

**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

**Applicant
(Respondent)**

- and -

CAROL EATON and CLAYTON EATON

**Respondents
(Applicants)**

CASE ON APPEAL

VOLUME I OF IV

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**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:

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Court File No. 42,

**DIVISIONAL COURT
ONTARIO COURT OF JUSTICE (GENERAL DIVISION)**



CAROL EATON AND CLAYTON EATON

(Applicants)

- and -

THE BRANT COUNTY BOARD OF EDUCATION

(Respondent)

NOTICE OF APPLICATION FOR JUDICIAL REVIEW

**APPLICATION UNDER the Judicial Review Procedure Act, R.S.O. 1990,
c. J. 1, and Rule 68 of the Rules of Civil Procedure**

TO THE RESPONDENT

**A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicants.
The claim made by the applicant appears on the following page.**

**THIS APPLICATION for judicial review will come on for a hearing before
the Divisional Court on a date to be fixed by the registrar at the place of hearing
requested by the applicants. The applicants request that this application be heard at 130
Queen Street West, Toronto, Ontario.**

**IF YOU WISH TO OPPOSE THIS APPLICATION, you or an Ontario
lawyer action for you must forthwith prepare a notice of appearance in Form 38A
prescribed by the Rules of Civil Procedure, serve it on the applicants' lawyer or, where
the applicants do not have a lawyer, serve it on the applicants, and file it, with proof of
service, in the office of the Divisional Court, and you or your lawyer must appear at the
hearing.**

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicants' lawyer or, where the applicants do not have a lawyer, serve it on the applicant and file it, with proof of service, in the office of the Divisional Court within thirty days after service on you of the applicants' application record, or not later than 2 p.m. on the day before the hearing, whichever is earlier.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: January 19, 1994

Issued By: D. Hoyle
Registrar

130 Queen Street West, Toronto, Ontario
MSH 2NS

TO: Hicks Morley Hamilton
Stewart Storie
30th Floor
Toronto-Dominion Tower
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Toronto-Dominion Centre
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Christopher G. Riggs
Solicitor for the Respondent

AND TO: The Attorney General of Ontario
720 Bay Street
Toronto, Ontario
M5G 2K1

APPLICATION

1. The applicants make application for:

- (a) An order setting aside the order of the Ontario Special Education (English) Tribunal ("the Tribunal") dated November 19, 1993, in the matter of the Education Act, R.S.O. 1990, c. E. 2: In the Matter of Ontario Regulation 305 (formerly 554/81) made under the Education Act, as amended, and in the matter of the minor, Emily Eaton, ("Emily") born 28 February 1984;
- (b) a declaration that Emily is entitled to be placed in an age-appropriate regular class in her neighbourhood school, which is currently Maple Avenue in Burford, Ontario;
- (c) an interim order continuing Emily's current educational placement in a regular class at her neighbourhood school until this application has been determined;
- (d) such further and other relief as counsel may advise and this Honourable Court deem just.

2. The grounds for the application are:

- (a) The Tribunal's conclusion that Emily should be placed in a segregated special education setting rather than an integrated regular class was rooted in fundamental errors of fact and law, unsupported by the evidence before it and patently unreasonable;

- (b) The Tribunal erred in law and exceeded its jurisdiction in carrying out its own "extensive and intensive review" of the literature dealing with segregated versus integrated education systems and in concluding, based on that review, that this literature is seriously flawed and not supportive of placing Emily in a regular integrated class. The Tribunal conducted that research and reached those conclusions outside the hearing, without notice to the applicants, without providing the applicants with any opportunity to make submissions on the issue or to reply and without citing any specifics regarding the literature consulted including the authors, titles, publications or content of the literature and notwithstanding the evidence to the contrary presented by three experts in education and psychology who testified on behalf of the applicants. Further, the Tribunal had previously made a ruling that counsel for the applicants could not file research reports or journal articles on this issue as part of a Book of Authorities because such literature would have "evidentiary or testimonial value" and it would therefore be "unfair" to admit it "when there is no opportunity for opposing counsel to cross-examine".
- (c) The Tribunal erred in law by placing upon the applicants the burden of proving that Emily's needs were being or could be met in a regular class rather than requiring the respondent to establish that only a segregated special education class could meet Emily's needs;
- (d) The Tribunal erred in law by failing to properly consider the rights of Emily and her parents under ss. 7 and 15 of the Charter of Rights and Freedoms ("the Charter"), ss. 1 and 17 of the Ontario Human Rights Code ("the Code"), and Canada's international obligations under the Universal Declaration of Human

Rights, the Convention on the Rights of the Child and the Declaration of the Rights of the Child and, in particular, erred:

- i) by failing to hold that placement in an age-appropriate regular class, with accommodation of her special needs, is the non-discriminatory norm to which Emily is entitled under the Code and the Charter and that placement in a segregated class is prima facie discriminatory;
 - ii) by failing to hold that in the absence of solid evidence as to the superiority of a segregated placement for Emily, equality rights principles prevent her being forced into a segregated placement against the wishes of her parents;
 - iii) by failing to find that Emily is entitled under the Code and the Charter to have all options for the least segregated placement considered and exhausted before ordering a special class placement;
 - iv) by applying a discriminatory standard to Emily, contrary to her rights under the Code and the Charter, which compared her performance in the classroom to that of her non-disabled peers in order to measure the "success" of her regular class placement, and then deciding her placement using a standard based on her lack of "success", rather than her educational needs, as required by the Education Act;
 - v) by failing to give appropriate weight to Emily's parents' fundamental personal choice for her education in keeping with their philosophy and beliefs as to her interests and in keeping with Canada's international obligations referred to above and the right to life, liberty and security of the person under s. 7 of the Charter and freedom of conscience under s. 2 of the Charter;
 - vi) by basing their decision as to which placement meets Emily's needs on their view that she is profoundly mentally handicapped, which directly discriminates against her on the basis of her disability, contrary to her rights under the Code and the Charter.
- (e) The Tribunal erred in fact and in law and exceeded its jurisdiction by disregarding the evidence of expert witnesses called by the applicants as to the benefits of an

integrated educational placement, the lack of any data to support superiority of a segregated special education placement and the harm that can result from a segregated placement, particularly since no evidence contradicting that evidence was presented by the respondent. In particular, the Tribunal erred in dismissing the evidence of Dr. Silverman, Dr. Bunch and Dr. Sapon-Shevin on the basis that they supported an integrated education system and on the basis of evidence which the Tribunal itself gathered as referred to in subparagraph 2(b) above.

- (f) The Tribunal erred in fact and law by concluding that Emily's special needs cannot be met in the regular class, based on the expert evidence before them concerning the methods which can be utilized to provide for those needs, and in the absence of any evidence from the Respondent that anything which would be done in the special class cannot be done in the regular class.
- (g) The Tribunal erred in fact and law by basing their decision on their conclusion that Emily is profoundly mentally handicapped, despite the fact that every witness giving evidence on this issue stated that Emily's disability makes it extremely difficult to assess her comprehension and proficiency, and that they cannot assess her abilities or whether she is benefitting from her regular class placement, and despite the fact that the only expert medical evidence before the Tribunal was that her potential for learning cannot be predicted.
- (h) The Tribunal erred in fact and law and exceeded its jurisdiction by finding that Emily's needs can be met better in the special class in the absence of any evidence establishing how this would be achieved.

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- (i) The Tribunal erred in fact and law in not finding that a segregated special class placement would cause Emily emotional harm despite uncontroverted evidence from her parents that she will be harmed, and from experts testifying on behalf of both the Applicants and the Respondent that segregated special class placement does cause harm to a student's emotional well-being and self-esteem.
- (j) The Tribunal erred in fact and law in their findings on the issue of whether Emily's needs are being met at Maple Avenue as follows:
 - i) by finding that the use of a parallel curriculum in the regular class, as necessitated by Emily's special needs, has the result of isolating her from her peers "in a dis-serving and potentially insidious way", in the absence of any evidence upon which it could reasonably reach that conclusion;
 - ii) by attributing the cause of any perceived isolation experienced by Emily to her disability rather than to the manner in which her educational program was carried out by the Respondent, despite being presented with uncontroverted expert evidence concerning the correct implementation of a parallel curriculum to accommodate the special needs of students in the regular class, its positive results for students with disabilities similar to Emily's, and the importance of adult role models in the classroom for the success of inclusive education using the parallel curriculum method;
 - iii) by rejecting the expert evidence of Dr. Harry Silverman regarding the impact of the classroom teacher's lack of pro-active involvement with Emily on the attitudes of her classmates toward her, and by concluding that any patterns of natural interaction which are going to develop would have developed by this point in time despite the classroom teacher's intervention or lack of intervention in the absence of any evidence to that effect; and
 - iv) by finding contrary to the evidence of Emily's parents and the mothers of three of her classmates, that there is little if any social interaction between Emily and her peers and that Emily's social and emotional needs are not being met in the regular class, and by applying a discriminatory standard which compared Emily's interaction with her peers to interaction between non-disabled students.

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- (k) The Tribunal erred in fact and law by concluding that placement in a regular class created a safety risk for Emily which necessitates special class placement in the absence of evidence that any such risks have not and would not continue to be kept to a reasonable level in the regular class, and despite uncontroverted evidence that Emily does not swallow objects in the classroom, and that she has sufficient oral motor control to manipulate objects in her mouth without choking. The Tribunal's findings in this regard are patently unreasonable.
 - (l) Such further and other grounds as counsel may argue and this Honourable Court permit.
3. The following documentary evidence will be used at the hearing of the application:
- (a) the record and transcript of the proceedings before the Tribunal;
 - (b) the reasons for decision of the Tribunal;
 - (c) such further and other material as counsel may advise and this Honourable Court permit.

January 19, 1994.

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ANNE M. MOLLOY
JANET L. BUDGELL

Solicitors for the Appellants,
Carol and Clayton Eaton

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CAROL EATON AND CLAYTON EATON
(Plaintiffs of proceeding)

- and -

THE BRANT COUNTY BOARD OF
EDUCATION
Court File No. 42/94

DIVISIONAL COURT
ONTARIO COURT OF JUSTICE
(GENERAL DIVISION)

NOTICE OF APPLICATION
FOR JUDICIAL REVIEW

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**DIVISIONAL COURT
ONTARIO COURT OF JUSTICE (GENERAL DIVISION)**

The Honourable Mr. Justice Carruthers)	Tuesday, the 8th
The Honourable Madam Justice Dunnet)	day of February,
The Honourable Mr. Justice Adams)	1994

B E T W E E N:

CAROL EATON AND CLAYTON EATON

Applicants

- and -

THE BRANT COUNTY BOARD OF EDUCATION

Respondent

- and -

ATTORNEY GENERAL FOR ONTARIO

Intervenor

ORDER

THIS APPLICATION by Carol Eaton and Clayton Eaton for Judicial Review of the decision dated November 19, 1993 of the Ontario Special Education (English) Tribunal (the "Tribunal"), appointed under the Education Act, was heard this day at Osgoode Hall, Toronto, Ontario.

ON READING the Joint Application Record, the Respondent's Record, the record of the Tribunal and the facts filed on behalf of the parties, and on hearing the submissions of counsel for the Applicants, counsel for the Respondent and the Attorney

Order of the Divisional Court dismissing the
Application for Judicial Review, dated February
8, 1994

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General for Ontario not having been called upon,

THIS COURT ORDERS that the application be and the same is hereby dismissed
without costs.

D. Hay G
Assistant Registrar
Divisional Court

INSCRIT / ENTERED AT TORONTO

IN FILM No:

CANS FILM No:

943

GN/LE: 010: 1994

AT DOCUMENT No:

ATITRE DE DOCUMENT No:

FEU/PAR:

727



Order of the Divisional Court dismissing the
Application for Judicial Review, dated February
8, 1994

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CAROL EATON AND CLAYTON EATON

- and -

THE BRANT COUNTY BOARD OF
EDUCATION

Court File No. 42/94

(Part 1 of proceedings)

DIVISIONAL COURT
ONTARIO COURT OF JUSTICE
(GENERAL DIVISION)

ORDER

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COURT OF APPEAL FOR ONTARIO

wily ^{✓ THE ✓}
The Honourable, Associate Chief Justice ~~McGee~~ ^{OF})
The Honourable Mr. Justice Austin ^{ONTARIO})
The Honourable Mr. Justice Laskin)

Monday, the 11th
day of July, 1994

BETWEEN:

CAROL EATON AND CLAYTON EATON

**Applicants
(Appellants)**

- and -

THE BRANT COUNTY BOARD OF EDUCATION

**Respondent
(Respondent in Appeal)**

**APPLICATION UNDER section 2 of the Judicial Review Procedure Act,
R.S.O., c.J.1.**

ORDER

**THIS MOTION, made by the Applicants, Carol Eaton and Clayton Eaton, for an
order granting leave to appeal in this matter to the Court of Appeal for Ontario, was
heard this day at Osgoode Hall, Toronto, Ontario.**

ON READING the Applicants' and Respondent's Motion Records and excerpts from the Transcript of Evidence in the proceedings below before the Ontario Special Education (English) Tribunal, and on hearing submissions of counsel for the Applicants, Carol Eaton and Clayton Eaton, the Respondent, the Brant County Board of Education and the Intervenor, the Attorney General for Ontario,

1. THIS COURT ORDERS THAT leave to appeal be granted in this matter;
2. THIS COURT ORDERS THAT the costs of this motion be reserved to the Court hearing the appeal.

INSCRIT À/ENTERED AT TORONTO

IN FILM No:

DANS FILM No: 956

ON/LE: 26 07 1994

AS DOCUMENT No: 518

À TITRE DE DOCUMENT No:

PER/PAR: *SL*

W. Keith Munro
ASSISTANT REGISTRAR

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CAROL EATON AND CLAYTON EATON

Applicants (Appellants)

(Short title of proceeding)

- and -

THE BRANT COUNTY BOARD
OF EDUCATION
Respondent (Respondent in Appeal)

COURT OF APPEAL FOR ONTARIO

ORDER

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Carol Eaton and Clayton Eaton

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Court File No. M12992

COURT OF APPEAL FOR ONTARIO

BETWEEN:

CAROL EATON AND CLAYTON EATON

**Applicants
(Appellants)**

- and -

THE BRANT COUNTY BOARD OF EDUCATION

**Respondent
(Respondent in Appeal)**

**APPLICATION UNDER section 2 of the Judicial Review Procedure Act,
R.S.O. 1990, c.J. 1**

NOTICE OF APPEAL

CAROL EATON and CLAYTON EATON APPEAL to the Court of Appeal for Ontario from the Order of the Divisional Court dated February 8, 1994, dismissing the judicial review application brought by them from the Order of the Ontario Special Education (English) Tribunal dated November 19, 1993.

THE APPELLANTS ASK that the order of the Divisional Court be set aside and that an Order be made as follows:

- (i) quashing the decision of the Ontario Special Education (English) Tribunal dated November 19, 1993;**
- (ii) directing that any re-hearing of this matter should be before a differently constituted tribunal;**
- (iii) awarding costs to the appellants.**

THE GROUNDS OF APPEAL are as follows:

1. The Divisional Court erred in failing to properly interpret the Education Act ("the Act") in accordance with equality rights principles guaranteed under the Ontario Human Rights Code ("the Code") and the Canadian Charter of Rights and Freedoms ("the Charter").
2. The Divisional Court erred in failing to find that the operation of the Code and the Charter give rise to a presumption in favour of an integrated regular class placement for all children, including children with disabilities.
3. The Divisional Court erred in failing to find that the Tribunal applied the wrong legal test in determining the educational placement for the appellant's daughter Emily, who is a child with multiple disabilities.
4. The Divisional Court erred in failing to find that a segregated educational placement for Emily could not be justified in the absence of evidence that the segregated placement was sufficiently superior to an integrated regular class placement so as to warrant overriding Emily's equality rights and exposing her to the serious risk of psychological harm.
5. The Divisional Court erred in failing to hold that a segregated placement could not be justified in the absence of evidence establishing that the services required to meet Emily's needs would be provided in the segregated placement and could not be provided in a regular class placement without undue hardship on the respondent.

6. The Divisional Court erred in failing to hold that the respondent bears the legal onus of justifying a segregated placement.
7. The Divisional Court erred in holding that the issue of onus did not play a role in the Tribunal's decision.
8. The Divisional Court erred in its consideration and application of s. 14 of the Code and s. 15(2) of the Charter.
9. The Divisional Court erred in failing to hold that the Tribunal could only direct the most segregated placement available in the continuum of services if other less restrictive options have been exhausted.
10. The Divisional Court erred in the high standard of curial deference which it afforded to the Tribunal both on questions of fact and questions of law.
11. The Divisional Court erred in failing to find that the Tribunal's post-hearing review of the academic literature in the area of special education placement and the conclusions drawn from that review constituted a denial of natural justice.
12. The Divisional Court erred in finding that the Tribunal made no legal error in disregarding the evidence of the applicants' expert witnesses.
13. The Divisional Court erred in failing to find that the Tribunal acted in a patently unreasonable manner by not taking into account the uncontroverted evidence of serious psychological harm which would likely result if Emily was placed in a segregated class.

14. The Divisional Court erred in failing to find that the Tribunal acted in a patently unreasonable manner in finding that the evidence before it pointed to Emily having a profound intellectual handicap.

15. The Divisional Court erred in failing to find that the Tribunal applied the wrong legal test by not giving appropriate weight to Emily's parents' decision for her educational placement, and that forcing Emily into a segregated class against her parent's wishes constitutes a violation of sections 7 and 15 of the Charter.

July 18, 1994.

ADVOCACY RESOURCE CENTRE FOR
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CAROL EATON AND CLAYTON EATON

Applicants (Appellants)

- and -

THE BRANT COUNTY BOARD
OF EDUCATION
Respondent (Respondent in Appeal)

File No. M12552

(Part 1 of proceedings)

COURT OF APPEAL FOR ONTARIO

NOTICE OF APPEAL

ADVOCACY RESOURCE CENTRE FOR THE
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COURT OF APPEAL FOR ONTARIO

THE HONOURABLE MR. JUSTICE CARTHY)	WEDNESDAY, THE
THE HONOURABLE MADAM JUSTICE ARBOUR)	15TH DAY OF
THE HONOURABLE MR. JUSTICE LABROSSE)	FEBRUARY, 1995.

B E T W E E N:

CAROL EATON AND CLAYTON EATON

Appellants

- and -

THE BRANT COUNTY BOARD OF EDUCATION

Respondent

- and -

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

Intervenors

O R D E R

THIS APPEAL by the Applicants, Carol Eaton and Clayton Eaton, for an Order setting aside the Order of the Divisional Court dated February 8, 1994, which dismissed the Applicants' application for judicial review of the Order of the Ontario Special Education (English) Tribunal dated November 19, 1993, was heard on December 19, 20 and 21, 1994 at Osgoode Hall, Toronto, Ontario, and the Reasons for Judgment were released on February 15, 1995.

ON READING the Appeal Book, the Respondent's Appeal Book, the record of the Tribunal, facts filed on behalf of the parties and the intervenors, and excerpts from the Transcripts of Evidence in the proceedings before the Ontario Special Education (English) Tribunal, and on hearing the submissions of counsel for the Applicants, counsel for the Respondent, counsel for the Intervenor, Attorney General of Ontario, counsel for the Intervenor, the Ontario Association for Communication Living and counsel for the Intervenor, the Canadian Disability Rights Council,

1. **THIS COURT ORDERS** that the appeal be allowed and that the decision of the Tribunal be set aside;

2. **AND THIS COURT ORDERS** that Section 8 of the Education Act, R.S.O. 1990, c.E.2, as amended, should be read to include a direction that, unless the parents of a child who has been identified as exceptional by reason of a physical or mental disability consent to the placement of that child in a segregated environment, the school board must provide a placement that is the least exclusionary from the mainstream and still reasonably capable of meeting the child's special needs;

3. **AND THIS COURT ORDERS** that the matter be remitted to a differently constituted Tribunal for re-hearing in accordance with the direction set out in paragraph 2 above.

INSCRIT / ENTERED AT TORONTO

IN FILM No:

DANS FILM No:

ON/LE 04 11 1995

AS DOCUMENT No.

À TITRE DE DOCUMENT

PER/PAR

W. Keith Gurnea
ASSISTANT
RECEIVED

EATON
(Appellants) -and-

BRANT COUNTY BOARD OF EDUCATION
(Respondent)
Court File No.: C19214

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at Toronto

O R D E R

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Supreme Court of Canada



Cour suprême du Canada

**SUPREME COURT OF CANADA
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NOMBRE DE PAGES (incluant le présent formulaire)

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SUBJECT/SUJET:

COMMENTS/REMARQUES:

interventions by March 29, 1996.

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M. Larmour

Date

Feb 15/96

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

ON TUESDAY, THE 13TH DAY OF FEBRUARY, 1996

BEFORE:

THE HONOURABLE CHIEF JUSTICE LAMER

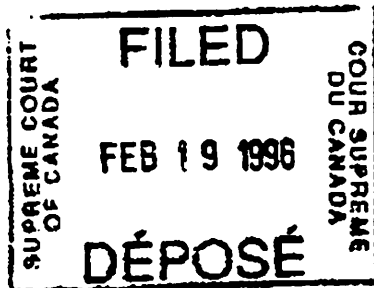
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BETWEEN:

BRANT COUNTY BOARD OF EDUCATION

APPLICANT (Respondent)

- and -



CAROL EATON and CLAYTON EATON

RESPONDENTS (Applicants)

ORDER

UPON application made by the Applicant, The Brant County Board of Education, for an order stating constitutional questions in respect of this appeal, and for directions concerning service thereof on the Attorney General of Canada, the Attorneys General of the provinces, and the Attorneys General of the Governments of the Northwest Territories and Yukon;

1. **THIS COURT ORDERS THAT** the constitutional questions as set out in Schedule "A" attached hereto, are to be stated in this appeal, and are to be served, together with a copy of this Order and the reasons for judgment of the Court of Appeal for Ontario released February 15, 1995, on the Attorney General of Canada, the Attorneys General of the Provinces, and the Attorney General of the Governments of the Northwest Territories and Yukon.

2. **THIS COURT ORDERS THAT** all notices of intervention are to be served and filed with the Registrar of the Supreme Court of Canada by March 29, 1996.

Deputy *Louise McLaughlin*
REGISTRAR

SCHEDULE "A"

CONSTITUTIONAL QUESTIONS

**THE BRANT COUNTY BOARD OF EDUCATION
AND
CAROL EATON and CLAYTON EATON**

1. Do s. 8(3) of the *Education Act*, R.S.O. 1990, c. E.2, as amended, and s. 6 of *Regulation 305* of the *Education Act*, infringe Emily Eaton's equality rights under s. 15(1) of the *Canadian Charter of Rights and Freedoms*?
2. If the answer to question 1 is in the affirmative, are s. 8(3) of the *Education Act*, and s. 6 of *Regulation 305* of the *Education Act*, justified as a reasonable limit under s. 1 of the *Canadian Charter of Rights and Freedoms*?
1. Le paragraphe 8(3) de la *Loi sur l'éducation*, L.R.O. 1990, ch. E.2 et ses modifications, et l'art 6 du *Règlement 305* de la *Loi sur l'éducation* portent-ils atteinte aux droits à l'égalité que le par. 15(1) de la *Charte canadienne des droits et liberté* garantit à Emily Eaton?
2. Si la réponse à la première question est affirmative, le par. 8(3) de la *Loi sur l'éducation* et l'art. 6 du *Règlement 305* de la *Loi sur l'éducation* sont-ils justifiés en tant que limite raisonnable au sens de l'article première de la *Charte*?

BETWEEN:

**BRANT COUNTY BOARD OF EDUCATION
APPLICANT (Respondent)**

- and -

**CAROL EATON and CLAYTON EATON
RESPONDENTS (Applicant)**

No. 24668

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

ORDER

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Brant County Board of Education**

Order of the Supreme Court of Canada granting
leave to appeal dated October 26, 1995, filed with
the Court December 13, 1995

30

Court File No.: 24668

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

THURSDAY, THE 26TH DAY OF OCTOBER, 1995

B E F O R E :

The Right Honourable Chief Justice
The Honourable Madam Justice L'Heureux-Dube
The Honourable Madam Justice McLachlin

B E T W E E N :

THE BRANT COUNTY BOARD OF EDUCATION

**Applicant
(Respondent)**

- and -

CAROL EATON and CLAYTON EATON

**Respondents
(Applicants)**

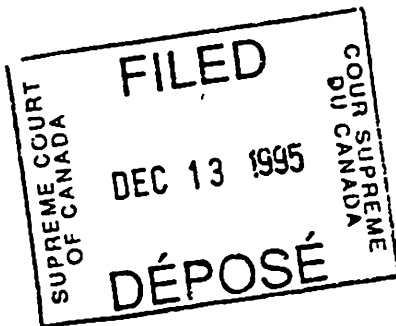
- and -

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

Intervenors

O R D E R

UPON APPLICATION by counsel on behalf of the Applicant for an
Order granting leave to appeal to this Honourable Court from the judgment of the



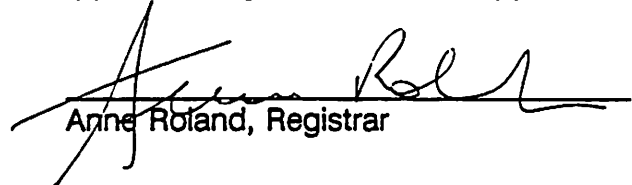
Order of the Supreme Court of Canada granting
leave to appeal dated October 26, 1995, filed with
the Court December 13, 1995

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Court of Appeal for the Province of Ontario, pronounced on the 15th day of
February, 1995.

IT IS ORDERED that the Applicant be granted leave to appeal.


Anne Roland, Registrar

by the Courts below as an application for judicial review of the Tribunal's decision.

2. The Court of Appeal erred in holding that the Tribunal's decision, upholding the placement of Emily Eaton in a self-contained classroom, infringed her equality rights, contrary to section 15(1) of the *Canadian Charter of Rights and Freedoms* ("the *Charter*").
3. The Court of Appeal erred in holding that Emily Eaton's equality rights were contingent upon the consent of, or could be waived by, her parents.
4. The Court of Appeal erred in rejecting the argument that the special education provisions of the *Education Act* and the *Regulations* fall within s.15(2) of the *Charter*, and therefore do not infringe s.15(1).
5. The Court of Appeal erred in its analysis of s.1 of the *Charter*.
6. The Court of Appeal erred in holding that the appropriate remedy was to "read in" to s.8(3) of the *Education Act* a direction that, unless the parents of a child who has been identified as exceptional by reason of a physical or mental disability consent to the placement of that child in a segregated environment, the school board must provide a placement that is the least exclusionary from the mainstream and still reasonably capable of meeting the child's special needs.
7. The Court of Appeal erred in relying upon legislative fact which was not before the Tribunal or the Divisional Court.
8. The Court of Appeal erred in reviewing the findings of fact of the Ontario

Special Education (English) Tribunal (the "Tribunal") and in holding that
the Tribunal failed to take into account proper considerations.

DATED at Toronto, Ontario this 11th day of April, 1995.

C G Riggs
B J Bowlby

Christopher G. Riggs, Q.C.
Brenda J. Bowlby

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- 5 -

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NOTICE TO THE RESPONDENT: A respondent may serve and file a memorandum in reply to this application for leave within 20 clear days after service of the application. If no reply is filed in that time, the Registrar will submit this application for leave to the Court for consideration pursuant to section 43 of the Supreme Court Act.

5
MR. CHAIRMAN: That is fine. I am sorry to
interrupt you, Ms. Budgell, but that term is
used variously and I think it is important for
us to understand before we go any further.

10
THE WITNESS: Just to clarify for you. I am
not comfortable with any of those
terminologies and as a result I tend to use
them interchangeably when I am speaking to
someone in order to be clear what I am talking
about. I don't use only one terminology, just
so I don't confuse you later.

15
MR. CHAIRMAN: Thank you.

MS. BUDGELL: Q. Do you work at all in the
area of instruction for child care?

20
A. Yes, I do. For the last five years I have
instructed in Paris, Ontario. Part of the baby-sitting course
at the Ontario Safety League provides for children. There is a
section on baby-sitting handicapped children and I have been
privileged to be able to teach in that for the last five years.

25
Q. I am just going to turn now to Emily
specifically, beginning with her date of birth. It's on
record, but...

A. Okay. Emily was born February 28th, 1984.

30
Q. Where was she born?

after she was born could have been subsidized through government programming but we were not aware it existed. So, there was over \$1,000.00 per month on oxygen costs alone and all kinds of other things, that was just one of the things. So, of course, there were things that they would like to do that we were not able to do. We tried to provide one exciting day where they were going to be the centre of attention and that was one day when we always knew that they would relax.

For the rest of the time, as I said, their behaviour - we noticed more fighting. We noticed more whininess and crying. We're not sure whether that was - we really don't think that it was directly attributable to the fact that Emily was a child with disability, but more that she was a new addition to the family and life was disrupted by a baby.

Q. You mentioned earlier that you attempted to explain to them the diagnosis of cerebral palsy and what could be expected for Emily in the future. Can you elaborate a bit on how you got that diagnosis and how you related to it as a family and the philosophy you may have adopted to deal with that?

A. It took a long time to get a label of cerebral palsy from any medical profession. We were told that she had - actually, for an awful long time we had no working

5 label for her. We were told that she may have a developmental disability. She did have a severe seizure disorder and she had apnea.

10 We used the term, Clayton and I, cerebral palsy because we were familiar with it through our work at Ross Macdonald and through our background and our educational field. We also had known several people with cerebral palsy. So, it was the terminology that we used advisedly because we knew that the onset of C.P. is at birth due mainly to oxygen deprivation or within the first two years of life due to oxygen deprivation to the brain. So, that was our term, not from the medical people, just to be very clear on that, because it was a lot of years before anyone ever told us that that was, in fact, the one label that we should use for her.

20 We were told that some of the labels that would be bandied around would be useful for services and we should get used to using them and not be upset by them, such as developmental handicap or delay or challenge or whatever the correct political terminology of the day might have been.

25 So, for the boys we tried to explain to them what cerebral palsy might mean. We told them that that meant that oxygen didn't get to her brain. They all knew where her brain was and they all, at that point, were able to converse, at their level, that your brain made all of the rest of you

30

work. So, they understood that somewhere, maybe in one or two
areas of her brain or maybe in all of them, nobody had
specifically told us where, that there were some injuries
probably there; her brain was hurt. In terms of would it get
better? No, it would not get better. Would it get worse? In
all likelihood absolutely not. It would take significant
further deprivation of oxygen before there would be further
damage.

So, I think we were able to reassure them that
what was there was as bad as it would get and the only way to
go from where she was, was forward. While it wasn't fine to
them, because they wanted a sister who did things like their
friends and their cousins' sisters did and like each other,
they were able to accept that.

In terms of the apnea. Again, we explained to
them that for some reason that we did not know, Emily would
stop breathing on occasion and what to do. It was necessary
because there were times when nature calls and I could not be
available in the room with Emily, I needed to be in the
bathroom and that was not in the same room that Emily was in.
So, someone needed to be listening for the monitor and be able
to stimulate her if necessary. So, they were all taught how to
physically stimulate her through touch, through sound and to be
very aware of what the monitor meant when it went off; not to

learn and that we would, as a family, be working, all of us,
towards, all of us, meeting our potential, but we would
5 probably concentrate our effort a little bit more on her
because she was the one who had the most obvious needs.

We would be asking them to play with her, to
read to her, to sing to her. We would be taking her into the
10 community. She would not be hidden away. We prepared them in
terms of the fact that we anticipated taking her into the
community and having people stare because she needed to go with
oxygen tanks wherever she went.

She was, once her hair started growing, a
15 physically relatively attractive little girl. She is hypotonic
which means she was very floppy rather than being rigid which
we often think of in terms of cerebral palsy. We were prepared
in two ways. One, that people wouldn't recognize that she was
20 disabled just by looking at her if she was in a shopping cart
or a stroller. And, secondly, that if the equipment that went
with her was noticed that there could be a lot of staring,
there might be pointing, there could be names used that we had
25 already cautioned them were not appropriate terminology to be
used in our home like retard, dummy and cripple and words such
as that.

We told them that people would think she was
30 different, would possibly assume lower expectations for her,

5 we don't know. We don't know whether she ever will be able to
do those things, but we will constantly look for methods to
assist her to develop the full potential that she has in
whatever area it is.

Q. Were your sons responsive to that approach?

10 A. Very. The very first thing they wanted to
know was what to do, how could they teach her? Things like; if
they gave her a spoon could she learn to eat with a spoon,
would they be able to teach her to eat with a spoon? "How
about I walk back and forth and she can watch me and she can
15 learn to walk?" "If I sing to her then she'll learn to sing."
Various things like that that they brought out on their own.

Q. Okay. Of the list of things that the
doctor said she would never be able to do which of those can
she do now?

20 A. Now she is able to eat table food, usually
with a spoon. She is somewhat messy, but she is able to do it.
She is able to eat all finger foods easily. She is able to
pick up a glass of approximately this size, not this weight,
25 but a glass and give herself a drink. She is fully able to
weight bear and able, with minimal assistance, to walk using a
rollater which is a walker. She is able to make sounds, but
not articulate. She uses very limited communication, but she
30 uses a lot more than we were given notice that she would.

understand words, the meaning of words?

5 A. She's known the meaning of words like mom
and dad and dog and cat and bird and fish and brothers and
girl, words like that, drink, food, toilet, since she was
probably around three, three and a half. We were sure at that
point that she was recognizing those words.

10 Q. How were you sure of that?

15 A. We would ask her things like, "Look at
dad," and she would look at dad. "Look at Mark," and she would
look at Mark. "Where is the dog?" and she would look where the
dog was. "Do you remember where the fish are?" and she would
look towards the room where the aquarium was rather than
another room.

20 We were working, at the same time, in her
language goals program with specifics such as the colours and
shapes. She has the Fisher Price stacking rings and Fisher
Price blocks and dowels. They are brightly coloured, so we
used the primary colours. "Get the one that's red. Look at
the blue one. Pick up the..." whatever colour we wanted.
25 Initially she would have to be told what the colours were. We
would spend a lot of time just repeating the colours to her.
"Now I'm putting on the red ring. Now I'm putting on the
orange ring. Now I'm putting on the yellow ring." Go all the
30 way through that, not ask her to show us, just as a method of

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In-Chief - S.C. Eaton

teaching her what the colours were, what the shapes were.

Then we would start asking her to show us that
5 she recognized what we were doing. About the time she was
three and a half, four we started introducing signs to her for
those colours and words, a lot of which we don't use all the
time any more just because you get out of the habit. If
10 everybody isn't doing the same thing all the time then you
start forgetting to do it. It's very easy to forget when
you're trying to concentrate on so many things at once.

Q. Does she recognize more signs than she can
15 execute?

A. Oh, yes. She used to do more signs,
actually, than she does now. She used to attempt most animal
signs which are mainly made high up on your head so they're
quite difficult for her to do. She has a hard time lifting and
20 maintaining her arm above shoulder level. So, they were
difficult and she needed some physical help from us to do them.
If she was given support in her arms she would put her hand up
to her head to make a cow sign or a horse sign and she would
25 try to make the same sounds, the appropriate sounds for those
things.

She attempts - she will do a lot of signs when
we ask her; they're not always coming close to what we would
30 recognize even as being signs, but she is physically moving her

body, we feel, in an attempt to make the signs. Again, that's
a very slow thing for her because teaching her muscles to do
the motion that the activity of signing requires is a slow
process for her, and I think she has to remind herself maybe of
the mental stages that her physical self has to produce.

Q. What types of changes have you noticed in
her vocabulary over the years?

A. In terms of spoken language she only has
one word and that's "mom" and nothing more has come from that.
In terms of using her vocalization she has improved the quality
of correct responses and I think that there has been a
noticeable decrease in inappropriate noise making.

Sometimes that doesn't seem very significant to
us when we're thinking in terms of language or communication
development, but we feel very strongly that she needs to know
when it's inappropriate to communicate as well as how to and
when to communicate. So, those skills were pretty much absent
until the last year or two when we spent more time
concentrating on that and I believe they have been
concentrating on it at school more too. I think we are
definitely noticing changes in that area. When we ask her to
be quiet, for instance, or to stop screaming or not laugh now
she is better able not to than she used to.

The signing is definitely refining in terms of

her individual signs are more recognizable now. The physical movement to make them has come. Her desire to sign, I'm not sure if it's as high as it used to be, but I think her ability to understand the signs and to be involved with signing is as good. She just may not be as motivated to do it herself now. Again, I'm not sure why that is other than the fact that as personnel have changed it has taken awhile to teach the new person how to read Emily's signs, which is not difficult, it's just that you have to know what you're looking for.

Q. Has her interest or preference for certain books changed as she has gotten older?

A. Yes, in the same way that it did for the boys. She has definitely gone from - she doesn't want to read Where is Spot? any more; that's way beyond her desire to look at books like that. She used to be quite content to just sit and look at a picture book with me and I would tell her something about the picture, there were no words on the page. Now she seems to - and she wouldn't do it for a long time either. She wasn't particularly interested in looking at books or listening and that may be because we were using it as a therapy exercise, but I don't think so. I think she just wasn't as interested. Now she will sit for quite long periods of time and listen to a book.

Again, as I indicated yesterday, some of the

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In-Chief - S.C. Eaton

books that I am now choosing to read to her are much more sophisticated than you might assume she would have the ability to understand or enjoy. You noticed, maybe, the titles of some of the books on the video tape. Those were ones that all have now been read to her, If I Ran the Zoo, or there's another Doctor Suess one, The Places I Go, which are new to her and she has really enjoyed those.

She very much enjoyed the story of Freckle Juice. We teased her a lot because she has a few freckles herself and wondered if she would be as silly as the boy in the story to buy a formula for freckles because we told her that lots of kids don't like to have freckles and we thought that was pretty funny and she laughed. We said why don't we paint her brothers and we would do the joke on them, she and I. That got her chuckling away. I think it was Brian. I'm not sure if it was Brian or Mark that was around at that point and said that he didn't want purple freckles.

She really enjoyed the story - I know yesterday I called it Home Alone and I knew that I was wrong. It's Left by Themselves about the two little girls that were stranded in a snowstorm in South Dakota in 1850, I think it was. That book we started to read on a snow day. It was winter and we were snowed in and the buses didn't come so she had to stay home from school. We said we would just pretend. Actually, the gas

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In-Chief - S.C. Eaton

was off all down our road and we heat with gas so our house was
very cold and we had to put blankets up around the door. We
5 tied the story into what we were actually doing ourselves and
pretended we were the pioneer girls at home. So, we took that
story and Emily, her brothers and I spent a couple of days
playing that we were the children in the story. She seemed to
10 really get a kick out of that. There was a massive amount of
snow around.

Q. When you say she got a kick out of it, how
did you know?

15 A. She chuckled. I would say, "Do you think
we're the little girls?" and she'd look up at me and kind of
give me a little grin and chuckled away like, "Are you nuts,
mom? I know you're not ten."

20 Q. How much time at a sitting do you spend
reading with her?

25 A. That, a lot, depends on how much time I've
got. If I've got five minutes and I can spend five minutes
reading with her then I take five minutes to read with her and
she'll usually have no problem staying with me and the book for
that length of time. If I've got 30 minutes or two hours to
sit down with her then we go for it. Reading is something that
I really enjoy doing. I enjoy reading out loud to all of my
30 children. It's pretty much a nightly family activity that we

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5 do, the boys and I. Emily spends more time at bedtime with
her dad. So, I take my reading opportunities with her during
the day when she's home.

10 Sometimes on the weekend we will spend as much
as half an hour or 40 minutes with books. It won't be visually
apparent that she's attending to it all that time, but she's
not getting cranky. She's not necessarily looking at the
15 book, she's not necessarily turning pages, but she's there and
I can tell that she's aware of what we're reading and that we
are reading and she's reading with me. If she's done I can
tell too; she becomes very cranky.

Q. Do you think she is aware of the content of
a story that you're reading?

20 A. I think so; I could not prove that, but I
believe that she is. I think that comes a lot from my
experience of being a mother, watching how the other children
in the family reacted to things, and a lot of it comes from my
knowledge of Emily too and how she physically reacts to
25 questions. But some of it does come from that teasing, like I
said, and the laughing when I say something stupid about what
we've read that she knows isn't right. Or I ask her a question
about something that was in the story that I particularly liked
and I'll ask her, "Did you like that part of the story?" and if
30 she did she gets the arms and legs going and the entire body

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and that as a motivating factor in her development?

5 A. We have always used her brothers as an
example for her to move up towards or myself as a model for
her; when she grows up to be a lady like mom or when she gets
to be big like mom or, "When you are big like your brothers,"
or, "Big kids like your brothers do," those kind of things.
10 So, if we saw them doing something that we felt, from her body
reaction, indicated an interest then we used that as a
motivational tool. "You want to learn to play soccer. Fine.
You've got to do your therapy, you've got to get strong legs
15 and then you can run like your brothers. You like the music.
Okay. Let's all sing as a family. Now you sing. Your
brothers are singing now. Let's have you sing too." So, we've
always used them in that way.

20 Q. Do you find that to be an effective method?

A. Yes, very. She very much wants to be like
the rest of the kids.

Q. All right. Can you turn to page three?

25 Can you briefly describe the outcome of this particular
I.P.R.C., particularly the item under point 9 that says it's on
a trial basis?

30 A. Okay. It was agreed to for a three month
period which we assumed, all of us at the meeting that day, I
believe, would take place very soon. In terms of the word

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5 "trial basis" I believe that terminology was used, but it was
also, at that point, called a pilot project. We were told that
it would be the first time that it had been done in the Board.
There had never been a child who was multihandicapped placed
in a regular grade school with an E.A. So, this would be a
10 pilot project for the Board to be reviewed in three months'
time. We were aware of that and agreed that that was probably
a good idea.

Q. That was in January, 1990?

A. That was in January.

15 Q. When was Emily actually placed at Maple
Avenue?

A. Her first day was April 30th, 1990.

Q. What happened between January and April,
1990?

20 A. A lot of hurry up and wait. There was the
need to create the accessibility within the school building
itself. In addition to that, because she was a kindergarten
aged student, she would only be going to school half time. As
25 we're rural dwellers and the norm for our area is all day,
every other day, that would be the way she went to school.
That became a slight problem, apparently, for the Board to find
an educational assistant who was available in that kind of time
30 frame, so there was a search that took quite a length of time

5 have indicated before, she likes the sound of things rattling
against her teeth, she likes the texture of things rolling
around in her mouth. She has always given them back when
we've asked her to and she has never ever swallowed anything
that was not food.

10 Q. On the following page the heading is Gross
Motor, 2.0. In the very last section, 2.2.3, in the far
right-hand column there is a statement regarding social
integration with peers. This is in response to Emily's
mouthing objects and that kind of thing. Could you comment
15 briefly on your views about this issue?

20 A. Yes. It seems to us that this could be
explained to the other children in a reasonable manner; that
due to Emily's disability these are things that she does like
to do and she may not yet have learned not to do. It could be
25 explained to the others that when it appears that she's
licking or biting on them that what she is actually doing is
showing her affection. So, we felt it could be interpreted to
the other children in the classroom very well and that the
other children in the classroom could learn not to be offended
by it when they understood what was happening.

30 Q. Is this a strategy that you use outside of
school?

A. Yes, we do, and very successfully outside

A. Not that I recall.

5 Q. Ms. Bowlby also asked you about doctors
that Emily has seen and, in particular, she asked you if you
had ever taken her to the Hugh McMillan Centre to which you
responded no. At the present time are there any arrangements
in place or underway with respect to the Hugh McMillan Centre?

10 A. Yes, there are.

Q. Can you explain that, please?

15 A. Emily has been referred to the Hugh
McMillan Centre for a global communication assessment, which
will involve the occupational therapy department also, in an
attempt to see if there is some sort of augmentative
communication assist for her and if, indeed, some of her
physical difficulties may be contributing to difficulties with
the communication. That is in the process of being arranged.

20 Q. Who is making the referral?

A. The referral has been made through our
family physician, Doctor Malcolm Lock.

25 Q. Were you in agreement with that or how did
that come about?

30 A. Communication has always been something
that we have been concerned about and, as Ms. Bowlby suggested,
it is extremely important in terms of furthering and enabling
her educational process. Without a formal means of

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communication we recognize that it's very difficult for Emily.

5 So, from the moment she began a formal therapy
program and the speech therapist became involved with her we
have been trying to find an assistive augmentative
communication system for her. We have tried several, none of
10 which seem to have met with a large degree of success. This is
just part of our continuing search for a system that will make
learning easier for Emily and also the day to day communication
easier for her because we fully recognize the frustration that
is involved for her.

15 Q. Who requested your doctor to make the
referral?

A. We did.

20 Q. Ms. Bowlby also, in cross-examination, drew
to your attention that Emily had missed 42 days of school in
the '92/'93 year to date.

A. Yes.

25 Q. I believe your answer was that was probably
about accurate.

A. Mm-hmm.

30 Q. You also indicated that part of that was
the whole month of December.

A. That's correct.

Q. Since December, since she recovered from

that?

5 A. This is an important one. We want Emily
to be a part of our community, of her community. Not long ago
Emily would have - we would have been - it would have been
recommended to us that Emily should go to an institution where
10 she should be cared for. I think society, in its enlightenment,
and provincial governments, in their attempt to save money,
have decided that Emily should be integrated with our family
now, with our family within the community.

15 I think our community includes her
neighbourhood school. And the people who live in our
community, the children that she will grow up with and will be
part of her community when she's an adult go to that school;
they need to have the understanding of Emily, they need to get
20 to know Emily, they need to be integrated with Emily now.

25 We can't bring her back at the end of her
school career and plug her back into that community. She has
to be there now and grow up with those children and those
children have to grow up with her so that she'll have the
30 supports that she needs within that community, the supports
that Carol and I are giving her now. We won't be around to
give them to her the rest of her life. And if she's going to
maintain that integration within her community, that society
says she should have within our family, then I think society

1993?

A. Yes, I did.

Q. Okay. What happened on that visit?

A. I met with the lunchroom supervisor who works with Emily at lunchtime at the school. I observed Emily eating lunch. I discussed with the lunchroom supervisor if she had any concerns. Basically stressed, at that point in time stressed the importance of proper positioning with Emily when she is eating.

Q. What do you mean by positioning?

A. How she is sitting. To ensure that she was sitting in a position so that she wouldn't choke.

Q. What is the correct position?

A. Basically you want to sit, Emily to sit in her chair that we've previously discussed with her back against the chair, feet flat on the floor. You want her to sit up nice and tall. You want her to sit with her back up straight. You don't want somebody to be sitting with their neck bent over because you want to have a good passageway for the food to go down your throat.

Q. Can you comment on Emily's oral motor skills with respect to eating?

A. Okay. Basically Emily has very good oral motor skills. She is very capable of manipulating food within

5 her mouth. She has very good rotary chew. She can maneuver
food. Once she has the food in her mouth she can maneuver it
around to chew it, can just manipulate it around to chew it
before she swallows.

Q. What impact does that have on her
susceptibility to choking?

10 A. It would decrease her susceptibility. If
somebody has poor oral motor control they are more likely to
choke.

Q. What observations did you make on your
15 visit with the lunchroom supervisor?

A. During that visit?

Q. Yes.

20 A. Basically that Emily eats within her
classroom and the kids in the classroom are there when she
initially starts eating. After about 15 minutes the other
children leave and Emily continues to eat. When the other
children are there she is very interested in watching the other
kids. She pays more attention to what the other kids are doing
25 than necessarily paying attention to eating her lunch at that
point in time. So, the majority of her own eating is done once
the other children leave the room.

Q. Turn to the next page.

30 A. Within that same report, that same day?

see in a classroom.

5 MS. MOLLOY: I would ask, Mr. Chair, to have
Doctor Bunch qualified to give opinion evidence as
an expert in the field of education of children
with exceptionalities.

MR. CHAIRMAN: No problem, Ms. Bowlby?

10 MS. BOWLBY: No.

MR. CHAIRMAN: Very well.

MS. MOLLOY: Q. Doctor Bunch, one of the
documents I gave you is a report entitled Aspects of Integration
of Students with Challenging Needs. Is that a report which you
15 prepared for this hearing?

A. It is.

MS. MOLLOY: The next Exhibit, Mr. Chair, A31.

MR. CHAIRMAN: Yes.

20 EXHIBIT A31: Report entitled Aspects of
Integration of Students with Challenging Needs
prepared by Gary Bunch

- Above mentioned produced and marked

25 MS. MOLLOY: Q. Doctor Bunch, are you familiar
with the research studies and literature dealing with the
comparisons between special education settings and regular
classroom settings as far as academic and social gains are
30 concerned?

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A. I'm familiar, in general, with the breadth of
the literature and, in specifics, with a few of the studies.

5 Q. From your review of that material and
literature what conclusion do you reach about the academic and
social gains that can be derived from special education
classrooms?

10 A. My understanding of the literature is that
does not speak clearly to any social and academic gains
particularly resident in special education as we presently
structure it.

15 Q. You indicate on the first page of your report
that this factor, as you put it in item number one, "The lack of
any consistently clear evidence in research studies...", that
those gains exist in special education programs. And you
20 indicate that that is one of the factors which you believe is at
the root of the present societal movement toward integration. Can
you explain that?

25 A. Going back a little bit in history, but not
back too far, to the initiation of special education as we know it
now which is only about 50 years ago. Society, as represented in
the educational system, found a growing and pressing need to
respond to the educational challenge of children who had
30 difficulty in learning and, in many cases, children that society
had not placed in its schools before that time. The way that was

5 conceived and best conceived to respond to the needs of the
children was to create a very specialized system of education with
specialized placements, specialized teachers, sometimes
specialized schools in an effort to, in small groups, interact
with children intensely and extensively to give them knowledge of
various aspects of the curriculum.

10 As time went on, and particularly within the last
ten or 12 years, as we've had time to begin to investigate the
efficacy of the special education structure and whether or not
the early ideas were working out, we've come to an understanding
15 of literature that in some cases says, yes, there is a beneficial
effect of some types of regular education placements and other
literature that says there is a neutral effect of special
education placements and other literature that says that
placement in regular classroom has at least equal effect to
20 placement in special education classrooms.

I think society, some aspects of society, at
least, are beginning to question the need for a separate structure
in the light of a couple of problems found in that structure, one
25 of those being the fact that we cannot consistently and concretely
prove that it has had the effect that we wished. Another being
the fact that it has had some less than positive effects on the
relationship of children and the acceptance of children within the
30 school systems and within community generally.

5 MS. BOWLBY: Sorry, I didn't get that last point.
I just didn't hear it. I'm trying to write down
what you're, Doctor Bunch.

THE WITNESS: Which part?

10 MS. BOWLBY: You said, "Cannot consistently and
concretely prove it's had the effect that we
wished for and...?"

15 THE WITNESS: And another problem area that people
have found is that it has had less than positive
effect on the lives of some children in terms of
their involvement in their communities and their
acceptance in society.

20 MS. MOLLOY: Q. Can you expand on that idea, if
you could, in light of what you describe in your report as the
normalization movement?

25 A. The dynamic that's referred to as the
normalization movement goes back into the sixties and it's
probably most associated with a publication which was actually
written here in Canada on the campus of York University by an
American named Wolf Wolfensberger in which he explored the need to
bring people previously institutionalized closer to participation
in community as generally conceived in our society.

30 From that very central publication a number of
other supportive publications followed much of the

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deinstitutionalization movement in society across North America
and also in other aspects of the world where people began to
5 examine the role and contribution of major institutions,
segregated institutions to the development of individuals with
various types of challenge and resulting in the significant
decrease and the closure, in some cases, of major institutions as
10 people were returned to communities and government and other
agencies began to set up, in communities, support systems for
people previously institutionalized.

That extended through the institutional community
to a very large degree and continues to do so. It has extended
15 through the medical community to a quite significant degree,
particularly in terms of drug therapy and people being able to
maintain themselves in a community. It has extended into the
social community, for instance, the Boy Scout movement, the Girl
20 Guide movement, dance classes, agents of society like that that
are generally associated with recreation.

Q. How does that connect or does it connect with
mainstreaming or inclusion in the formal education system?

25 A. I think it connects in two ways or perhaps in
one connected way. One is that the school system, over time, has
begun to integrate more children, to place more children
previously segregated or considered for segregation in regular
30 classrooms. Mostly children who would be considered, using a

5 diagnostic scale, as mildly or moderately challenged in their
learning. It connects in that way in that all School Boards
pretty well everywhere, that I know of, are integrating more
children that they might have previously segregated.

10 It connects in another way in that in many
respects the school system has not moved as quickly and decisively
towards return to community of individuals who are labelled in
some way. But the special education structures of education have
remained more intact and stronger than the special education
structures previously found in other segments of society.

15 Q. For a child who is integrated into the broader
community but is in a segregated educational setting what effect,
in your opinion, does that have on that child in terms of
learning?

20 A. I'm not aware directly of any studies which
have investigated that. So, I'm speaking on the basis of my own
professional experience and discussions with other individuals. I
would estimate that a child who is placed in quite different
situations as a consistent part of his or her life such as being
25 placed, for instance, in a segregated special education classroom
with others of deemed like ability and then going in the evening
back to his or her own community and being involved community
activities and family activities, such an individual would, in a
30 fair number of cases, I think, experience degrees of cognitive,

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affective, emotional dissidence between one situation and another.

Q. In what way?

5 A. I think many children would not understand why
they move between the two worlds. Appreciating that people in
the two worlds are helpful and thoughtful and assistive and
friendly, but would probably have some difficulty in understanding
10 why, in some instances, they were being treated in certain ways
and being associated with people that they did not know, the peers
in the special education classroom, and then going home in the
evenings, on the weekends and holidays, never seeing those
15 children basically, and being associated, if associated at all,
with children of more regular ability.

Q. Now, what you've just described here, is that
what you're referring to under the heading Services on page three
of your report?

20 A. More or less.

Q. What, in your opinion, is the appropriate role
of parental preference in determining whether the child is to be
placed in an integrated setting or a special education class
25 setting?

A. I consider the parents the most informed
people to make a decision on placement.

Q. Why is that?

30 A. I think it's because it is their child. They

5 know the child better than anyone else. They know what they
would like their child to experience in life. They have an
excellent and very firm idea, in many cases, of how they think the
child may obtain experiences which they think will assist the
child. They have a much longer term view of the child in terms of
his or her experiences throughout life. In the beginning they are
10 the responsible agent for the child and in the end they continue
to be the responsible agent for the child.

15 Q. Do you continue to hold that view in a
situation where parents and teachers are in disagreement about
where the child should be placed?

A. I do.

20 Q. In your opinion does the education of the
child happen only at school?

25 A. A segment of the child's education occurs at
school. Much more of the child's education occurs beyond school.
School offers certain variance or certain aspects of an
education, traditionally primarily of an academic nature.

30 Q. We've heard evidence in this proceeding from
Emily Eaton's parents that they take essentially a holistic
approach to education and that their philosophy is that Emily
should be fully integrated into all aspects of their lives and
experience everything there is for her to experience, that that's
part of her broader educational experience and they wish her

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education, in the formal sense, to also be inclusionary. As an educator what is your view of that philosophy?

5 A. I would say the holistic concept within
education would be very much as you have described the Eatons'
concept of holism to be. Educators more and more are turning to
10 appreciate the child as a fully rounded individual and that there
are many aspects of a child included in the child's learning
through life, that school contributes some of those aspects. And
within those aspects that the school contributes, for instance in
the area of reading or writing or spelling, that the school system
15 is moving away from some of its former practises in terms of
requiring certain levels of expertise in spelling and certain
levels of reading and trying to work with children to bring out
whatever potential the child has. That includes, much more
recently, the social potential of a child as well the academic
20 potential. So, the concept of holism is associated with what
educational circles, in some educational circles is being called
a paradigm shift; a shift from previous ways of looking at
children and looking at education to a more contemporary, usually
25 termed holistic manner of looking at children.

Q. Turning back to your report. At page three of
your report you have a topic which you have entitled the
Contact Hypothesis. Can you explain what that means?

30 A. That's a title I have used, but it's not my

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inclusion of pretty well all children in a regular classroom is a very possible pragmatic and practicable educational dynamic.

5 Q. When you say pretty well all children how does that relate to a child like Emily Eaton who has physical disabilities as a result of cerebral palsy and who is nonverbal?

10 A. I have never met Emily Eaton. I have seen a couple of video tapes of Emily, quite lengthy video tapes of Emily, and I have read some materials describing her in various ways.

15 Q. Let's identify what those things are. You saw two video tapes?

A. I saw two video tapes.

Q. One would have been...

20 A. One which was a birthday party situation and the other which was a family situation primarily in the outdoors doing various activities.

25 MS. MOLLOY: I can indicate for the record that the two videos that we provided to Doctor Bunch were the birthday tape video which has been marked as Exhibit A3.

30 MS. BOWLBY: Could I just interject here? The difficulty I am having here is this witness has been qualified as an expert and he can certainly answer hypothetical questions. Now we are being

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education.

5

Q. What do you mean by average child in special education?

10

A. Well, more and more these days the average child is the child with fairly significant degrees of challenge in their learning, children who are towards the severe/profound end of the scale of challenge. I see very little extra that we might get out of special education for those children and quite a bit extra that we might receive in integrated situations.

15

Q. In terms of what you mean by a danger to themselves or others. Supposing you were given a situation of a child who is nonverbal and who is physically disabled and even possibly mentally disabled and that child puts things in his or her mouth on a regular basis; what level of concern would that give you in terms of safety?

20

25

30

A. I think it would, in my view, depend on what the child did with the material that was placed in the mouth. If the child were ingesting, had a record of ingesting it, if we found out from the parents or the medical system or previous teachers that the child was actively eating substances which were dangerous to the child then I think you would have to consider much more extensive monitoring situations where the child could be protected from self in that respect then. This may, for some children, be a protected environment such as you

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find in special education and it may be other types of
situations.

5 I have worked with a number of children such as
the one that you have just described; cerebral palsy, nonverbal
and always orally exploring things in the environment. Other
than cautioning the teachers to be careful in those situations
10 where these particular children have no record of actually
swallowing rubbers, pencils, whatever it is that it might be, it
was no particular problem.

15 Q. Extend the hypothetical somewhat and take
the same child I have just described and add into that the fact
that the child is nine years old and has never been known to
swallow anything except food. In that situation would you
consider this a reason to remove a child from a regular class
and put a child into special ed.?

20 A. Within that restricted definition of need to
be placed in special education, no, I wouldn't.

25 Q. For a child with cerebral palsy with serious
mobility impairments as a result of the cerebral palsy, serious
physical disabilities as a result of the cerebral palsy and
potential mental disabilities as a result of the cerebral palsy
and nonverbal, take those as a given and relate it to what you
have seen of Emily Eaton on the videos and the material you have
30 read. Can you see anything in that situation that would require

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5 A. No. Within the field of special education
and when you move into integration one of the concerns over a
fair number of years has been with what has been called physical
integration which is simply placing a child in a classroom but
not providing any of the dynamics and support which would
facilitate interaction, socialization. I think there is a fair
10 number of experiences that people have had where a child has
just been parachuted into a classroom and nothing else has been
done in terms of support. I would not consider that integration
except on a purely corporeal physical level.

15 Q. I think that that answers the two
assumptions that I have just put to you.

A. Mm-hmm.

20 Q. The third assumption is that the exceptional
child will imitate the behaviour of normal children.

A. I would agree with that.

Q. You would assume that?

A. That many behaviours would be imitated.

25 Q. So, you would agree with the suggestion that
although mainstreaming does allow for increased social contact
between handicapped and nonhandicapped individuals it does not
ensure the social acceptance or increased appropriate social
behaviour of - well, let me stop there - the social acceptance
30 of handicapped students?

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5 A. That's a difficult one to answer because as
I listen to you read I have my own definition of mainstreaming
which involves providing the dynamics and support systems for
interaction. I mentioned before just the physical placement of
10 a child in a classroom to me is not mainstreaming. I would
agree certainly that just physically placing a child in a
classroom does not result in or necessarily result in
interaction between the kids. Mainstreaming - and you get into
this sort of discussion whenever you start talking about what
15 does mainstreaming mean or integration and inclusion. People
tend to have their own definitions.

20 Q. Just on that issue of mainstreaming and the
interactions that you have suggested. Would you agree that
there has to be some comparability in terms of social,
intellectual level for mainstreaming to work?

25 A. I would agree on that. The yardstick of
comparability, I think, would be the essence of a discussion
around that. As a professional and as an individual I see many
more similarities among children than I see dissimilarities
among children. Within the educational system we tend to focus
on some similarities and some dissimilarities more than others.

30 Q. Are you familiar with Professor M. Winzer,
W-I-N-Z-E-R?

A. I certainly am.

5 Q. I think Professor Winzer wrote an article or
it may have been - yes, it is a book; Children with
Exceptionalities; a Canadian Perspective.

A. Mm-hmm.

10 Q. This is a quote. You probably know the
quote that I am going to put to you here because it is one that
appears fairly frequently.

"If children are to be integrated into regular
classrooms this requires that they be members of
the class not just physically but also
15 intellectually, socially, emotionally.
Mainstreaming might prove to be the more
restrictive environment if exceptional children
are debased by their peers, socially isolated
and poorly accepted."

20 Are you familiar with that quote?

A. I am.

Q. Would you agree with that quote?

25 A. Not in its entirety. It happens that Doctor
Winzer formerly taught for me and we have had many opportunities
to discuss the essences and the meanings and the ebbs and flows
of statements such as that. Doctor Winzer and I, while holding
many shared positions, also have some differences in opinion.

30 Q. Is this one of them?

5 statement.

A. Parts of that, interpretations of that

Q. Now, you have said...

10 MS. MOLLOY: I don't know if you have finished
referring to that article, but I think in
fairness to the witness it is not appropriate to
pick one sentence out of the entire article and
put it to the witness and ask him to agree or
disagree. If she has the whole article there I
15 think in fairness to the witness he ought to see
the statement in context before he has to reply
to whether he agrees or disagrees with a
sentence.

20 MS. BOWLBY: I don't have the whole article. I
have the quote. Doctor Bunch agreed it is a
quote that is often quoted in various different
articles.

25 MR. CHAIRMAN: I am familiar with the quote as
we all are here on the Tribunal. In fact, it's
an adaptation of a quote that has been around
from the sixties from another well-known
educator. I think if Doctor Bunch has agreed
that he is familiar with the quote and it was
30 quoted, I believe, accurately, I think it is

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5 fairly safe to assume that he would be able to
respond to it in that way. I don't think that
you were making reference to anything else in
the article.

MS. BOWLBY: No.

MR. CHAIRMAN: I think we will let it stand.

10 MS. BOWLBY: Q. You have said that a parent
should choose, basically that is your bottom line, that the
parents have the right to choose.

15 A. My preference is that Boards of Education,
educators and parents work together in deciding the best
placement for any child. In instances where educators and
parents disagree it is my position that the position of the
parents is the one that should hold.

20 Q. Would you agree that it is possible that
parental choice can become clouded by emotion?

A. Yes, I would agree that parental choice can
become clouded by emotion. I would also agree that educator
choice can become clouded by emotion.

25 Q. So, even in a case that parental choice
becomes clouded by emotion you would hold that parental choice
should be the choice that decides the day?

30 A. I would say within the usual parameters of
having an emotional component in making the choice then the

parents should really be the guiding factor in placement of
their children.

MS. BOWLBY: Can I ask you to turn to the - is
the paper A31?

MR. CHAIRMAN: The report to Advocacy Resource
Centre is A31.

MS. BOWLBY: Q. I would just like to take you
through it. I have a number of questions, Doctor Bunch, arising
from this document. I have about three copies of this document
and I can't find my notes on it. Excuse me. I thought I had it
in front of me. I have two that don't have the notes I am
looking for. Okay, I did have it in front of me. If you could
turn to page two. At the top of the page you have a quote from
Lorraine Wilgosh that states:

"Parents of children with disabilities want
their children to have opportunities for making
neighbourhood friendships, enhanced by
attendance at the local school and to be
prepared for living and working in society as
adults."

Where did you get that quote from?

A. Wilgosh is one of the authors in the 1993
publication on Education in Canada. She has a chapter within
that book.

76

1162.
Cr-Exam - G. Bunch

5 Q. Don't you see - within the classroom as more
and more sophisticated topics are dealt with don't you see that
youngster being isolated more and more?

A. No, that is not what I have seen.

Q. That's not what you have seen?

10 A. I would also suggest that I have seen more
of this, probably, than any person in this province and it is
not my direct experience.

Q. How much time did you actually spend in the
classroom yourself of the 400 hours (sic)?

15 A. Nine years.

Q. You spent nine years in the classroom with
this study?

20 A. Oh, no. I thought you were talking about in
the classroom.

Q. So, this is nine years in...

A. You mean in total days?

Q. Yes. You spent nine years where?

25 A. In individual classroom teaching.

Q. These were in Schools for the Deaf?

30 A. Yes. I would say in my own study I probably
put maybe 750 to 1,000 hours of direct observation in
classrooms.

MS. BOWLBY: Those are all the questions that I

77

1164.
Re-Exam - G. Bunch

RE-EXAMINATION BY MS. MOLLOY:

5 Q. Doctor Bunch, you were referred to a work by
Frank Gresham or an extract of that work in which he sets out
three assumptions underlying mainstreaming the first two of
which were that physical placement of an exceptional child in a
classroom with regular children will result in social
10 interaction, that was one assumption, and the other that it
would result in social acceptance. You indicated that you
didn't agree that that would necessarily be the case. Could I
ask you to consider the converse of that? Can the social
15 interaction with the nondisabled peers or the social acceptance
with the nondisabled peers happen if a child is never placed in
a regular classroom at all?

20 A. Not through the school system. My responses
to those two questions I think were - and perhaps I didn't make
it clear at the time. Physical placement is a necessary but not
a sufficient guarantee for interaction.

25 Q. Thank you. That was precisely the point.
Later Ms. Bowlby was asking you about the line drawing issue and
she put to you that the list of considerations that you had
noted at page four of your report was not an exhaustive list and
that there were other factors that could be taken into account.
Then she asked you what about the ability of a child to
30 communicate and you answered that you considered that to be part

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1192.
In-Chief - M. Sapon-Shevin

Q. Again, what was your area of concentration there?

5 A. Area of concentration was clinical psychology, particularly around issues of children with disabilities and exceptionalities.

Q. And finally your Doctor of Education in 1976 from the University of Rochester, New York?

A. That's right.

Q. What was the area of concentration there?

10 A. Teacher education. That is within the Department of Curriculum and Instruction. So, a degree in the preparation of teachers.

Q. What was your doctoral dissertation on?

15 A. My doctoral dissertation was on the ways in which teachers can arrange classroom environments to facilitate positive prosocial interactions between children and began to look early on, it was some of the first work done in the area, on organizing cooperative activities and cooperative structures to promote nice touch, nice words, positive social interactions and the ways in which many traditional classroom situations are structured so that children are being competitive and not supportive of one another and proposing some alternative structures for the classroom.

20
25
30 Q. I am looking now at page three of the C.V.

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1201.
In-Chief - M. Sapon-Shevin

attitudes towards working with a wide range of youngsters within
a regular classroom setting.

5 At the same time I also worked extensively with
school districts in the area who were trying to move towards
inclusion. Sometimes I would do this by working with a team of
10 teachers from a specific school. Sometimes I would do it by
giving in-services in schools regarding inclusion and
mainstreaming. Sometimes I worked with groups from a whole
district that went beyond just teachers; teachers, administrators
who would come and work as a unit to try to think about their
15 programs in their district so that they could move towards
inclusion education.

Q. What is your present position?

A. My present position is at Syracuse
University. I'm a profession in the Division for - well, it's
20 now called Teaching and Leadership. We've just changed our name
again. Syracuse University is the first university in the United
States to have a program in what's called inclusive education.
That is, after many years of trying to bridge that same gap,
25 Syracuse decided that they no longer wanted to have an
independent certification program in elementary education and one
in special education.

30 Rather than just having an 'A' plus 'B' and
having people get dual certified what we decided to do was to

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1235.

In-Chief - M. Sapon-Shevin

5 education and a regular education teacher team teach a classroom
that includes children who have been previously labelled and
children who are not labelled and together, with whatever other
supports are available, it might be a teaching assistant, they
provide an educational program to all of the children within that
classroom.

10 So, special educators are certainly necessary and
useful, but their role changes. Instead of having, you know, 12
children in the segregated setting that belong to them, they
become consultants and they become collaborators and they become
members of a team.

15 Q. Moving now to the section of the Stainbacks'
article that is entitled Why Should All Students Be Educated in
the Mainstream? What, in your opinion, are the benefits for
students with disabilities if they are in an inclusive setting as
20 opposed to a segregated setting?

25 A. Well, the benefits are numerous. When any
child grows up they become a part of a larger society. Children
who grow up who are labelled as disabled don't go to the retarded
video store and the retarded supermarket, you know, and the
retarded playground. They engage in all of those activities in
the broader community. [So, in order for them to learn and be
able to function successfully in that wide range of settings they
30 have to be exposed and learn to interact and be integrated with

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1236.
In-Chief - M. Sapon-Shevin

children who behave in perhaps more typical fashion or who don't have disabilities. Several areas; exposure to appropriate behaviours, language models. It makes no sense, and there has been tremendous research to support the fact that it makes no sense to put a child who has limited language who other children who have limited language.

Q. Why is that?

A. Who will they hear speak? To put children who have language delays altogether where they have no peer models and they have no language models or the language model they have is their 35 year old teacher - a six year old who doesn't speak needs to hear the language, be surrounded by rich language of other six year olds so they learn appropriate vocabulary, intonation, speech patterns.

If you think of a six year old who doesn't speak sitting at snack time with other children in a regular classroom and they go around the circle and one child says, "I want juice," and another child says, "Juice, please," and the next child says, "Give me some juice." By the time we come to the child with the disability they have already heard quite a few models of appropriate, age appropriate speech from a six year old which is very much more effective, the literature shows, than taking that child, isolated, sitting them across from an adult in an artificial setting saying, "Can you say juice?" It much closer

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1237.
In-Chief - M. Sapon-Shevin

approximates the way all children learn.

Typically children learn tremendously from their
peers. We don't go to the playground with our typical five year
old and say, "Let me teach you how to do swings. Let me teach
you how to run around." They learn these things from being
around other children who are doing these things. Only by being
surrounded by children who are, quote, "typical" children can a
child with disabilities learn to fit in, learn to do those
activities. So, in terms of communication, in terms of social
behaviour.

We know from the research that the major thing
that isolates children with disabilities is inappropriate social
behaviour; that they don't know how to act, they don't know how
to hang out at the mall or they don't know how to be at a
playground or what one does in the cafeteria. The only way to
learn those behaviours is to be in those settings. It cannot be
taught in segregation or in isolation. You don't teach someone
how to shop in a supermarket by doing textbook lessons; you only
can learn that by being in the supermarket. And you can only
learn how to be with other children by being with other typically
behaving children.

Q. That would be a social benefit, I guess, of
inclusion. What about academic benefits?

A. Well, social and academic benefits really

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1238.
In-Chief - M. Sapon-Shevin

5 cannot be separated the way that many people would like. Some
people will say, well, inclusion is only good for social
benefits, but all education occurs in a social context. We are
all social creatures. We all only learn things in relationship
to other people. So, the exposure, and more strictly at the
academic level the exposure one gets in a typical classroom is so
10 much richer and so much broader than what happens in a segregated
special education class. The language use, and that is an
academic issue, not a social issue. The language use in a
regular classroom is much richer than what would occur in a sort
of more hothouse environment that's only children with special
15 education.

The exposure to curriculum is much broader than
what someone decides a particular child is capable of. Very
often what happens in special education settings is that the
20 curriculum is so narrow, so tightly controlled and so constrained
by someone's expectations for a particular child, often false
expectations, that they don't get the rich exposure that they
would.

25 The research shows that children pick up
tremendous amounts of incidental education by being around a
richly stimulating environment. You can take a six year old to
Shakespeare and they may not get everything out of it that a 30
year old Shakespeare scholar would get out of it, but that

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1254.
In-Chief - M. Sapon-Shevin

5 to try and facilitate this thing along what I am
content to do is say to the Tribunal obviously
these are issues of weight in terms of supporting
what Doctor Sapon-Shevin says. You are going to
have to determine at the end of the day what
weight, if any, these anecdotes have. I would
10 suggest they don't have a lot of weight and we
would probably move along more quickly if we were
able to deal with the issues of her expertise.

MR. CHAIRMAN: Any more, Ms. Molloy?

MS. MOLLOY: No.

MR. CHAIRMAN: Okay.

MS. MOLLOY: Q. You were talking about the
disadvantages of segregation for the child who is disabled and
pulled out of the regular class. Could you continue?

20 A. There is considerable research around issues
of stigma and labelling that a child who is removed from the
typical setting bears, then, in addition to the objective nature
of their handicap. They bear stigma of having been labelled and
25 separated. That their opportunities to interact with typical
peers decreases both temporally and in terms of the way that
child is perceived by other children.

30 The research shows that even within segregated
classrooms within a regular school, but a segregated class, that

1255.
In-Chief - M. Sapon-Shevin

5 children look very differently and very negatively on children
who are in the special ed. room or the resource room, that that
has a stigma. The removal to a completely segregated different
setting further increases that sense of stigma and isolation and
decreases opportunities for peer modelling, for typical social
interactions and decreases the probability of that child being
10 fully included within mainstream society at the completion of
school.

15 Q. If you could go to page six of the Stainback
article. On the left-hand side of the page there is a quotation
from Chief Justice Warren's judgment in Brown v. The Board of
Education and it is as follows:

"(Separateness in education can) generate a
feeling of inferiority as to (children's) status
in the community that may affect their hearts and
20 minds in a way unlikely ever to be undone. This
sense of inferiority...affects the motivation of
a child to learn...(and) has a tendency to
retard...educational and mental development."

25 That case was in the context of racial segregation. Have you
done any work in the area of racial segregation?

30 A. I have worked with teachers who are trying to
include children who are racially different within the same
setting as well.

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1256.

In-Chief - M. Sapon-Shevin

5 Q. In your experience is there anything in
common or what might be different for children with disabilities
who are segregated?

10 A. One of the things we know about segregated
placements is that - and some of the interesting data that we
have on this comes from children who go between settings. A
child, for example, who had been in a segregated class who is
then integrated or a child who is part-time integrated, that
their behaviour and their academic skills are consistently higher
within the integrated setting.

15 So, a teacher in the special education setting
will report, "He doesn't know how to cooperate or take turns,"
and the regular classroom teacher will say, "When he is in here
he does that fine." Because the children who are in the regular
classroom provide a kind of a scaffolding, a structure for that
20 behaviour just as all of us behave differently in different
settings. I behave differently at the ball park than I do before
this Tribunal. That children who are in more typical settings
behave in more typical fashions. There is research.

25 So, for example, a child with behavioural
problems is much less likely to be disruptive and to engage in
those negative behaviours when they are in a regular classroom
setting over time than a child who is kept in a classroom with
30 six other children who are all acting out and behaviour problems.

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1257.
In-Chief - M. Sapon-Shevin

5 That's one of the main reasons to include a child, because of
profound differences in their learning and in their behaviour
when they are segregated and when they are integrated.

Q. Is there a relationship between self-
confidence and sense of self-worth and the ability to learn?

A. Yes.

10 Q. What is the connection?

A. When children feel good about themselves and
confident about their acceptance within a community they are open
to learning experiences in a much better way and are able to
15 proceed. When children feel that they have been labelled or
devalued or stigmatized in some way they often meet the low
expectations that are associated with that label and turn off to
learning opportunities even when they are provided.

20 Q. Is there a connection between a child's sense
of confidence and self-worth and placement of a child in a
segregated setting?

A. Two things are very related, their sense of
confidence and self-worth and also the material that they are
25 exposed to. So, children who are segregated say, "They don't
expect me to learn to read," and also are not given that same
kind of educational experience. It becomes kind of a snowballing
effect and because the expectations are low and they don't learn
30 they continue to feel poorly about themselves. So, it's hard to

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In-Chief - M. Sapon-Shevin

5 pull out just one or the other because they're related. When we
feel that people think we're smart we act smarter. When we think
that people think that we're not capable we act less capable.

Q. Have you had experience with children who
have been in a segregated setting for some time and are then
integrated?

10 A. Yes, I have.

Q. How easy for them is it to be integrated
compared to a child who was integrated from the beginning?

15 A. It's much more difficult for three reasons.
When a child has been segregated, first of all, that child's
sense of themselves as a learner and a member is sharply
diminished, so they have a real transitional problem. They have
to learn a whole new set of ways of behaving.

20 Secondly, when a child has been segregated their
peers don't know them, don't understand them, don't accept them.
When you try to integrate a child, for example, in junior high -
I've had this experience - the other kids will say, "Well,
25 where's he been all along? Who is this child? He drools. He
spits. He hits." All they can see are that child's disabilities
because they have no history with that child. So, it is very
difficult for children to accept a child who they have never
seen. When a child kind of comes up through the system with a
30 child who is different they are much more likely to say, "Oh,

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In-Chief - M. Sapon-Shevin

that's Michael. He can't talk, but he really likes baseball because I know," because they have had history with that child. They will acknowledge that Michael bites or Michael doesn't speak, but they also know something about that child also.

The third thing that becomes difficult about integrating a child who has been segregated is that the teacher who receives that child has implicitly and explicitly been told, "This is not a child that you need to learn how to deal with." And all of a sudden that child appears and it is very difficult to say to them, "Well, we told you for years that it took a special teacher to work with this child and now they're back and they're yours." So, teachers say, "I'm not prepared. This is not my area of expertise. I don't have the background. I don't have the experience." As opposed to teachers who have been given support in developing that expertise because the child is in their classroom.

So, when children are segregated teachers become what we call deskilled, they lose the skills to deal with particular situations. Whereas when they are presented not just with the child who presents certain challenges, but with support in figuring out what to do then they become skillful and more competent and confident in their ability to work with a wide range of youngsters.

Q. What about the confidence level of the

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In-Chief - M. Sapon-Shevin

disabled child himself having come from the segregated system and going into the integrated system?

5 A. Well, again, it's connected to all those other pieces. Children who have been segregated often don't feel confident about themselves and also then behave in ways that make them more deviant and appear more deviant than children who have been integrated primarily because - the research shows that the major reason children are rejected by their peers has nothing to do with academics. In other words, children don't say, "I won't play with you because you read at the 2.3 grade level and I read at the 6.5."

15 The reason children are rejected by their peers is because their social behaviour is not appropriate; they don't know how to play, they don't know how to hang out, they don't know when to laugh, they don't know how to engage socially. So, when a child has been segregated, when they are reintegrated, precisely they don't have those social skills and they are more likely to be rejected by their peers.

25 Q. Going back again to the Stainback article. The next section beginning at page eight is entitled What are Some Practical Strategies for Promoting Inclusive Schooling? Some of this material deals with structures of education within a system. Have you had any experience or do you have any knowledge of the Canadian system?

30

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In-Chief - M. Sapon-Shevin

A. Yes, I do. What's very interesting,
particularly with regard to the objection that was raised before,
is that most of the teaching and research around inclusion that
goes on in the United States is based on Canadian models. That
the primary video tape and educational writing that I have used
for the last 15 years comes out of Ontario. That when I speak
about inclusion in the United States they often say, "Well, fine,
that's Canada, but we're different here in the U.S." We have
models from British Columbia that are used extensively in the
United States. I show a video tape called Hello, My Friends that
was produced in British Columbia. I show a video tape called
With a Little Help from my Friends that was produced in
Kitchener-Waterloo, which I believe is fairly close to us, on
their model of inclusion and the way in which the Board there
decided to have an inclusive education philosophy. Another video
I show is called Jenny's Story which is a Toronto inclusion
experience. And some of the educators that I have co-presented
with and co-written with are Canadians. So, we share freely back
and forth.

With the exception of some legal differences
around 94-142 and Ontario regulations and things being different
the philosophy and the issues that come up are identical in terms
of teacher attitude and school structure and curriculum
modification and building friendships. And all of those things

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In-Chief - M. Sapon-Shevin

are completely the same because children are the same.

5 Q. Dealing with the subheadings under this
overall category of Strategies for Promoting Inclusive Schooling,
'the first heading is Establish a School Philosophy. How
important is that?

10 A. The research has shown, and in the book that
we talked about before, Restructuring for Caring and Effective
Education, that one of the main things that will determine
whether or not inclusion is successful is whether there is a
stated mission statement by the school, by the district that
15 says, "This, we believe; in the so and so district that all
children can learn, all children should be with their peers." If
there is a consistent philosophy that everyone buys into and
understands, the community and the administrators, that all the
subdecisions, you know, curriculum and placement, have a frame of
20 reference that is consistent. So, it is one of the most
important things that there be that kind of philosophy.

Q. What is the principle of natural proportions?

25 A. The principle of natural proportions says
that children should be served, that ideally the number of
children with disabilities in a typical classroom should be the
same as the proportions that occur in society. So, for example,
if there is one child with severe disabilities for every 300
30 children then a school should have no more than one child with

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In-Chief - M. Sapon-Shevin

5 severe disabilities for every 300 typical children. So that
those are the natural proportions in society and that violating
those proportions by putting, for example, all children with
severe disabilities together or all children with visual
impairment together or all children with hearing impairment
together doesn't allow for the kinds of interactions that occur
10 naturally in society and place an undue hardship on the teachers
as well. Because when you have schools that do clusters, like,
they send all the children with disabilities to the same school,
even if there are other children there too, then there are, like,
many children with high needs in the same classroom and in the
15 same school and the resources are stretched way too thin. So,
ideally inclusion means putting children in their neighbourhood
school, in their home school or there is a choice program where
they would choose to go so that they are represented within that
20 school in the same proportions as they would be in society.

Q. The next heading is Include Individuals Who
Are Directly Involved. In terms of the setting up of an
integrated setting, whether it be a classroom or a whole school
25 or a system or whatever, what kinds of people ought to be
involved in decision making around that?

A. Anyone who has responsibility for and/or
expertise about and/or interest in that child. So, that would be
30 the parents, the classroom teacher, the administrator, the

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In-Chief - M. Sapon-Shevin

MR. CHAIRMAN: I bring it up, Ms. Molloy, as you
know...

MS. MOLLOY: We'll make it.

MR. CHAIRMAN: Will we? You certainly know
better than I that if we were reviewed and a
witness - either counsel didn't have the time to
examine a witness it makes - this whole procedure
might be suspect. Well, if you know. That
having been said, can we do lunch in an hour? We
would normally take an hour and 15 minutes.

MS. MOLLOY: Not too easily. We can try.

MS. BOWLBY: We can.

MR. CHAIRMAN: Let's take a stab at it. The
Tribunal will be back and ready to go at ten to
two, okay.

R E C E S S

O N R E S U M I N G :

MARA SAPON-SHEVIN RE-ENTERS WITNESS STAND

PREVIOUSLY AFFIRMED

EXAMINATION-IN-CHIEF BY MS. MOLLOY CONTINUED:

Q. Doctor Sapon-Shevin, you have met Emily

1300.
In-Chief - M. Sapon-Shevin

Eaton, have you?

A. Yes, I have, last night.

Q. How long did you spend with her?

A. About an hour, an hour and a half.

Q. In preparation for today's evidence did you
also review the binder that is labelled Exhibit R1?

A. Yes, I did.

Q. Upon meeting Emily what's your impression of
her?

A. Kind of a sparkly smiley little girl,
pleasant, interested in what was going on around her, interested
in the rhubarb pie we were eating.

Q. As were we all.

A. Yes.

Q. Was there anything or is there anything about
Emily Eaton that would indicate to you that she might need to be
in a segregated special education class?

A. Not anything that I observed.

Q. Did you see any impediments to including her
in a regular education system?

A. No. She would be among the children that I
would label in the easy range of included.

Q. In fact, you have anticipated my next
question. Have you seen children with that degree of disability

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1318.
Cr-Exam - M. Sapon-Shevin

A. Sure.

5 Q. And you believe that all children should be
served in the neighbourhood school in a regular class with age
appropriate peers and that that placement would meet the needs of
all exceptional youngsters?

10 A. No, the placement doesn't meet the needs.
The services that are provided and the structures that are
provided could meet the needs. Just physically placing a child's
body in the classroom does not meet their needs. There has to be
extensive curriculum modification and teacher preparation and
15 support systems.

20 Q. Let me put it another way. The model that
you have told us about today of inclusary (ph) education is the
model that you say would meet the needs of all exceptional
youngsters?

25 A. Could be hand tailored, individualized to
meet the needs of education, of any child, yes.

30 Q. And it's fair to say you're an advocate of
this model?

A. I have a lot of experience seeing it in
operation and I do firmly believe that a child's educational
needs can be met in that setting.

Q. And you speak and you write articles
encouraging others to use this model?

A. Supporting others who are trying to use that model.

5 Q. But in addition you yourself are involved as a consultant?

A. When districts are moving in that direction they often ask for my help to do it better.

10 Q. You would agree that there are experts, and even as you are an expert, you would agree that there are experts who strongly feel that an inclusary (ph) setting might not meet the unique needs of all children, particularly those who are severely and mentally handicapped?

15 A. Are there people who would testify in that way? I'm sure there are.

20 Q. Now, the philosophy or model that you have put forward is not one which would call for a continuum of services?

A. No, it would not.

25 Q. So, a continuum of services is an entirely different model than the model that you have put forward?

30 A. The experience that special education has had since the passage of, in the United States, since 94-142 which promoted a cascade model or a continuum of services, has found consistently that when more segregated options are provided, even though on the chart it always says, "Remove a child to a more

1320.
Cr-Exam - M. Sapon-Shevin

5 segregated placement only when necessary and replace the child or
move a child back to a less restrictive environment as soon as
possible," that once children are removed to more segregated
settings there is no movement back in the other direction. And
that when more segregated options are provided the responsibility
and the impetus to schools to become responsive to children in
10 less restrictive environments is removed. So, teachers are
often forced into - within the continuum model it's said, "Either
maintain this child in your regular classroom as it's now
situated or we'll remove the child." So, then teachers are
forced between sort of making due in the regular classroom with
15 no support, no modification, large class size, no aid, no
preparation and training or being told, "If this is not
satisfactory to you or to the child we will remove the child."
So, the problem with a continuum is it doesn't say, "We will
20 provide all of these services within the context. We will do
what is necessary to maintain a child in a less restrictive
environment." It offers only make due or removal.

25 Q. Is that your opinion or is that based on the
research?

A. That's based on research and...

Q. Could you tell us the research you are citing
to back that up, please?

30 A. I can't cite it without it in front of me,

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1321.
Cr-Exam - M. Sapon-Shevin

5 but if you look at service delivery models. If you wanted to
read the book on Restructuring for Caring and Effective Schools
or the book on Support Networks for Inclusive Schooling.

10 Extensive teacher interviews about their discomfort with being
forced to choose between segregated models and kind of the status
quo as opposed to teachers who are provided with supports to
maintain children in inclusive education.

Q. Well, those books would have research that
supports the inclusary (ph) model, correct?

A. Well, interviews with teachers, yes.

15 Q. There would be research, other research, I
assume, that would support the continuum of services?

20 A. You would have a hard time finding some in
the last ten years. There's a reason that the entire country,
and this country as well, are moving towards inclusive education.

Q. But neither your country or this country is
there?

A. No, it's a movement, it's a process.

25 Q. And there are opponents to the process?

A. Of course there are opponents to the process.
There are opponents towards racial segregation also, it doesn't
mean that they are right.

30 Q. Well, it doesn't mean either that the people
who are saying, "Whoa, wait a minute," or the people who are

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5 with youngsters whose disabilities are of such a nature that they
cannot be assessed for any intellectual ability or social
awareness?

10 A. Sure. There is extensive literature,
particularly around children who are labelled as autistic, for
whom that's very ambiguous and as now, with facilitated
communication, we are learning that these children learned
tremendous amounts from...

Q. This is research data?

15 A. This is research data, yes. These are
children who are now testing in high ranges on I.Q. tests who
were previously thought to be completely not present. There are
certainly many, many individuals with cerebral palsy and physical
disabilities who, because they had no way to be assessed, people
made assumptions about their capabilities or lack thereof that
20 turned out to be, you know, grossly erroneous.

25 Q. Is there any data to the contrary or
literature to the contrary that suggests that youngsters with
severe intellectual delays or inability to assess for
intellectual ability or social awareness do not benefit from
modelling?

A. No.

Q. There is none?

30 A. That it would be damaging to them or they

don't benefit from it?

5 Q. That suggests that they don't learn from
modelling?

A. That they don't learn from modelling?
Certainly they might learn in other ways as well, but I don't
know of any data that says it would be a mistake to model for
10 them.

Q. No, that's not my question. My question is,
is there any research data that shows or is inconclusive, that
either shows that there is no benefit or that it's inconclusive
15 about any benefit that might be there?

A. I'm sure there is. There's much that's
inconclusive in this field, that's why it's tricky.

Q. You also said that research shows that
20 children pick up incidental education by being around stimulating
environments. Now, when you say children pick up incidental
education by being around stimulating environments, is this based
on research?

A. There is research. There's many parental
25 reports. There are reports from students themselves. There are
teacher observations to this effect.

Q. The nature of the children and the research?
I'm particularly interested in the research.

30 A. Again, I did not come with my bibliography.

5 Q. Is there any literature to the contrary or literature that would suggest that such incidental education isn't always there with respect to youngsters whose disabilities are such that they cannot be assessed for intellectual ability or social awareness?

10 A. Not that I'm aware of.

Q. You say that the data indicates that academic skills, the academic skills of exceptional children are consistently higher in an integrated setting. What data are you referring to?

15 A. I call your attention to articles in the Journal of Exceptional Children, to the Association for Persons with Severe Handicaps, in teacher education and special education, in the Journal of Mental Retardation. Numerous articles that compare children with initial similar diagnoses who were placed in integrated versus segregated settings.

20 Q. And the nature of the children, does that include the type of youngster that I have been focusing on?

A. Mental retardation or mild handicaps.

25 Q. Including youngsters who can't be assessed for intellectual ability or social awareness?

30 A. Well, because they can't be assessed it's difficult to assess their progress in either setting. So, at that point one has to make decisions based on - given that there

5 is some hole in our information we have to think about the things
that we can observe; for example, their interactions with other
people, their interactions with adults, their opportunity to
engage in other opportunities.

10 Q. You said that when children feel labelled
they turn off to learning. What did you mean by feel labelled?

15 A. Children who are removed to segregated
settings, even children who are labelled as severely cognitively
delayed, are aware of the fact that they do not go to school with
their peers or with their brothers and sisters. I have no doubt
that a child like Emily is very aware of the subject of this
Tribunal and that she would certainly know she was going to a
different school, that she was no longer going to the school with
her friends in the neighbourhood if she were removed, that this
20 would have meaning for her, that she was being displaced somehow.

25 Q. Turning off to learning, when you say that
the youngster who feels labelled turns off to learning what did
you mean by that?

30 A. We have a lot of parental reports where the
parents will say that the child was no longer as eager to go to
school, offered resistance in getting dressed in the morning,
seemed somehow down spirited. Or, in reverse, children who had
been that way who then were in more integrated settings who were
more eager and excited to go to school. There are affective cues

MR. CHAIRMAN: Very well.

5 MS. BUDGELL: Q. I would like to turn now to
your views of the educational needs of exceptional students and
in particular exceptional students with disabilities of various
types. Could you describe, in general terms, your views on what
the fundamental needs of students with exceptionalities are? Can
10 you describe the main headings that need to be addressed in their
educational programs?

15 A. Basically the educational needs of
exceptional children are the same as those of so-called normal
regular class children. They need to have a program that is
adapted to their particular ways of learning, ways of responding.
They need to have a program that is based on particular
objectives which has a particular path set down for it based on
those objectives. They need to have a program which is in tune
20 directly with their responses so that it can be changed based on
their responses. They need to have a feeling of acceptance on
the part of the teacher. They need to feel that making an error
is not, in fact, a capital offence, but that errors are natural
and that one can perhaps learn through errors that have been
25 made. They need to have a program that is evaluated on an
ongoing basis so it can be adapted as necessary. They need to be
reinforced in what it is they do to increase their level of
30 motivation and interest. They need a quality educational process

which any child at a school needs.

5 Q. I am now going to bring you through to some
specific areas and ask you to comment on these particular needs
as they relate to students with disabilities and in particular,
for example, a student who is nonverbal and has some motor
involvement and may or may not have some form of intellectual
10 impairment which essentially can't be assessed because they are
nonverbal. The first area or heading would be the importance of
cognitive stimulation.

15 A. Cognitive stimulation is an important
component of any, should be an important component of any
educational process for all kids. It's particularly important
for children with physical difficulties or who are nonverbal
because their ability to explore their world and to understand
their world has limitations imposed on it. Consequently, one
20 needs to overcome their ability to experience as extensively as
other individuals can by virtue of more cognitive stimulation in
terms of explanation, in terms of having salient characteristics
pointed out to them, having explanations presented to them,
25 having certain suggestions made which would lead them through the
solution of whatever problems they are facing.

30 There is no substitute for effective thinking and
problem solving. That is true for a so-called physically
handicapped child or a normal child. All kids need cognitive

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5 education. All kids need that stimulation so that they reach the
point where they begin to incorporate that kind of instruction
into their own thinking so that it becomes automatic. It may
take a little longer with kids who are not verbal because part of
developing effective concepts and abstract thinking is to be able
10 to manipulate words and ideas verbally and engage in an exchange
of ideas with somebody else verbally or, if not verbally, through
some other modality.

15 Q. You said that was true of so-called normal
children and children with physical disabilities. Could it also
be true for students who may or may not have some kind of mental
or intellectual disability?

20 A. Very definitely. We have always assumed that
individuals with certain degrees of mental retardation are
incapable of thinking abstractly, of making generalizations, in
fact, of engaging in behaviour that we call intelligence. Now,
they are if one takes the time to expose them to that kind of
content. There are many instances in various parts of the world
25 in which individuals with Down Syndrome with very low measured
I.Q., whatever that happens to mean, who, as a result of a very
concentrated long-term cognitive educational process, have become
economically and socially self-sufficient.

30 Now, the I.Q. score doesn't change necessarily,
which raises some interesting questions as to what I.Q. scores

5 measure or what I.Q. tests measure, but in terms of their ability
to function and to solve problems and to deal with
contradictions, or whatever, that arise in their world they
become much more effective than one would ever expect based on
the particular I.Q. score they have.

10 Q. Can you apply the principles that you have
just enunciated to the importance of so-called academic learning
or academic subject matters such as math, arithmetic, seeing
words, being exposed to people reading or learning to read?

15 A. Well, there are very large cognitive and
what's called metacognitive components in some aspects of the
academic program, solving certain kinds of mathematical problems,
for example, and deriving meaning from reading. Effective
comprehension skills require fairly good ability to think
abstractly and to think of alternatives in terms of how you might
20 select particular strategies for solving your problems.

The point of any cognitive education program,
however, should be to develop a generalized ability on the parts
of the individuals to apply those skills to situations other than
just academic areas. Now, they are important academically. The
25 aim would be to produce somebody who is a much more effective
thinker and problem solver and not just somebody who is better at
math or more efficient in reading.

30 Q. Can you comment on the importance of these

5 factors where a particular student, where a particular
exceptional student may be nonverbal, can't really assess their
ability to absorb things going on around them on a very accurate
level? Can you comment on the importance of exposure to
stimulation?

10 A. That sort of stimulation is important because
we really cannot determine how much cognitive elaboration goes on
when an individual such as you have described encounters certain
experiences, whether they be academic experiences or other
experiences. We have assumed for a long time that the physical
15 characteristics of the individual suggest severe limitations in
terms of cognitive ability.

20 In my own professional experience at the Hugh
McMillan Centre we found or I found, and a number of other people
have found the same sorts of things. That young children and
adolescents with cerebral palsy and other kinds of physical
involvement who are nonverbal who, when they are provided with a
useful means of communication, whatever that is, a voice
25 simulator or a Blissymbolics board or whatever, they are able now
to communicate the thinking that has gone on and to now let
people know that they have, in fact, been quite aware of what's
been going on in their environment. They have understood their
experiences. They have understood what people have told them and
30 that, in fact, they can think of all of these things on a fairly

abstract level.

5 So, consequently, I think one needs to take a
positive approach to look beyond the obvious physical problems
that an individual has and to assume that one can have a positive
10 impact in terms of creating a more efficient thinker, problem
solver, learner as a result of this kind of cognitive
stimulation.

Q. How does that view translate into your
recommendations in terms of placement of a student with
exceptional needs?

15 A. In my professional opinion there really is no
alternative to the regular classroom placement for all children
regardless of exceptionality. I fully subscribe to the No Reject
Concept which suggests that no School Board has the right to
20 exclude a child from education in a regular classroom and that
the general curriculum and the general interaction that goes on
in the regular classroom is typically in the best interest of all
kids and, consequently, a School Board does not have the moral or
legal right to exclude any child.

25 Q. In your view what is a student with
exceptional needs in danger of losing if they are placed outside
of a regular classroom?

30 A. Well, they can lose their sense of being an
effective learner. They can lose their sense of being an

5 acceptable, competent, likeable individual. They can lose their
sense of being part of a community, the immediate community
within the classroom or the larger community just outside the
school.

10 Being designated as so different that they need
to be isolated in one way or another from other kids their age
can have quite a serious detrimental effect on their picture of
themselves as a human being let alone as a learner. Since
15 elements of one's personality and certainly one's self-picture is
a large component of one's personality and are extremely
resistant to change, once an individual develops that notion that
they are undervalued and not worthy and shouldn't be with other
people, and they develop that sense of themselves, it's extremely
difficult, no matter what kind of experiences follow, to overcome
20 that very negative self-evaluation.

25 Q. Okay. Can you tie that into your previous
comment about the importance of taking a positive attitude on a
particular student's learning potential?

30 A. What the research tells us is that when
teachers and other important adults make it quite clear to any
child that they are capable of learning and that there are
expectations that they will learn and that they will progress the
child responds much more positively in terms of interest and
motivation and desire to learn and preparedness to learn. The

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5 expectations that are established and the general atmosphere or
learning climate that is established in a classroom for a child
directly influences the extent to which the child performs and
the quality of that performance.

10 Q. Finally, if you could comment on the
importance of a stimulating environment and where you think it is
in the best interest of the child to be placed to get the maximum
stimulating environment?

15 A. Well, again, in order to be able to fully
understand various facets of one's world one needs to have as
stimulating environment as is possible; it needs to be varied in
content, it needs to be varied in terms of the nature of the
experiences, it needs to be varied in terms of with whom you can
20 discuss the experience or the events, it needs to present
challenges cognitively to kids which they are then guided through
towards a resolution. The varieties of experiences that are typi-
cally part of a regular classroom would seem to fit that bill.

25 It's important, however, that the teacher make a
concerted effort to make sure that in the face of stimulation
that the child is, in fact, stimulated, that the child is aware
of the stimulation, that the child benefits from that
stimulation. And the expectation, that I have already mentioned,
of achievements is also part of that.

30 Q. All right. What stimulation may be lost if a

child is placed in a segregated class with only other children with exceptionalities?

5 A. The major stimulation that would be lost is
the different points of view of the different kids in the regular
classroom, their different perceptions, the different ways in
10 which they attempt to solve problems, the understanding that
there may not necessarily be a right or wrong strategy to use in
solving a problem, but there may be a number of different
strategies that will come to the same solution and that thinking
of different strategies is important. Seeing how other kids
15 adapt to new situations, adapt to challenges, adapt to
expectations academically all add to the particular repertoire of
any child in terms of learning and performing. It's a general
intellectual model. It's a general academic model that's adopted
by other kids in the class. It's the difference of opinion,
20 different perspectives that are important, that all provide
stimulation that allow an individual to begin to think in terms
of alternatives and begin to make judgments and begin to see
relationships between approaches to problems. Then there is the
25 obvious social kind of stimulation in terms of appropriate models
that would be missing.

30 Q. What about differences in abilities in the
regular class and how that might impact on a student who is
exceptional?

5 A. A very long-standing assumption has been that
you end up with a homogeneous group of children in terms of
intellectual ability, in terms of interest and motivation, rate
of learning and so on and so forth. Well, that's not true. In
10 any regular classroom without any exceptional child there is a
fairly broad range of ability that falls within the normal range,
differences in interest and motivation and so on.

15 Any regular classroom teacher who is concerned
about being an effective teacher would need to make adaptations
to the program to take into account those individual differences
in the so-called normal child. Research has suggested that when
you include exceptionalities into a regular classroom you extend
that range of individualization or individual difference by only
20 about ten to 15 percent.

25 Q. Based on your experience observing an
inclusive system at work and based on your research with students
who have exceptionalities what are your conclusions or opinions
with respect to the appropriateness of inclusive education?

30 A. The only conclusion I can come to as a result
of five years of being involved in a traditional sort of school
system with segregated classrooms and over...

Q. Where was that?

A. I'm sorry?

Q. Can you just identify where that was?

5 A. Oh, that was in the Etobicoke Board of
Education where I was Chief Psychologist...and over 14 years of
experience in the Wellington County School Board which is a
totally inclusive system is that there really is no alternative
10 to a regular class placement for the effective education of all
children. There really is no rational argument that can be
substantiated with research evidence for the continued
maintenance of segregated programs for exceptional kids.

15 Q. Are there any situations in which placement
outside of an inclusive setting might be appropriate or
necessary?

20 A. One needs to look at what the primary problem
or the primary need of the child in question is. If the primary
need is education then the education should go on in a regular
classroom. If the primary need or primary problem is a medical
one then I think there may be situations in which any classroom
situation would not be appropriate, whether it be segregated or
integrated. For example, if you have a child that needs to be on
25 a respirator or a child whose blood chemistry needs to be
monitored on a fairly regular basis or whose internal organs, the
functioning of the internal organs needs to be monitored
regularly or anything like that, where the primary problem is to
30 maintain the physical well-being of the individual then one

5 somebody with verbal questions and answers when they can't
respond verbally. The other category within the test tends to be
referred to as performance, performance items. Items that are
manipulated manually, that involve fine motor coordination and
control, eye/hand coordination and so on. Somebody who has motor
involvement as a result of cerebral palsy, or for whatever
10 reason, again, cannot effectively deal with those test items and,
consequently, what result could be derived from that would be
invalid.

15 Many of the typical psychological tests are
invalid when it comes to their use with particular kinds of
exceptionalities not only because of the things I have already
mentioned, but also because if the individual who is currently
being tested is not represented in the normative sample on which
the test was developed then the test is invalid when it comes to
20 assessing that particular individual. It is invalid because you
make comparisons of the individual's test results against the
results of a normative sample, people of the same age, same sex,
socioeconomic level, et cetera. Now, again, if the individual is
25 not represented in that sample the comparison is invalid.

30 Q. Are you aware of any standardized test which
would be valid for assessing exceptional students who have
physical disabilities, fine motor and gross motor involvement and
who is nonverbal?

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A. No.

5 Q. In terms of conducting your assessment do you
place any relevance on medical information?

A. I think it's important to determine medical
history to see whether there are any factors from a medical
standpoint that may be influencing or inhibiting the learning
10 process. In many cases, though, that information is truly
academic because there really isn't much you can do about it.
There may be some value in terms of the medical diagnosis from a
medical standpoint in terms of categorizing the child, but many
15 medical diagnoses have no educational relevance in terms of
influencing the instructional process that needs to go on.

Q. Why is that?

A. Because, on the one hand, it's a medical
diagnosis, not an educational diagnosis or assessment. While one
20 assumes that there should be certain limits or inhibitions placed
on development in learning as a result of certain medical
problems it's not always clear what those are or to what extent
they operate in any particular situation.

25 For example, a diagnosis of cerebral palsy is of
interest for an educator to know that the child has that problem;
one could probably determine that by looking at the child in any
case without the medical diagnosis, so it doesn't really serve
30 much purpose in terms of your understanding of the child. But it

5 doesn't assist the educational process. It doesn't tell the
teacher how to teach this particular cerebral palsy child, what
strategies might be most effective and most appropriate, what
kinds of materials might be most effective, what pace would be
more valid for this child and so on and so forth. That you need
to determine, can determine only in the context of education.

10 Cerebral palsy individuals, while they may share
the same medical diagnosis, differ widely in terms of the impact
of that medical problem on behaviour, performance and learning.
So, one can't use the medical diagnosis and say, "Ah-ha, I have a
child with cerebral palsy, that means I have to do these things."

15 Q. What about in terms of identifying any
limitations which might exist in terms of the learning?

20 A. Again, the diagnosis suggests that there
might be some limitations in terms of the amount of physical
involvement, but that physical involvement varies across
individuals. The only thing you can do is to determine the
extent of the motor capability in terms of fine or gross or
eye/hand coordination skills in the learning situation. The
25 diagnosis of cerebral palsy doesn't necessarily give you that
information; it might if the medical practitioner has included
it, but the diagnosis itself doesn't carry with it that
information.

30 Q. I am going to give you a hypothetical

5 time and the ways in which you then build up a Bliss board
vocabulary. You don't present the 512 symbols to an individual
right off the bat and assume that they are going to learn them
and use them. So, you introduce symbols in a particular way
based on the needs that occur with respect to a particular child.
That needs to be evaluated.

10 So, there is a very formal detailed evaluation
process that goes on with regard to determining whether or not
Blissymbolics is appropriate as a means of communication for this
individual; how one structures the vocabulary, at what rate one
15 introduces new symbols to increase the vocabulary, the
preparedness on the part of the parents to become involved in
interacting with a child using Bliss symbols, the desire on the
part of the child to communicate. All of these things need to be
taken into consideration.

20 Q. Are you aware of what resources are
available, for example, in Ontario where that kind of formal
assessment, evaluation and work could be done?

25 A. The major source of that work is currently at
the Hugh McMillan Centre in Toronto.

Q. In your experience, and you can cite the
Wellington County School Board if you like, is this something
that is normally done at school?

30 A. It can be done in one of two ways. The

5 teacher of a particular child or a group of teachers who might be
interested can become involved in a teacher training workshop on
Blissymbolics.

Q. Where would that be?

10 A. That could take place at the Hugh McMillan
Centre or staff from the Centre could come up to the School
Boards and do it within the context of the school system. In
Wellington it has worked both ways; teachers have gone there or
staff have come and have provided workshops at various levels.
15 The workshops deal not only with the symbol system itself as it
exists and how you introduce it, but also how you can create
additional symbols to fit into the particular unique experience,
sort of lifestyles or life conditions of a particular student.

20 There was a particular situation in Wellington
where a teacher found out, in May, that she would be having a
nonverbal child with cerebral palsy in her class in September who
communicates via Blissymbolics board. She decided that during
the summer she would enroll in a Blissymbolics training workshop
at the Hugh McMillan Centre so that she would be familiar with
25 the system and with the symbols when she met this child in
September. She also then decided that she was going to teach her
entire class, regular classroom, her entire class Blissymbolics.
Her rationale for this was that she thought all kids should be
30 bilingual.

5 Q. Once an augmentative communication system
such as Bliss is set up and is acquired by the exceptional
student is there any reason why it can't be used in an inclusive
classroom setting?

10 A. None whatsoever. We have had, in Wellington,
at least three students at different levels in the system, one at
the high school level, who were in regular classrooms at
different stages of development in terms of their facility with
Blissymbolics. All it takes is establishing the climate in the
15 classroom and the structure by the teacher to model the
behaviour that it's important for you to take the time to stand
by the student using the Bliss board to watch the message being
created so that you can then interact and that you can just point
to the board yourself to create your own message which the
20 student will then understand. So, you can in fact have fairly
complex verbal interaction between the student who is nonverbal
and students who are verbal.

25 Q. Turning now to the Wellington County School
Board and your experience with that Separate School Board. I
would like you to first describe the philosophy behind the choice
to become inclusive, the impetus behind it if you could.

30 MS. BOWLBY: Excuse me. Could I just have a
moment, please. I may have an objection. All
right. Thank you.

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asked which I think was a legitimate question.

MS. BUDGELL: Q. Yes?

5 A. Okay. My own experience of classroom
teachers and parents recounting to me the benefits that they felt
their students or their own children had received from their
interaction with exceptional kids in the classroom; they felt it
10 had contributed very, very dramatically and directly to maturing
of their kids who were becoming more accepting individuals of
diversity.

15 It had an influence on the exceptional kids in
that they were included, included in the school activities,
included in after school activities. Their evaluations of
themselves as learners improved. Their feelings of themselves as
being stupid individuals decreased. Their feelings of not being
20 able to think and achieve changed in a more positive direction.

25 The teachers changed because what had typically,
in the past, been adjustments that needed to be made to the
program were now seen as natural occurrences that are typically
or should be typically part of any instructional process. So,
there were positive benefits that accrued to everybody in that
situation.

30 Q. Did you draw any conclusions with respect to
the impact of exposure to stimulation, the impact of
expectations, the impact of challenge, the degree of challenge in

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5 the learning environment? Can you comment on your conclusions of
the impact of all of those things on the learning experience of
the exceptional students that you are familiar with?

10 A. The impact was similar to that on the part of
the high schools students; less frustration with making a
mistake, more confidence in themselves as learners. In the past
the kids would tend to avoid certain types of material because
they knew they couldn't deal with them effectively; they were
15 more likely to confront that material, whether it be reading
material or any other kind of material now. As a result of the
reinforcement that was part of that accepting stimulating
environment they felt good in the kinds of answers and the kinds
of performance they gave even though they may not have been
complete. So, this was a shaping process that led them to try to
20 learn more, to interact more frequently with difficult material
and they were less frustrated.

Q. I would like to turn now to your assessment
of Emily Eaton.

25 MR. CHAIRMAN: Before you do that, I certainly
would like to carry on. Rosemary, are you all
right?

COURT REPORTER: Yes.

30 MR. CHAIRMAN: We would have to interrupt in
about half an hour. Will that be a problem?

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MS. BUDGELL: That's fine.

MR. CHAIRMAN: Okay, let's carry on and that will
give as much possible time to the respondent for
cross. Okay.

MS. BUDGELL: Q. Doctor Silverman, have you had
an opportunity to observe Emily Eaton?

A. Yes, I did.

Q. Where did you observe her and for how long?

A. I observed her in her classroom for the full
morning of January 27th of this year.

Q. Have you had any other opportunities to view
her?

A. I viewed two video tapes that were made at
home, one of Emily's ninth birthday party and one of general
interaction with other family members in the home and outside.

MS. BUDGELL: I can identify for the record that
Doctor Silverman viewed Exhibit A2 and A3.

MS. BUDGELL: Q. Generally speaking what are
your impressions of Emily based on those opportunities that you
had to see her?

A. Well, my observations pointed out that Emily
does have some serious physical problems in terms of motor
control and coordination and binocular coordination, but that
there are numerous signs of an intellectual ability that is much

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5 period of time it would be difficult to really come to some
understanding of why she is doing it. There would be a number of
explanations. One could suggest that it is her way of getting
10 additional information through another modality about things
around her. It might be an indication, from another point of
view, of signs of immature development, immature behaviour. It
is really difficult to speculate.

Q. Did you observe any danger in the classroom
with respect to her mouthing and any potential for swallowing or
choking on any objects around her?

15 A. The only thing that might pose a potential
danger are the little nuts and bolts that are part of the erector
set equipment in the classroom because they tend to be rather
small, but most other objects are large enough and bulky enough
20 that it wouldn't pose a problem if she did put them in her mouth.
She seems, and this is based on not a lot of evidence, but she
seems to have an awareness of what can be swallowed and what
shouldn't be swallowed. Some need is being met by her mouthing
these things and it is doubtful, in my mind, that she would ever
25 try to swallow any of them.

Q. If you were asked to comment on a child who
puts things in their mouth, regularly mouthed objects, but had
historically not swallowed anything other than food what
30 conclusion would you draw from that situation?

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5 A. Well, to the extent, the answer I have just
given you; that they know the difference between what should and
shouldn't be swallowed and tend not to swallow things that are
not considered to be food. They might enjoy the stimulation of
having something in their mouth, but that would be the extent of
it.

10 Q. What did you observe with respect to her
response to verbal auditory stimulation, for example, music, the
patterns of speech from the other students or from the
educational assistant or from the teacher?

15 A. They relate again to the earlier comments in
terms of her orientation. She was aware of tonal shifts and
changes in volume of the teacher's voice. She tended to look in
the general direction of any little activity that the other
students were engaged in when that became noisy. She showed a
20 general enjoyment in listening to music and, in fact, began to
move her body in rhythm with what I assume was the rhythm on the
cassette as I couldn't hear it. It is all part of her awareness
of what is going on in the classroom; that there are different
25 kids in that classroom and that there are different sounds and
different stimuli in that classroom and she is aware of them, she
is aware of the difference.

30 Q. You state at the bottom of page three that
she tries to identify the sources of musical tones and noises.

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Now, the argument has always been that by virtue
of having an exceptional child in a regular classroom the
exceptional child will model the positive behaviour patterns of
the regular kids. Well, to some extent that is true, but in
order to ensure that the patterns of the regular kids are
appropriate and sensitive the teacher needs to establish that
kind of a structure and foundation for it.

Q. What is your view on the impact of any gap in
ability which may exist between an exceptional student and the
rest of the class and the impact that has on the learning
environment?

A. It depends on how much importance the
important people place on the gap. The issue, I think, from an
educational perspective is not so much the gap because the
concern about an educational program for Emily or any other
exceptional child is not necessarily to decrease the gap or to
make that exceptional child capable of functioning at the same
level as the others, but is to enhance the possibilities of
greater learning and greater development on the part of the
exceptional child. The issue is not so much the gap between the
normal and the exceptional. The focus needs to be on increasing
the level of ability, the repertoire of skills on the part of the
particular exceptional individual.

Q. Can you comment on the importance of

1459.

In-Chief - H. Silverman

promoting constructive relationships between Emily and her peers
within her community?

5 A. Well, the relationships that are established
with Emily in the classroom will influence the relationships
outside the classroom and outside the school. One carries the
friendships one makes in the classroom to other kinds of
10 activities. As kids grow and mature these attitudes remain with
them and become part of their way of interacting.

 If you have dramatic contradictions in the type
of atmospheres in which that particular child happens to exist,
for example, if the one element of the outside community is
15 receptive and warm and the school environment isn't, then you
have a conflict situation which the individual has to resolve for
himself and try to explain. The more evidence there is that the
individual is not worthy of inclusion the more likely the
20 individual is to decide that he is not worthy of inclusion and,
therefore, there must be something seriously wrong with him and
one's self-picture, one's sense of oneself as a person and as a
valuable functioning contributing person can be impaired.

25 Q. I would like to turn now to the conclusions
that you made with respect to Emily's placement. Could you
summarize what conclusions you came to?

30 A. Based on the observations and my assumptions
with reference to Emily's ability to benefit from a very

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In-Chief - H. Silverman

5 terms of being accepted and wanted and valued in many different
situations, the more well-established will the positive self-
picture become and the more prevalent will be the feeling that
they are capable and in spite of whatever problems they have they
do have some capabilities and they can become effective and
reasonable learners and members of society.

10 Q. In your view what impact does self-esteem,
positive self-image have on learning, the capacity to learn or
level of learning?

15 A. Well, a positive self-esteem contributes to
level of interest and level of motivation when confronted with
learning tasks. If you feel you are competent, if you feel that
you are a learner, an effective learner, then you approach the
challenge of learning tasks in a positive way. If you do happen
20 to make a mistake or if you do happen to fail you're not thrown
by that because your experience has been one of capability and
success. The more success you achieve the better you feel about
yourself and the better you feel that you are capable of solving
a variety of new challenges.

25 There is no substitute for a positive self-image
in terms of one's specific academic functioning or one's general
social functioning. People with poor self-images tend not to be
effective or not to be successful learners and they tend not to
30 be successful in terms of interpersonal relationships.

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In-Chief - H. Silverman

5 Q. In your opinion what would be the impact of
removing Emily from Maple Avenue School and placing her in a
segregated class at another school?

10 A. Well, I think the message is that she is so
different, that her problems are so serious that she has to be
removed, that she is so different from other children that she
can't be educated in the same context as they are and it could
have an effect on how she pictures herself first as a person and
secondly as a student. The more negatively she evaluates herself
the less likely it is she is going to try to acquire skills or to
learn strategies or whatever.

15 Q. Can you make any predictions with respect to
her level of interest, level of energy with respect to the school
learning environment if she was removed?

20 A. Well, if her self-image was impaired and her
level of motivation was decreased it is highly likely that her
level of energy and her desire to be in school would also be
impaired.

25 Q. What impact do you think Emily's removal
would have on her classmates at Maple Avenue, the members of the
Maple Avenue community?

30 A. That's really hard to say because I wasn't
able to observe them in a variety of situations. Some of them, I
would suggest, probably wouldn't miss her, a few of the kids

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In-Chief - H. Silverman

probably would. But since the atmosphere currently in that
classroom is not one of general acceptance of Emily as an
5 integral part of that classroom the students have not developed
the notion, I don't think, that Emily is an integral part of that
classroom and, therefore, perhaps after initial stage of asking,
"What happened to Emily?" they would probably just go on with
10 their typical reactions.

Q. What's the impact on other children or
members of the community when a member is removed, for example,
because they are different in some way?

A. The emphasis on differentness rather than
15 looking for similarities between so-called normal children and
children with exceptionalities carries the message that we
shouldn't include them as part of the social group because of
those differences. Segregating a child from the school system
20 carries a very strong message to the community; the school
system doesn't feel the child is worthy of inclusion and,
therefore, has set up these separate facilities. It's a message
I don't think schools or anyone should want to communicate to the
25 community at large. Certainly the messages that are conveyed
through other kinds of social agencies, the family, the church,
whatever, is one of inclusion. By excluding in a certain set of
circumstances that sets up a contradictory message.

30 Q. What is the long-term impact of a negative

recently?

A. I'm sorry?

Q. That would have been something you've read
recently?

A. No. That was something I read quite some
time ago.

Q. Okay. I know the one you are talking about,
I had forgotten about that. Would you have read the individual
program plan, the I.P.P.?

A. I don't think so.

Q. So, you didn't read the I.P.P. Did you get
any information or instruction from - what was your instruction?

A. To visit the classroom and to observe Emily
Eaton in the class, regular class program and to make a judgment
as to whether I thought that was an appropriate placement for
her.

Q. Okay. You came to this exercise obviously as
somebody who had some firm views on what we call inclusive or
integrated settings for education, the inclusive model I guess we
could call it?

A. Yes.

Q. And you came as somebody who is basically
committed to that model as the appropriate model for all
youngsters, is that fair to say?

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Cr-Exam - H. Silverman

A. That's correct.

5 Q. So, it's fair to say that even before you entered into that classroom that was going to be what you felt was going to be in Emily's best interest?

A. I think that's why A.R.C.H. approached me.

10 Q. Thank you. Just in terms of the time that you spent in the classroom. I think you said this morning that you went in and Mrs. Lottridge, the teacher, had a number of youngsters, the class at the front of the class and then another class came in and they were working on the rain forest class and
15 that a speech pathologist came in at about recess. Okay. The evidence that we've had, and I should tell you that both the educational assistant and Mrs. Lottridge will confirm this, is that the speech pathologist was actually there with Emily from
20 9:30 until recess, that's 9:30 until 10:10.

A. She may have been in the classroom, but she was not with Emily. The only person who was with Emily was the educational assistant and me sitting behind them both. I was
25 introduced to the speech therapist or pathologist later on in the day just around the recess time and that's when she and the educational assistant had a conversation.

30 Q. My information is - and the speech pathologist did testify here, I should tell you, Doctor Silverman, that she was in the classroom and she was with Emily

speech therapist that she then put a cassette in and let Emily
listen to the cassette.

Q. Now, you had no discussions with the teacher
about the class apart from initially introducing yourself to the
teacher?

A. That's correct.

Q. No discussion, no request to see the
individual program plan of Emily?

A. No.

Q. No discussions with the educational
assistant?

A. Very, very brief discussion, it didn't really
amount to very much.

Q. I would like to have you turn to your report.
I think to make things easier I will put the next couple of
questions to you as we go through the report. Page two. I am
looking at the middle paragraph or actually the second to - the
large paragraph in the middle of the page that starts, "Emily
frequently exhibits signs of fatigue..." The middle sentence,
the fourth line down towards the right side.

"That is, the manifestations of fatigue appear
when Emily becomes bored with an activity or when
she does not particularly like the task she is
being asked to complete with the hand over hand

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Re-Exam - H. Silverman

MS. BUDGELL: Well, I think that I can rephrase
the question...

MR. CHAIRMAN: All right.

MS. BUDGELL: ...in a way that will be
acceptable.

MS. BUDGELL: Q. Are the types of observations
contained in the Board psychologist's report similar to those in
yours?

A. Basically, yes.

MS. BOWLBY: I...

MR. CHAIRMAN: The answer is there.

MS. BUDGELL: Q. Finally, Doctor Silverman, you
were questioned as to your instructions in preparing the report
and going to observe Emily. You were also asked whether or not,
because of your firm commitment to the inclusive setting, your
opinion was essentially established before you actually observed
Emily. I would like to clarify. When you were actually
observing Emily what was the primary main criteria that you were
using before you would ever give your professional opinion as to
her placement?

A. A decision as to whether or not the program
in the current placement was appropriate and whether or not I
felt, with some modifications or adaptations, that she could cope
within it and benefit from it.

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Re-Exam - H. Silverman

MS. BUDGELL: Just a couple of things.

5
RE-EXAMINATION BY MS. BUDGELL CONTINUED:

Q. Doctor Silverman, did you observe any
behaviour problems in Emily?

A. No.

10 Q. Now, just to clarify as well. You were
speaking in terms of large numbers of people holding different
opinions. Do you have any statistics on the percentages, or
roughly, of educational psychologists who share your views versus
15 those who don't?

A. No, I'm not aware of those statistics. One
just gains an overall impression based on the kind of literature
that is appearing in the journals and the kind of research that
is going on. All I can add to that is that in April I was at the
20 American Educational Research Association conference in Atlanta
and the section of it devoted to special education was concerned
primarily with assisting School Boards to develop quality
education programs.

25 Integration versus segregation is no longer an
issue in the literature and in the research people do. It's an
established situation as far as most educators are concerned, but
one doesn't argue that any more. One just assumes that even
30 though there are pockets of resistance inclusion is the most

5 appropriate way to go and given that how do we enhance the
quality of education for students who are included in regular
programs.

10 Q. All right. Just to clarify one other point.
You were describing what the E.A. was doing while Emily was at
the computer. Do you recall what she was doing while Emily was
watching the slides on the rain forest?

A. She was sitting...

15 MS. BOWLBY: Excuse me. I'm going to object to
that. That doesn't arise out of any of your
questions.

20 MR. CHAIRMAN: No. It's going a little more
precise. My question was directed at what Emily
did do when she wasn't being given specific
involvement by the E.A. I was more interested in
Emily's behaviour than the...

25 MS. BUDGELL: That's my question, to give a full
picture of what Emily was doing at different
times. I thought the rain forest slides might
sort of fill out that example because it's one
more opportunity when Emily was attending at
something. I'm just wondering what Emily was
doing while she was watching the slides...

30 MR. CHAIRMAN: Okay.

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In-Chief - M. Lock

5 but it's not really established because we have no premorbid
information about the child in utero. Basically they seem to
occur at birth and are present from then on.

Q. From your knowledge of Emily as her doctor
since she was born are you able to predict what her ability is to
learn?

10 A. I don't think that that is a reasonable thing
to try to predict. I think that during the course of development
what usually happens is that there are many different ancillary
medical services which assess the child at any one point in time,
15 but I don't think that it's possible to completely predict what
any child's abilities are. It's the same as a normal child;
it's not possible to predict a normal child's abilities from one
age to the next year.

20 Q. Do you have any particular experience with
children with disabilities that lead you to that conclusion?

25 A. I have a very particular child that basically
altered my perception of that particular question with regards to
trying to predict abilities in children. Approximately 12 to 13
years ago I was also assisting with the delivery of another child
that happened to be born with basically half a brain. This young
boy was - his father was a lawyer, a local lawyer here in the
city. I remember at the time thinking that this child was so
30 severely disabled from a multitude of birth defects including

1473.
In-Chief - M. Lock

5 what could be called a cerebral palsy type condition with
paresis, left-sided paresis because of half development of the
brain and because of other congenital heart defects, seizure
activity, et cetera, et cetera, there were a whole host of these
things, that I really didn't think that the child was going to
survive beyond perhaps the first year of life.

10 I can remember very clearly having a discussion,
as these people live next door, with the parents as to what I
thought, at that time, would be considered reasonable placement
for this child. I thought that the child was severely disabled,
15 that it would need 24 hour care, in spite of the fact that the
child may have seizures needed 24 hour care and nursing
facilities which I did not think that the parents could probably
provide themselves on an ongoing basis. I did not think,
20 according to my training at that time, that this child would ever
develop in any sort of way that would allow this baby to be any
functioning member of society, able to communicate, able to do
most of the usual interactive processes that we carry on in daily
social activities.

25 We are now 13 years down the line and a lot of
ancillary services later. This child is now communicating,
albeit a Bliss board, computerized, if you wish, communication,
is understanding, shows quite remarkable abilities in some
30 academic areas. Basically it altered my perception of where this

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In-Chief - M. Lock

particular type of patient can go and where their goals and aspirations can be.

5 Through this time the parents didn't take my advice, luckily, and integrated the child into a special schooling type situation. He was not put into a normal school because he had a visual defect as well and this precluded him from taking part in a regular visually orientated classroom. 10 This child really has progressed further than ever I anticipated with my training that he could possibly go.

15 Ever since then I've altered my perceptions of what handicapped children can do. Perhaps sometimes we handicap the children in placing them in situations where we make these assessments about what their abilities are and where they are going to go. Perhaps that's a self-fulfilling process and we make that come true because our perceptions and our teaching is 20 such that this child is not going to maintain that. If our belief system is held in that way I think we're possibly influencing the way that we approach them and that may be influential on their development in total. So, I don't think 25 that it's possible to assess where a child is going to be, even a normal child, let alone a handicapped child, and especially handicapped children because in my experience they surprise me.

30 MS. MOLLOY: Thank you very much, Doctor Lock.

Ms. Bowlby may have some questions for you.

MS. BOWLBY: Could I just have a moment?

MR. CHAIRMAN: Do you need some time?

MS. BOWLBY: Just one moment.

MR. CHAIRMAN: Ms. Bowlby, are you ready to
begin?

MS. BOWLBY: Yes. Just very briefly.

CROSS-EXAMINATION BY MS. BOWLBY:

Q. Doctor Lock, the young chap you were telling
us about, we don't want to identify him for the record but I
understand - shall we call him J.? His first name starts with
J., I understand.

A. Mm-hmm.

Q. I understand that he attended at Lansdowne
Children's Centre where he learned his communication system.

A. I think that's correct, yes.

Q. My understanding is that he then went into a
special class in Greenbrier Public School within the Brant County
Board.

A. Possibly. As I say, I don't know much about
his schooling because this child, as I say, is a neighbour of
mine. He is a patient, actually, of my partner, so I am not
involved in his day to day care unless he is not there.

Q. You wouldn't know the - did you understand

1476.
By Mr. Chairman - M. Lock

that he did attend a special class? That's my information, that
he attended a special class at Greenbrier Public School.

A. I'm sure he did, yes. I wouldn't dispute
that.

Q. And then went to W. Ross Macdonald?

A. Yes.

MS. BOWLBY: Those are the questions I have.

MR. CHAIRMAN: Thank you. Ms. Molloy, anything
you would like to ask?

MS. MOLLOY: No.

MR. CHAIRMAN: Just a moment before you step
down, Doctor. There may be something from the
Tribunal. I have one. I see from the written
notes in your file that you've taken the required
medical college course in illegible handwriting.
I do think I see something under November 30th,
1992 about laryngeal tracheal spasm in the middle
of the first page, laryngeal tracheal spasm; is
that what I am reading there?

A. I am sorry, which date?

MR. CHAIRMAN: November the 30th, 1992.

A. Yes.

MR. CHAIRMAN: Is that related to C.P.?

A. No.

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By Mr. Chairman - M. Lock

MR. CHAIRMAN: It is something that will occur
naturally in any child?

5 A. Yes. This was a particular event that
occurred to Emily which she had not had before which really foxed
both the pediatrician and myself. We were puzzled, actually, by
10 this problem because the pediatrician and I wondered whether or
not she actually had pertussis whooping cough or whether she had
a pertussis syndrome which is a viral type illness which can give
similar symptoms but is not actually pertussis. This was really
the first time that Emily had had this and it was probably
15 secondary to a viral infection and/or an allergic reaction at the
time or a combination of both.

MR. CHAIRMAN: I see. Really, then, it's all
part of the general medical examination and
20 medical care that you have taken with regard to
Emily?

A. Yes, yes.

MR. CHAIRMAN: You told Ms. Molloy in your
examination-in-chief that Emily is not what you
25 would classify as a fragile patient in the sense
that you don't see her as frequently as you see
children who don't have cerebral palsy.

A. That's right.

30 MR. CHAIRMAN: Could you characterize her

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By Mr. Chairman - M. Lock

susceptibility to physical risk vis-a-vis other
nine year olds?

A. I think that these children are perhaps,
perhaps at a little bit of an increased risk because of their
ability to perhaps - because they're not so physically active as
a normal child if they come into contact with something perhaps
they're a little bit more susceptible to succumbing to symptoms
which a normal child would get through a little easier. But as
you can see from the number of visits that I've had with Emily,
whether this is a reflection of the care that she gets at home
or - but I wouldn't consider that I see Emily any more, with any
more increased frequency than I would see another child, perhaps
less.

MR. CHAIRMAN: Very good. Thank you. Anything
out of that?

MS. MOLLOY: No.

MR. CHAIRMAN: Thank you very much.

THE WITNESS: Thank you.

COURT REPORTER: Could we have a break now?

MR. CHAIRMAN: Yes. I think that Ms. Bowlby may
want a little bit of time. This does not have to
be on the record.

--- OFF THE RECORD DISCUSSION

R E C E S S

1634.
Cr-Exam - B. Cronkwright

Q. Do you recall having a discussion with
somebody in Special Ed. about Emily?

A. I remember talking to Mr. Carter at different
times about some items.

Q. So, Mr. Carter, you're saying, was involved
in helping you design the I.P.P.?

A. He would have some input.

Q. Did he? Do you remember him having input
into the grade one I.P.P.?

A. Did he sit with us when we actually wrote it
down? No.

Q. What did he do?

A. He would have been a resource person that we
would have contacted.

Q. Do you remember contacting him about the
I.P.P.?

A. I remember contacting him about some
information.

Q. What information?

A. Things to do with equipment, chairs. I can't
remember if it was scissors or what it was about.

Q. So, technical assistance?

A. That's what I remember at this point,
contacting him about.

1635.
Cr-Exam - B. Cronkwright

Q. Did you talk to anybody about programming or
teaching methods, curriculum?

A. Yes. I have fairly close contact with
Suzanne Earle, Jackie Ireland, the Superintendent for Special
Education.

Q. Was Suzanne Earle involved in helping you
design the I.P.P.?

A. I couldn't say for sure how much her input
was on that I.P.P. at that time.

Q. Did Jackie Ireland have any input on that
I.P.P.?

A. Yes, she would because we usually share. Any
questions or concerns that I have I would run it by and call them
and say, "This is how I'm planning to set this up," and they may
say, "Fine," or, "We might try this."

Q. Did you seek out any principal or teacher who
was involved in inclusive education with children like Emily?

A. Our policy is somewhat inclusive within our
own county. We have many more children included than not
included. So, a lot of our principals have many identified
students in their regular classroom settings including myself.

Q. What about children who are nonverbal, any of
those included?

A. I'm not sure if we have any others. I

couldn't answer that.

5 Q. I take it from that that you didn't consult
with anybody else?

A. Well, I consulted with the Special Ed.
Department who has a master list of all identified students in
the county and they did give me various suggestions and ideas and
10 people to contact for material or how to do this program or how
to do that and they never once mentioned that. So, I would
assume from that that we didn't have another child really like
Emily that I could go to someone for or I would have heard about
15 it, I hope.

Q. Were you aware that the Wellington County was
including children like this within the regular curriculum,
children who were nonverbal?

A. Not specifically.

20 Q. Were you aware that there were other
districts, other Boards of Education within Ontario that were
doing it?

A. Yes, and some that buy services. The
25 terminology varies.

Q. Were you aware that there were children who
were nonverbal that were being integrated into classrooms,
regular classrooms in other counties, other Boards in Ontario?

30 A. I wasn't aware of any specific situations.

1637.
Cr-Exam - B. Cronkwright

5 Q. So, I take it if you weren't aware of it you
also didn't go out and observe it being done?

A. That's correct.

Q. Did any of the teachers in your school go out
and observe other teachers who were successfully doing this kind
of programming?

10 A. Would you be a little bit more specific about
what they observed? A child that was nonverbal?

Q. A child who had significant disabilities like
Emily and who was nonverbal like Emily and who was integrated
15 into a regular classroom. Did you go out and observe that
working anywhere?

A. I've seen it working and I've been involved
with in-service for that.

20 Q. Oh, have you?

A. At Jane Laycock School and Lansdowne
Children's Centre.

Q. When?

A. Back when I was a curriculum assistant.

25 Q. But Jane Laycock is not an integrated
setting; that's a totally segregated setting.

A. Excuse me. You asked me if I had ever
observed children, I believe.

30 Q. No. In a regular classroom. Children with

these kind of disabilities integrated into a regular classroom.

A. I'm sorry. No, I didn't observe that.

Q. Were you aware of it going on in Ontario?

A. Yes.

Q. Did you seek it out? Did you go looking for
ideas? How did you do it?

A. No.

Q. When you ran into difficulties, which I
gather you felt you had in grade one, and you determined that now
this is not going to work and you start the plans to recommend to
the I.P.R.C. that Emily be moved out, at that point when you got
into difficulty did you go and seek out teachers who were doing
it successfully to see what they were doing?

MS. BOWLBY: I object to the question because
it's not been established that the Board felt
that the Board got into difficulty. I think that
that's an unfair question to put to the witness
in that way.

MS. MOLLOY: Q. Let me put it another way. When
you got part way through grade one and you decided that you would
recommend that Emily be moved out of the school was that because
you felt that it really wasn't working?

A. Because we were still unable to evaluate.

Q. Does that mean you felt it wasn't working?

5 A. It appeared that there was no means of
evaluation or communication.

Q. Okay.

A. I'm not saying it wasn't working. I don't
know, we don't know what she was doing.

Q. Okay.

10 A. We couldn't evaluate any growth.

Q. Let's just deal with that point and then I'll
come back to the other. You said your problem was that you
couldn't evaluate what she was learning.

15 A. That's one problem.

Q. Okay. Let's deal with that problem. You
didn't know what was being absorbed. You didn't know if anything
was being absorbed, true?

20 A. True.

Q. And because she couldn't tell you that she
was learning things you had no idea if she was or wasn't, is that
fair?

A. I think so.

25 Q. Since you don't know that she was learning
something isn't it equally true that you don't know the reverse
as well; she might have been learning but you just don't know?

A. That's true.

30 Q. Did you make any attempt, then, to contact

1640.
Cr-Exam - B. Cronkwright

5 other teachers who were dealing with this kind of student in the
regular classroom to see how they deal with that problem, because
you must agree that's a problem?

A. What do you mean this kind of student? I'm
just not clear if you're talking mainly about being nonverbal.

10 Q. A student who has serious physical
disabilities and is nonverbal, do you think that accurately
describes Emily?

A. All right, yes. Would you mind repeating the
question? I'm sorry.

15 Q. Okay. You come to the determination that you
have a problem in that you can't assess whether or not Emily is
learning, is that fair?

A. I don't know if it's a problem. The fact was
20 we were unable to assess her growth.

Q. Well, that was one of the reasons you decided
that you were unable to meet her needs?

A. Well, you said that I had a problem.

25 Q. You don't think that's a problem?

A. I guess it's a concern. I'm not sure that I
had a problem.

Q. Okay, the school had a concern, a difficulty.

A. Okay.

30 Q. Is difficulty an okay word?

1641.
Cr-Exam - B. Cronkwright

A. Okay. I just wasn't sure. I'm sorry.

Q. I didn't mean anything negative.

A. I'm just trying to be sure of exactly what
you're saying.

Q. You have a difficulty, a concern or a problem
about the fact that you can't evaluate Emily in terms of how much
she has learned?

A. Correct.

Q. Correct?

A. Yes.

Q. At that point did you make any attempt to go
out and search out teachers who were dealing with students with
similar needs as Emily in the classroom to see how they coped
with it?

A. No.

Q. Did your teachers do that?

A. No, not that I'm aware of.

Q. Did you encourage them to do that?

A. No.

Q. Did you even think of doing it yourself?

A. We worked through the experts in our Board
regarding means of communication, communication systems, we had
constantly done that, and on the advice of the parents.

Q. Did you even think about contacting someone

who was already doing this to see how they dealt with it?

MS. BOWLBY: Mr. Chairman, I don't know how many
times the question has to be asked. I think that
it's getting to be a little repetitive.

MS. MOLLOY: He hasn't answered the question.

MR. CHAIRMAN: I think the witness has
acknowledged that they didn't...

MS. MOLLOY: Do it.

MR. CHAIRMAN: ...go to another school.

MS. MOLLOY: I asked him if he thought of it.

MR. CHAIRMAN: Well, we'll accept that, but I
hope you don't go down the road any further than
that. Go ahead and answer that question.

MS. MOLLOY: Q. Did you think about it?

A. Had I thought about it?

Q. Yes.

A. Observing another child with similar
difficulties in an inclusive setting outside of our Board?

Q. Consulting with another teacher or principal
who was including a child with those kinds of needs successfully
to see how they dealt with the problem, did you think about doing
that?

A. We have other children similar...

Q. Just answer the question.

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Cr-Exam - B. Cronkwright

5 A. ...being dealt with by principals and
teachers in our county and I did consult with many of those. Our
policy is not complete 100 percent inclusive and I did not go out
of the county.

10 Q. You told me already that you were not aware
of any nonverbal child in a regular classroom in the County of
Brant, correct?

A. Yes.

Q. All right. Just bear with me while I repeat
the question. You haven't answered it yet.

15 A. I'll try.

Q. A nonverbal child, a serious physical
disability integrated into a regular classroom, okay; did you
search out teachers of such children, think about doing that in
order to see if they had similar problems and how they dealt with
20 it?

A. No.

Q. That didn't even cross your mind?

MS. BOWLBY: Well, come on.

25 MR. CHAIRMAN: I think he said no.

MS. MOLLOY: I'm not sure I...

MR. CHAIRMAN: I think 'no' is fairly clear, Ms.
Molloy, isn't it?

30 MS. MOLLOY: Q. All right. You didn't think

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MS. MOLLOY: This is fine.

MR. CHAIRMAN: We will break for ten minutes. We
will reconvene at 2:40.

R E C E S S

O N R E S U M I N G :

BRIAN CRONKWRIGHT RE-ENTERS WITNESS STAND

PREVIOUSLY AFFIRMED

CROSS-EXAMINATION BY MS. MOLLOY CONTINUED:

Q. We were dealing with this Part A observation
document that was before the I.P.R.C. We started to talk about
what your involvement was and I think I got a little off point
here. When this matter came before the I.P.R.C. you were the
person who put forward this document?

A. No, I was not.

Q. Oh, you weren't?

A. No. Mrs. Piggott did.

Q. Okay. Under item 2.0, the Assessment column
says, "No change noticed in level of input." Do you see that?

A. Yes.

Q. Do I take it since you said that this was
basically an objective assessment that it means only that you

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Cr-Exam - B. Cronkwright

haven't been able to measure that in some concrete way...

A. Right.

Q. ...assess it, is that right?

A. Nothing different than we've been able to do
before. No change.

Q. This doesn't mean that there hasn't been a
change; there just isn't one that you feel confident about saying
is definitely there?

A. Yes, we're not able to identify.

Q. All right. Under item number 3;
opportunities provided to respond to visual and auditory
stimuli. Now, this related to grade one, I appreciate, and the
evidence we heard from Doctor Silverman related to grade two.
Doctor Silverman's observation was that there was a very rich
environment in the classroom and lots of opportunity for visual
stimulation and auditory stimulation, there were lots of things
happening, a very rich environment.

MS. BOWLBY: Excuse me. In fairness, Doctor
Silverman was speaking of the grade two/three
class.

MS. MOLLOY: That's what I said.

MS. BOWLBY: Sorry. This is the grade one class.

MS. MOLLOY: Q. That's what I said, right?

A. I heard what you said, yes.

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In-Chief - J. Piggott

school fun fair, a concert for the Burford family of schools.

5 Q. Now, did the kids go along on meet the
teacher night?

A. Yes, they did.

10 Q. What would the kids do? This is totally
foreign to me because I have a youngster who is preschool age and
we didn't get to go along.

A. The kids would socialize with each other.
Sometimes they would take their friends to meet their parents.

15 Q. Did Emily attend with her parents on those
nights?

A. No.

Q. Did other kids?

A. Yes.

20 Q. What happened?

A. They interacted with each other and the
parents interacted.

25 Q. Now, academically did you observe any
progress...

A. No.

Q. ...in Emily? How about the other youngsters
in the class, were you able to see development in these areas?

A. Yes.

30 Q. In the area of academic growth. Did you see

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In-Chief - J. Piggott

any indication that Emily was imitating or modelling the
behaviour of her peers at any point in the grade one year?

A. No.

Q. Now, as a teacher did you see any indication
that Emily was benefiting from instruction in the regular class?

A. No.

Q. Was Emily able to benefit from the curriculum
even as adapted?

A. Not that I know of.

Q. In your view could Emily's academic needs be
met in a regular class placement?

A. I don't think so.

Q. Her social needs?

A. Yes.

Q. Her physical needs?

A. Only if she had an aide.

Q. Now, with respect to social needs and
physical needs as between a regular class placement and a special
class placement what is your view as to where Emily's needs would
best be met? I'm talking social and physical now.

MR. CHAIRMAN: You are talking social and...?

MS. BOWLBY: Social and physical.

MS. BOWLBY: Q. Maybe you can deal with them one
at a time.

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5
10
15
MS. MOLLOY: I don't know if this witness has the qualifications to express an opinion on how social needs could be best met as between a regular classroom and a special education classroom. She has no expertise to evaluate that. She has got no background in special education or knowledge. It has not been established that she has any knowledge or understanding of special education settings. She has no professional qualifications to make that judgment.

20
25
MR. CHAIRMAN: Before you answer, Ms. Bowlby, we take the position, and we have already discussed this, that this witness has 32 years' experience as a primary teacher and has experience with exceptional children, Ms. Molloy, and it's a question that we would ask if it weren't asked by either counsel. So, we're going to allow that question.

30
MS. BOWLBY: Q. I will ask the question again.
Let me break it down. With respect to Emily's social needs where would you see those needs best met, in a regular class placement or in a special class placement?

A. I would think a special class.

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Q. Why is that?

5 A. In special classes she could have the individual needs that she needs and she could be integrated too, so she could have sort of the best of both.

Q. Physical needs?

10 A. My understanding of special classes are that the facilities in the room would make it easier for Emily's physical needs to be served.

Q. Would you have any concerns for Emily were she moved to a special class in a Brantford school?

15 A. No, because I would feel that Emily was going to be in the care of another professional person who had expertise in that area.

20 Q. Are you aware of whether youngsters in Burford attend schools outside Burford?

A. Yes, there are.

Q. Could you give us some examples?

25 A. There are some children that attend Dufferin School, children who attend W. Ross Macdonald, some attend B.C.I. which is Brantford Collegiate Institute, some come into Farrington.

Q. What is Farrington?

30 A. It's an enrichment centre. One of the children I had that was hard of hearing came into King George,

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the hard of hearing class. These others are current.

5 Q. Now, with respect to the I.P.R.C. decision
regarding Emily's placement, were you on the I.P.R.C. committee?

A. No.

Q. Were you specifically requested for your
recommendation?

10 A. No.

MS. BOWLBY: Those are all the questions I have.

MR. CHAIRMAN: It seems like a useful time to
take our lunch break and give the appellants some
15 time to prepare cross. I have got quarter after
twelve, so we can begin at - well, an hour is
going to be too little time so let's aim for
between quarter after twelve, pardon me, after
one and one-thirty, certainly with one-thirty
being the latest.

MS. MOLLOY: I should say at this time that I
will be asking to have Donna Bell excused during
the cross-examination of this witness.

25 MR. CHAIRMAN: I would have expected that, yes.
So that, Mrs. Bell, you - I assume you are Mrs.
Bell, I think I made the connection with the
video tape. You will be asked to be out of this
30 room while Ms. Molloy is cross-examining Mrs.

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Cr-Exam - J. Piggott

assist me on the physical needs.

5 Q. Yes. I should add that they also agreed that
there was a need for support. So, they agree with you there,
that you would need some support to do that, so that we take as a
given.

10 A. I would think that I would need some help or
some way of assessing the academic area.

Q. We heard from Mr. Cronkwright yesterday.
Were you here for Mr. Cronkwright's evidence?

A. Yes, I was.

15 Q. Mr. Cronkwright also expressed some concern
about the difficulty of assessing a student like Emily who is
nonverbal; is that a concern that you share?

20 A. Yes, it is, to make a meaningful program
academically for her.

Q. Notwithstanding the difficulty in assessing
how much Emily has absorbed do you agree that the basic teaching
method that you use is one which any child would learn well from?

25 A. Any child should learn well, but it doesn't
necessarily mean that the child will learn well.

Q. And the difficulty with Emily is you can't
tell if she is or isn't?

A. That would be probably correct.

30 Q. When you set out to - let me back up. Do you

5 MS. MOLLOY: Q. "She enjoyed music today and
participated vocally." There are a number of notations
throughout here about how much Emily enjoyed music. Is that
something that you noticed as well?

A. Yes.

10 Q. What kind of behaviour would she exhibit that
led you to believe she enjoyed music?

A. Just gestures, you know, with her hands.

Q. Her mother has described that as being more
animated physically, would that sum it up?

15 A. Yes, that would be accurate.

Q. What about her facial expressions?

A. Yes. She would be more - it would be a
serene look I would say.

20 Q. Smiling as well?

A. Not necessarily smiling, but a peaceful look.

Q. The next paragraph on that page.

"During gym the teacher..."

25 Would that be you?

A. Yes.

30 Q. "During gym the teacher raised her arm for
the children to stop and listen. I raised
Emily's right arm but when she saw the other
children raise their arm she raised her left

5 "What is your favourite subject?" and you were going around asking the children and you asked Emily, "What is your favourite subject?" and you said, "All of the children and Mrs. Bell responded, 'French.'" The other children obviously had noticed Emily's reaction to French?

10 A. Yes. Basically on Fridays the French teacher used a video called Tele Francaise and Emily would become quite animated when the video was on and we always told the other children it was because she really liked French.

15 Q. I don't know an easy way to tell you how to get to this. It's over about another ten pages or so. It's dated Friday, September 13th, 1991. The second page of that entry. Does everybody have that? On the second page it starts out, "...decided to take Emily down with them." Sorry. Just give me a moment. Actually, why don't we go back to the page before because this is an example you talked about, a way you had included Emily and it's a good account of how much she enjoyed it.

25 "A very full day for Emily. It was day three and her class's turn on the playground equipment. She went down the small slide. (I lifted her up and sat her on the slope and guided her down.) Then we walked in the sand (that was a challenge!) over to the big slide to watch the

30

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Cr-Exam - J. Piggott

5 go all the way around again. We practised this. Emily was there
and we tried to get her to participate in this, but she wouldn't
do it on cue. So, when we got ready to tape this for our
performance we went and did it and after the soundscape had just
ended and we were just about to clip the tape recorder off Emily
10 let out a squeal and all the children thought it was wonderful
because she had contributed to our soundscape. During the
presentation, before this, we said all the grade ones had
participated and they kind of looked and we said, "See if you can
hear Emily." And, of course, at the very end when she gave her
15 little squeal everyone recognized that and when everybody else
was laughing - and I think the squeal on the tape was very high-
pitched, and Emily likes high-pitched noises - she laughed too.

20 Q. The reference to the other children thinking
that she was the one making the traffic sound? I mean, I may be
asking you to stretch too far here; just tell me if I am.

25 A. I think that they thought she was doing the
"mmmmmm" sound because they were rather accustomed to hearing
"mmmmmm" from Emily at other times. So, when they were listening
through this it would be my opinion that they thought that was
her until the very end and then they realized that this little
high-pitched squeal was, in fact, Emily.

30 Q. The children used to play with Emily in the
playground a fair bit, right?

In fact, she did get that little badge, right?

A. Yes, she did.

Q. Skip a paragraph and then there is an entry:
"Emily attentive during language today and
cooperative for hand over hand painting. Emily
seeing something Halloweeny that would scare her.
We chose a bat."

Do you know what that was about?

A. I think that was the topic of the painting.
She was to choose something that would scare you for Halloween.

Q. Oh, I see. Okay. This reference to
"attentive during language today and cooperative for hand over
hand." What kind of language activity would you be doing with
the class?

A. I would likely have read a story. This would
be close to - we would be starting our Halloween activities.
This was a painting topic and it would likely be a Halloween
story that I had read and we would discuss the story. So, when
it's saying she was cooperative it probably meant that she had
listened without interrupting us.

Q. So, "attentive for language and cooperative
for hand over hand painting," that was probably a painting
activity that flowed from the story you read?

A. Likely.

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1856.
Cr-Exam - J. Piggott

I take it chip duty was something she enjoyed doing?

5 A. Yes, because she had contact with everyone in
the school.

Q. She likes that? Nodding doesn't get picked
up.

A. Yes.

10 Q. "During language she kept trying to put her
head on desk. Vocally and physically objecting
to work (often appeared to be saying 'leave me
alone!'). Once when I tried to have her establish
15 eye contact with me she deliberately ??..."

Underlined with a couple of questions marks on it.

"...closed her eyes and squeezed them tight."

Now, this is described as being different behaviour for Emily.
20 Do I take it this is more extreme than the kind of activity had
been seen previously?

A. I think it would be more extreme and the
length that it went on during the day.

25 Q. There's a statement here, just a little below
halfway down the page there is an arrow pointing that says:

"Do you have any method of quieting her when it's
not appropriate? (We encourage her sounds
whenever possible, but sometimes it is not
30 appropriate)."

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Cr-Exam - J. Piggott

Q. It sounds entertaining, was it?

5 A. Yes. As it says, Mrs. Bell assisted her
until she was on the floor and then she moved out and the other
children were the ones finding her, running to get help and that
and Emily found it amusing because she was laughing while she was
there on the floor.

10 Q. This would be another example, then, of how
you've used the concept like Circle of Friends in the classroom?

A. Yes.

15 Q. It's another example of Mrs. Bell moving to
the side and allowing the children to interact directly?

A. Yes.

Q. When that happened the children did interact
directly?

20 A. Yes, they did.

Q. Did the other children enjoy this activity as
much as Emily?

A. I think so.

25 Q. December 17th, 1991. This, I think, is the
day that you talked about where the children had a program for
their parents and then they sang and then they served tea
afterwards.

A. Yes.

30 Q. Mrs. Eaton was actually there for that

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June PIGGOTT - CY-EX.

5 year progressed and this is what we were trying to show and the responses that Emily made as the year progressed, she actually became more contented than she had been in September and that was the purpose.

10 Q. So, you did see an improvement in terms of amounts.

15 A. Yes, I can say personally that's why I included the numbers. In September it was nine times and as it went on in the year, by January, she was just doing it three times, but in September, for example, one day, and I can't tell you right now exactly what day it was, but Emily sobbed just like her heart was going to break and she did this and to me, that was not a contented person, but as the year went on, she didn't do that and she would
20 maybe cry or whimper, but it would be a short sustained period.

25 I wanted to show here that in fact her behaviour was moving towards being contented again, but that it took - takes all Grade 1 children a while to adapt and Emily didn't come in and be contented the first day of school. So, her response here - in my opinion, her response is indicating that it took her a while to adjust before she can achieve that attainment.

30 Q. But ultimately she did improve.

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5

A. Ultimately she did improve and she did maintain a level of contentment that I was told that she had had in kindergarten.

10

Q. Now, the assessment column, and we've heard previous evidence that you're being cautious in the assessment column to be as objective as you could, is that right?

15

A. We were trying to be.

Q. So, when you indicate item 1.0: "No accurate way to assess the level of contentment," you're not, I take it, saying that she's not content, but merely that you can't measure it.

20

A. I can't measure it, no.

Q. You already testified, in fact, that you had seen some improvement, but I take it that was a more subjective reaction to Emily and not something that you wanted to put in this sort of scientific assessment column?

25

A. Yes, because she wasn't crying as much in January as she did in September, but I hadn't done any scientific experimentation on that.

Q. To be as objective as you could, you simply recorded that you couldn't assess it. Is that why you said that?

30

A. Yes.

Q. Was there any particular reason why you didn't write in here that there was improvement?

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June PIGGOTT - Cr-Ex.

5 tions," 1.1, "Expressive Language." 1.2, "Receptive Language" and
then number 2.0 is "Fine and Gross Motor." The numbering is a
little different from the I.P.P., but it's the same categories.

A. Yes.

10 Q. All right. Under "Expressive Language," we
talked already a good deal in your cross-examination last day about
signing. In this Part B instead of "Assessment," the third column,
you have a column that's headed "Concerns of Progress" and you've
15 listed under "Concerns of Progress" the difficulty with Emily's co-
ordination, making it hard for you to read what signs she might be
using.

A. Yes.

20 Q. What was the reason for making this column
rather than "Assessment", simply making concerns?

A. Rather than "Assessment"?

25 Q. Well, in Part A, you did what had been done,
how Emily responded and assessment. In Part B, you have what has
been done, how Emily has responded and concerns.

30 A. I thought that rather than assessing this, I
would indicate the concerns that I had because under "Expressive
Language" and "Receptive Language," I wasn't really able to make
an assessment. I would indicate the area that caused me concern
in thinking that maybe she knew a lot more than what we knew she

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5 knew and if I were going to write "assessment" here, I would have to write that I'm not able to assess that. I just wanted people aware that these are some things that you should look at.

Q. Again, this is not like a report card kind of situation where you're talking about the positives and negatives.

10 A. No.

Q. What you're trying to highlight here is simply what you're concerned about.

A. Yes.

15 Q. So the fact that you've listed concerns doesn't mean that there weren't various achievements as well.

A. That's true.

Q. So under "Concerns for Progress," you've got:
20 "Emily's co-ordination makes it difficult to know for sure whether she signed or not."

Again, that's a physical problem, right?

A. Yes, it was.

25 Q. And you are not implying by this that she doesn't know any signs or understand any signs, but merely that it's difficult to understand what it is she is doing.

A. That's correct. The parents were able to observe more signs that we were at school. We were only able to observe the signs when Emily was with a small group of children and
30

June PIGGOTT - Cr-Ex.

5 that would sort of parallel what the parents would see, because she
would be with a small group there and a familiar setting and they
had told us many signs that they could observe and we hadn't
observed that, but perhaps we didn't know her approximations and
because of her physical disability, I didn't want to discredit that
10 she didn't know those.

Q. Under the next heading, "Opportunity to
communicate through appropriate sounds," there are a lot of
observations listed and how Emily responded and a lot of those we
15 went through already in the communication book and these are
simply, I take it, samples. These are not all the observations,
but these illustrate typical responses by Emily, is that right?

A. Typical.

20 Q. And in your "Concerns for Progress," you
mention here what you were in fact speaking about, difficulty with
not being able encourage vocalization in some settings.

A. Yes, that was our concern.

25 Q. So that was a concern that you had?

A. Yes, it was.

Q. And again, the positive side of that in terms
of Emily's response to things you weren't documenting for this
30 purpose.

A. No.

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June PIGGOTT - Cr-Ex.

Q. It doesn't mean they weren't there.

A. That she didn't respond?

Q. That's right.

A. She responded inconsistently. She responded like with the cow on her hand, it was a tactile thing, when she put her hand on Mrs. Bell's throat, it was a tactile thing and it would be a very positive response.

Q. Under "Receptive Language," under "Opportunities to respond to her indoor and outdoor environment," you have as an observation on how Emily responded that:

"She laughs and giggles at inappropriate times in her regular Grade 1 classroom setting. She falls asleep at some time during most days,"

and under the "Concerns," column, you have a statement:

"Difficult to evaluate as a regular classroom mode has no strategies or techniques to evaluate Emily's receptive language."

Again, in this comment, are we talking about the same sort of thing that we did earlier about the difficulty in assessing in an objective way?

A. Yes.

Q. Is that largely because of Emily's communication difficulties?

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Donna Bell - Cr-Ex.

student?

5 A. That's very difficult. I mean, you're asking
big changes of a regular Grade 1 student too. They're now coming
to school all day. There would definitely be an adjustment period
for Emily, but I don't know that you could compare her to a regular
10 Grade 1.

15 Q. What I'm saying, not just adjusting to being in
Grade 1 and being all day, but just generally new things to Emily
are more difficult to adapt to or adjust to than a regular Grade
1 experience.

20 A. That's a judgment call, because it's difficult
for Emily to really communicate to us or for us to understand
Emily's communication. Emily might be a child that goes with the
flow.

25 Q. You don't know, is that what you're saying?
You can't make that judgment here, you don't know?

30 A. I think you're making a comparison to a regular
Grade 1 student and I don't think that's fair. Every child is an
individual, every child adjusts individually.

Q. So you're not able to make that judgment, is
that what you're saying?

A. I don't think it's fair to Emily that I make
that judgment.

Donna Bell - Cr-Ex.

5 (dinosaur shaped of course) Emily was part of the
kitchen clean-up crew. She loved operating the dust
buster! (Home and School have bought 2 for the
school) Not bothered by it at all!!"

10 Again, is this an example of a noise that you had thought she might
be startled by, but she was okay with?

A. Yes.

15 Q. Was it part of the general routine of the
classroom that Emily would take a turn with the other kids doing
tasks just as other children would?

A. Yes.

Q. So it wouldn't be out of the norm for Emily to
be part of the sort of group that was doing the cleanup.

A. No, that would be normal.

20 Q. And you would try to give her a task that she
could manage as part of that?

A. Yes.

Q. So she would feel good?

25 A. Yes.

Q. Skipping over to some of the references that
we've done in general. April 9th, '92. This is another example
of something we've just talked about, but perhaps is a better
30 illustration of it.

A. Yes.

Q. What were they doing? Just watching t-ball?

A. Yes. There were t-ball teams. It was like an intramural activity and we got to go out and watch. It was probably one of the final games, so different classes in the school would go out and watch the game.

Q. Both Mrs. Piggott and Mr. Cronkwright talked about the steps taken by not just you and Emily's direct teacher, but all of the school staff to include Emily as a member of their community. Would you agree that that was the case?

A. Yes.

Q. And would you agree that the children as well picked up on that and were very receptive to Emily?

A. Yes.

Q. Would this have been an example of a situation where Emily was part of the group?

A. Oh, yes, very much so.

Q. This wasn't out of the norm, this was a common kind of thing?

A. Yes, when we would sit on the grass, it was very common for lots of children be around her in that type of activity.

Q. In your evidence in-chief and I'm not going to take you to all these references because Mrs. Bowlby has already

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Donna Bell - Cr-Ex.

5 done it, you went through a number of examples of signing by Emily
and Ms. Bowlby pointed out a lot of those, in fact all the ones
that she pointed to and that I have found in fact in the book
seemed to be related in some way to food?

A. Yes.

10 Q. I also noticed and correct me if I'm wrong on
this, but a lot of the signing was around the chip monitor duty.

A. A lot of signing from Emily?

Q. Yes.

A. Or the signing from the other student, yes.

15 Q. The signing from Emily.

A. Yes.

20 Q. And the other occasion that you made note of had
to do with another child that was eating a snack.

A. Yes.

Q. Would it be fair to say that these signing
activities by Emily were not only food-related, but involved
interaction with other children?

25 A. There would be interaction with other children
going on. The signing of Emily would not be to them per se. Like
when she signed "eat," she's not necessarily signing to that child
that's standing there getting chips kind of things. I don't think
30 she looked at that child saying, you know, "Give me some of your

chips."

5

Q. No, she was asking you for the chips.

A. Yes.

10

Q. But nonetheless, it's when she was with other children in that setting that she would do more spontaneous signing.

A. Yes.

Q. Rather than when she was working with you one-on-one with the computer and so on.

15

A. Yes, but I don't think that the presence of the children were stimulating factors so to speak. It could've been Emily and I there with, you know, six bags of chips and she may just have easily asked.

20

Q. Why do you say that?

A. Because I think the motivating factor was the chips, not the children.

25

Q. Can we now turn to the communication book for Grade 2, 39-4. In your examination in-chief you talked about this new sound that Emily was making.

30

A. Yes.

Q. And sometimes that it made it necessary to take her out of the room and that would not be for more than five minutes at a time.

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5 Q. And when Carol Eaton says that she sees in Emily
real relationships and friendships with other children and when
those children's mothers report that they see real friendships
between their children and Emily, do you accept that they're coming
at that from the same perspective that you do?

10 A. Yes.

Q. Do you accept then that there probably are
relationships and friendships there?

A. Yes.

15 Q. You talked about already this idea of confi-
dence, what children can do with one person in some ways being
related to how comfortable and how confident they are.

A. Yes.

20 Q. And are there things you do with Kelly and you
recognize in Kelly that no everybody else would know that Kelly can
do?

A. That Kelly can do?

25 Q. Or can understand or things that she communi-
cates that not everybody would know.

A. I think so. I think so. I think there must
be, yes.

30 Q. And we've heard from Emily's parents, for
example, that she knows her colours and we've heard from the

A. Right. It was Pam Gill, I believe.

5 Q. She gave an example of something she tried to
Emily where she took a doll and asked Emily to point out "Where is
the eyes?" and "Where is the nose?" I can't remember which body
parts now, but basically ask her to indicate which body parts and
10 that Emily pointed to them and demonstrated that she not only knew
that this was an eye, but that in a abstract way she could make a
distinction between an eye, a representation of an eye on the doll.

A. Okay.

15 Q. From your work with Emily does that surprise
you?

A. I doesn't surprise me. I didn't see clear
indication of that type of thing when I worked with her.

20 Q. So you didn't see it but it doesn't surprise you
that it might be there?

A. Right.

25 Q. Would that be because there were real diffi-
culties with communicating with Emily?

A. Yes.

30 Q. She's not always able to communicate or you or
anybody is not always able to understand what it is that she's
communicating, is that fair?

A. Yes.

Q. So when you're saying "I never saw it," that
doesn't mean it wasn't there.

A. Exactly.

Q. So, when you said in your evidence in-chief that
you didn't see any evidence that Emily had learned her letters...

A. That's exactly what I meant.

Q. You haven't seen any evidence of it, but by the
same token, you can't say that she doesn't know her letters either,
can you?

A. I didn't see any evidence to say that she did,
no.

Q. Or couldn't.

A. Or...?

Q. Let me put it another way. Perhaps it's better
if I put it the same way I put it to Mr. Cronkwright and Mrs.
Piggott. Because of the communication problem in that Emily can't
tell you what she knows, you cannot say for certain that she
doesn't know these things, that she hasn't learned them, can you?

A. No.

Q. You can say you haven't observed them and you
can't objectively say she's learned it, but you can't say that she
hasn't learned it either.

A. Right.

Q. Correct?

A. Correct.

Q. And the same thing would apply to all the other categories that we talked about, the numbers.

A. Yes, but I also have a personal concern that if you assume she knows, you stop looking for methods to teach and that can be an injustice to Emily if in fact she doesn't know and that's a concern that I have.

Q. Oh, sure, and quite commendably so. One thing I forgot to mention, this biting that went on at the beginning of Grade 1. I gather from other witnesses that eventually that just went away. She doesn't do that now or she didn't do it in Grade 2 when you were there.

A. I don't recall instances where it occurred, no.

Q. You talked about a discussion you had with Mr. Eaton when he came into the class.

A. Yes.

Q. And he said that you didn't need to relate all of the incidents of Emily crying and sleeping in class because they were aware of that behaviour and they were dealing with that at home and you could deal with those day-to-day things at school.

A. Yes.