he is present. However, no director who has not been elected to the Executive Committee shall be entitled to notice of any meeting of the Executive Committee, and his presence shall not be included for the purpose of calculating a quorum.
- 8.00 MEMBERSHIP**
- 8.01 **Membership in the Corporation** shall consist of such Ontario groups which support the objects of the Corporation as are admitted as either Local Associations or Ordinary Members by the Board and such individuals as are admitted as Honorary Members by the Board.
- 8.02 **Classes.** There shall be three classes of membership in the Corporation:
- .01 Local Associations;
 - .02 Ordinary Members; and

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.03 Honorary Members.

- 8.03 **Applications.** Unless otherwise determined by the Board, applicants for membership in the Corporation shall be admitted as Ordinary Members upon payment of the prescribed fee. The Board may by resolution admit applicants for membership as Local Associations upon payment of the prescribed fee.
- 8.04 **Honorary Members.** From time to time, the Board may admit for life or lesser term without payment of any fee or assessment as an Honorary Member a person who, in the opinion of the Board, has made an outstanding contribution to the development of the Corporation. The Board shall admit as honorary members the directors elected at each annual meeting of the Corporation with the term of such honorary membership to expire on the expiration of such director's term of office.
- 8.05 **Voting Classes.** No person or group which is not a Local Association, as defined herein, shall be entitled to vote in any proceedings of the Corporation.
- 8.06 **Transfer of Membership.** A Membership in the Corporation is not transferable.
- 8.07 **Revocation of Membership.** Any member may be expelled from the Corporation for cause by a two-thirds (2/3) vote taken by ballot of the members present and eligible to vote at an annual or other general meeting of members.
- 8.08 **Termination of Membership.** A membership in the Corporation automatically terminates upon the happening of any of the following events:
- .01 if the person, in writing, resigns as a member of the Corporation;
 - .02 if the member dies;
 - .03 if a member is expelled from the Corporation pursuant to section 8.07; or
 - .04 if a member's dues authorized under the authority of section 8.09 remain unpaid for more than sixty (60) days after the date they are payable; or
 - .05 in the case of a director's honorary membership, on the expiry of such director's term of office.
- 8.09 **Membership Dues.** Membership dues may only be levied if authorized by:
- .01 two-thirds (2/3) of the members of the Board; and
 - .02 two-thirds (2/3) of the votes cast by members eligible to vote at an annual or other general of which shall include notice of intention to seek such authority;
 - .03 Annual membership dues until changed in accordance with paragraph .01 and .02 hereof shall be \$25;
 - .04 Members paying their initial dues on or after October 1st of any calendar year shall retain membership until the end of the next following calendar year.
- 8.10 **Liability of Members.** Members shall not, as such, be held answerable or responsible for any act, default, obligation or liability of the Corporation or for any engagement,

claim, payment, loss, injury, transaction, matter or thing relating to or connected with the Corporation.

8.11 Annual Meeting. The annual meeting of the members shall be held each year within Ontario, at a time, place and date determined by the Board, for the purpose of:

- .01 hearing and receiving the reports and statements required by the Corporations Act to be read at and laid before the Corporation at an annual meeting;
- .02 electing such directors as are to be elected at such annual meeting;
- .03 appointing the auditor and fixing or authorizing the Board to fix his remuneration; and
- .04 the transaction of any other business properly brought before the meeting.

8.12 General Meeting. The Board may at any time call a general meeting of members for the transaction of any business, the general nature of which is specified in the notice calling the meeting. A general meeting of members may also be called by the members as provided in the Corporations Act.

8.13 Notice of Meetings. Notice of the time, place and date of meetings of members and the general nature of the business to be transacted shall be given at least ten (10) days before the date of the meeting to each member (and in the case of an annual meeting to the auditor of the Corporation) by sending by prepaid mail to the last address of the addressee shown on the Corporation's records.

8.14 Quorum. Four (4) Local Associations present by proxy shall constitute a quorum at a meeting of members, and no business shall be transacted at any meeting unless the requisite quorum is present at the commencement of such business.

PROVIDED HOWEVER that where:

- .01 less than four (4), but two (2) or more, persons are present in person or by proxy after one-half hour after the commencement time specified in the notice calling the meeting of members; and
- .02 the business transacted is limited to the selection of a Chairman and a Secretary for the meeting, the recording of the names of those present, and the passing of a motion to adjourn the meeting with or without specifying a date, time and place for the resumption of the meeting.

then two (2) persons present in person shall constitute a quorum.

PROVIDED FURTHER that at the meeting at the date, time and place specified in the motion to adjourn referred to in subsection 8.14.02, the number of persons present required for a quorum shall be divided by two.

8.15 Voting by Members. Unless otherwise required by the provisions of the Corporations Act or the by-laws of the Corporation, all questions proposed for consideration at a meeting of members shall be determined by a majority of the votes cast by members entitled to vote. Each Local Association shall be entitled to one vote and shall file with

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the Secretary of the meeting a proxy pursuant to section 8.16 designating who may vote on behalf of such member.

- 8.16 Proxies. Every Local Association entitled to vote at meetings of members may by means of a proxy appoint a person who need not be a member as its nominee, to attend and act at the meeting in the manner, to the extent and with the power conferred by the proxy. A proxy shall be in writing, shall be executed by the member entitled to vote or his attorney authorized in writing, or, if the member is a body corporate, under its corporate seal or by an officer or attorney thereof duly authorized, and ceases to be valid one year from its date. Subject to the requirements of the Corporations Act, a proxy may be in such form as the Board from time to time prescribes or in such other form as the Chairman of the meeting may accept as sufficient, and shall be deposited with the Secretary at least 48 hours prior to any meeting.
- 8.17 Show of Hands. At all meetings of members every question shall be decided by a show of hands unless otherwise required by a by-law of the Corporation or unless a ballot is required by the Chairman or requested by any member entitled to vote. Upon a show of hands, every member entitled to vote, or proxyholder for a member entitled to vote, present in person shall have one vote. Whenever a vote by show of hands has been taken upon a question, unless a ballot is requested, a declaration by the Chairman that a resolution has been carried or lost by a particular majority and an entry to that effect in the minutes of the Corporation is conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against the motion.
- 8.18 Chairman. In the absence of the President or the Vice- President, the members entitled to vote who are present at any meeting of members shall choose another director as Chairman and if no director is present or if all the directors present decline to act as Chairman, the members present shall choose one of their number to be Chairman.
- 8.19 Ballots. If at any meeting a ballot is requested on the election of a Chairman or on the question of adjournment, it must be taken forthwith without adjournment. If a ballot is requested on any other question, it shall be taken in the manner and either at once or later at the meeting or after adjournment as the Chairman directs. The result of a ballot shall be deemed to be the resolution of the meeting at which the ballot was requested. A request for a ballot may be withdrawn at any time prior to the taking of the ballot.
- 8.20 Adjournments. Any meeting of members may be adjourned to any time and from time to time and any business may be transacted at any adjourned meeting that might have been transacted at the original meeting from which the adjournment took place. No notice is required of any adjourned meeting.

9.00 COMMITTEES

- 9.01 Standing Committee. There may be the following Standing Committees:

- .01 the Nominating Committee; and
- .02 such other Committees as the Board may from time to time approve.

- 9.02 Combined and Inactive Committees. From time to time by resolution the Board may combine the work of two or more Standing Committees under such name as the Board shall select; and may permit any Standing Committee to be inactive.

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9.03 Ad Hoc Committees. There may be such Ad Hoc Committees and for such purposes as the Board or the Executive Committee (if any) may determine from time to time by resolution. The existence of each such Ad Hoc Committee shall be terminated automatically upon:

- .01 the completion of its assigned task;
- .02 a change in the membership of the Board or Executive Committee by which it was constituted; or
- .03 a resolution to that effect of the Board or Executive Committee by which it was constituted;

whichever first occurs.

PROVIDED HOWEVER that, in the case of termination pursuant to Subsection 9.03.02, the Board or the Executive Committee (as the case may be) may by resolution continue such Ad Hoc Committee.

9.04 The Corporation's policy is to encourage active participation on Committees by members of local groups. Except as otherwise provided by by-law of the Corporation, all committees other than the Executive Committee are subject to the following:

- .01 the Chairman shall be appointed by the Executive Committee, if any, otherwise by the Board for a term of one (1) year, and may be reappointed for one or more additional terms of one (1) year;
- .02 the Committee shall meet at least annually, and more frequently at the will of its Chairman or as required by its terms of reference, and as requested by the Executive Committee;
- .03 the Committee shall be responsible to, and report after each meeting to, the Executive Committee (or if none, the Board);
- .04 the Committee may establish its own rules of procedure and may appoint subcommittees;
- .05 the President shall be an ex-officio member of each Committee and may attend meetings as appropriate;
- .06 there shall be a member of the Board on each Committee.

9.05 Nominating Committee. The Nominating Committee (when one exists) shall

- .01 prepare a slate of one or more candidates for each office which will be vacant and for which an election is to be held at or after the annual meeting;
- .02 accept any additional written nominations for elected office any time prior to the holding of annual elections, but this does not preclude the Chairman of the annual meeting from accepting further nominations from the floor at the time of the election;

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- .03 make recommendations to the Board of names of persons to fill vacancies in office or on the Board or on committees that occur throughout the year.

9.06 Personnel Administration Committee. The Personnel Administration Committee, if any, shall at appropriate periodic intervals review and recommend to the Executive Committee, if any, and if none, to the Board, the adoption of suitable policies for the use of the Corporation in relation to its employees, including without limitation, duties, responsibilities, remuneration, holidays and other benefits.

10.00 EXECUTION OF DOCUMENTS

10.01 Cheques, Drafts, Notes, Etc. All cheques, drafts or orders for the payment of money and all notes and acceptances and bills of exchange shall be signed by the officer or officers or person or persons and in the manner from time to time prescribed by the Board.

10.02 Execution of Documents. Documents requiring execution by the Corporation must be signed by the President, any Vice- President or the Treasurer and another director, and all documents so signed are binding upon the Corporation without any further authorization or formality. The Board may from time to time appoint any officer or officers or any person or persons on behalf of the Corporation, either to sign documents generally or to sign specific documents. The corporate seal of the Corporation shall, when required, be affixed to documents executed in accordance with the foregoing.

10.03 Books and Records. The Board shall see that all necessary books and records of the Corporation required by the by-laws of the Corporation or by any applicable statute are regularly and properly kept.

11.00 BANKING ARRANGEMENTS

11.01 The Board shall designate, by resolution, the officers and other persons authorized to transact the banking business of the Corporation, or any part thereof, with the bank, trust company, or other corporation carrying on a banking business that the Board has designated as the Corporation's banker, to have the authority set out in the resolution, including, unless otherwise restricted, the power to,

- .01 operate the Corporation's accounts with the banker;
- .02 make, sign, draw, accept, endorse, negotiate, lodge, deposit or transfer any of the cheques, promissory notes, drafts, acceptances, bills of exchange and orders for the payment of money;
- .03 issue receipts for and orders relating to any property of the Corporation;
- .04 execute any agreement relating to any banking business and defining the rights and powers of the parties thereto; and
- .05 authorize any officer of the banker to do any act or thing on the Corporation's behalf to facilitate the banking business.

11.02 Deposit of Securities. The securities of the Corporation shall be deposited for safekeeping with one or more bankers, trust companies or other financial institutions to

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be selected by the Board. Any and all securities so deposited may be withdrawn, from time to time, only upon the written order of the Corporation signed by such officer of officers, agent or agents of the Corporation, and in such manner, as shall from time to time be determined by resolution of the Board and such authority may be general or confined to specific instances. The institutions which may be so selected as custodians of the Board shall be fully protected in acting in accordance with the directions of the Board and shall in no event be liable for the due application of the securities so withdrawn from deposit or the proceeds thereof.

12.00 BORROWING BY THE CORPORATION

12.01 Subject to the limitations set out in the by-laws or in the Letters Patent of the Corporation, the Board may,

- .01 borrow money on the credit of the Corporation;
- .02 issue, sell or pledge securities of the Corporation; or
- .03 charge, mortgage, hypothecate or pledge all or any of the real or personal property of the Corporation, including book debts, rights, powers, franchises and undertakings, to secure any securities or any money borrowed, or other debt, or any other obligation or liability of the Corporation,

provided that, except where the Corporation borrows on the security of its real or personal property, its borrowing power shall be limited to borrowing money for current operating expenses.

12.02 From time to time the Board may authorize any director, officer or employee of the Corporation or any other person to make arrangements with reference to the money so borrowed or to be borrowed and as to the terms and conditions of the loan thereof, and as to the security to be given therefor, with power to vary or modify such arrangements, terms and conditions and to give such additional security as the Board may authorize, and generally to manage, transact and settle the borrowing of money by the Corporation.

13.00 FINANCIAL YEAR

13.01 The financial year of the Corporation shall terminate on the 31st day of January in each year or on such other date as the Board may from time to time by resolution determine.

14.00 NOTICE

14.01 Computation of Time. In computing the date when notice must be given under any provision of the by-laws requiring a specified number of days' notice of any meeting or other event, the date of giving the notice is, unless otherwise provided, included.

14.02 Omissions and Errors. The accidental omission to give notice of any meeting of the Board or members or the non-receipt of any notice by any director or member or by the auditor of the Corporation or any error in any notice not affecting its substance does not invalidate any resolution passed or any proceedings taken at the meeting. Any director,

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member or the auditor of the Corporation may at any time waive notice of any meeting and may ratify and approve any or all proceedings taken thereat.

15.00 BY-LAWS AND AMENDMENTS, ETC.

15.01 Enactment. By-laws of the Corporation may be enacted, repealed, amended, altered, added to or re-enacted in the manner contemplated in, and subject to the provisions of, the Corporations Act.

16.00 REPEAL OF PRIOR BY-LAWS

16.01 Repeal. Subject to the provisions of Sections 16.02 and 16.03 hereof, all prior by-laws, resolutions and other enactments of the Corporation heretofore enacted or made are repealed.

16.02 Exception. The provisions of Section 16.01 shall not extend to any by-law or resolution heretofore enacted for the purpose of providing to the Board the power or authority to borrow.

16.03 Proviso. Provided however that the repeal of prior by-laws, resolutions and other enactments shall not impair in any way the validity of any act or thing done pursuant to any such repealed by-law, resolution or other enactment.

17.00 EFFECTIVE DATE

17.01 This by-law shall come into force without further formality upon its enactment.

Enacted as By-law Number 5 by the directors of the Corporation at a meeting duly called and regularly held and at which a quorum was present on the 13th day of October, 1990.


Secretary


Chairman

The foregoing By-law Number 5 was enacted by the directors of the Corporation on October 13, 1990 and confirmed, subject to certain variations, by the unanimous affirmative vote of all members entitled to vote at a meeting of members duly called and regularly held at the City of North York, in the Municipality of Metropolitan Toronto and at which a quorum was present on the 13th day of October, 1990.


Secretary


Chairman

BETWEEN:

THE BRANT COUNTY BOARD OF EDUCATION

and CAROL EATON AND CLAYTON EATON

Court File No. 24668

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

Proceeding Commenced at
TORONTO

MOTION RECORD

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Solicitors for the Intervenor,
The Down Syndrome Association of Ontario