



IN THE MATTER OF the *Education Act*, R.S.O. 1990, c. E.2:  
INTHE MATTER OF Ontario Regulation 305 (formerly 554/81) made under the *Education Act*,  
as amended, AND IN THE MATTER OF the minor child born in 1984;

between

E.

Appellants

- and -

THE BRANT COUNTY BOARD OF EDUCATION

Respondent

Tribunal Members:

Ken Weber Chair  
Carol Sanna Member  
Frank Turner Member

For the Appellants:

Ms A. Molloy  
Ms J. Budgell

For the Respondent:

Ms B. Bowlby

The hearing was held in Brantford, Ontario on 18 January; 17, 18, 19, 26, 27, 28, 31 May; 1, 2, 3, 4, 14, 15, 21, 23, 24, 25 June; 29, 30, 31 July, 1993.

## **The Appellants' Request**

That the determination of the Brant County Board of Education Identification, Placement, and Review Committee (IPRC), which directs that the student be placed in a special class, be set aside, and that the student be placed full time, in a regular, age-appropriate class at Maple Avenue School, with full accommodation of the student's special needs, including provision of a full-time educational assistant, any necessary assistive devices, appropriate education materials and resources, and proper training of all staff.

### **Chair's Note**

- 1 From opening submissions by the appellants' counsel, from the appellants' statement of request letter to the Secretary of the Tribunal (11 December 1992) and from exhibits such as Exhibit A-13 (Minutes of the Appeal Board) the Tribunal inferred that the parents' request is that a full-time educational assistant be assigned specifically to respond to the student's needs. In response to a request for clarification from the Tribunal, we are told in reply testimony from the appellants, and from closing submissions by appellants' counsel, that the request of the parents in the matter of an educational assistant is that the assistant be assigned full time to the regular class in which the student is enrolled.
- 2 The parents are not appealing the student's designation by the IPRC as an exceptional pupil.

## **Respondent's Reply**

That the request of the parents regarding placement be denied, and that the determination of the IPRC be upheld, on the grounds that, having regard to the student's needs, the best placement for the student is in a special class.

### **Witnesses**

#### **For the Appellants**

Rochelle Bouchir  
Gary Bunch  
Mrs. D.  
E., the mother  
E., the father  
Jennifer Huxley  
Malcolm Lock  
Murray McCutcheon  
Nerida Parkhill  
Fiona Robertson  
Mara Sapon-Shevin

#### **For the Respondent**

Ms. B.  
Brian Cronkwright  
Jackie Ireland  
Ms. L  
Mrs. P.  
John Shurvin  
Jeffers Toby  
Ms. W.

Harry Silverman  
Ms. V.  
Ms. S.W.  
Carolyn Williams  
Robert Williams  
Ms. C. W.

### **Rochelle Bouchir**

Ms Bouchir is a speech-language pathologist, employed by the Lansdowne Children's Centre since September, 1992. The student is a client having check-up status, i.e., Ms Bouchir consults with the student's parents and school personnel. She explains that because the student is not physically able to sustain eye contact for very long, one looks for other signs of attending behaviour as well, e.g., in Ms Bouchir's words, "...when [the student's] body is still and [the student's] tone is higher and [the student] may move [the student's] head toward a sound, we have a sign then that [the student] is attending" (Vol.5,p.931).

Ms Bouchir asserts that people learn language skills "...through attending and then later imitating and then later speaking on their own" (p.921). She stresses the importance of turn-taking, and feels that the student shows progress in this skill in the special services at home program. Regarding signs, Ms Bouchir describes the student's signing as idiosyncratic, stating, "I observed [the student] signing 'more', and what the mother described was [the student's] sign for 'drink'" (p.927). "I know I asked [the student]...a yes-no question. ...The student made a quick breath in and the appellants pointed out that [the student] was saying 'yes' at that point"(p.938).

With reference to a small doll that was new to the student, Ms Bouchir asserts, "I asked [the student] to point to eyes, hands, feet and the doll's stomach, I used the word tummy, and [the student] pointed to all of them" (p.928). She explains the importance of symbolic object representation for an augmentative communication system.

Ms Bouchir delineates the rationale for a number of the communication goals in the student's current program. Regarding the student's response to sounds Ms Bouchir states, "I've seen [the student] recognize people's voices...and it was reported to me at school that [the student] enjoys music and interesting sounds..." (p.937). In the student's home Ms Bouchir says she observed the student imitating the student's mother's vocal intonation or stress patterns.

### **Gary Owen Bunch**

Dr. Bunch is an Associate Professor of Education and Psychology at York University, and is accepted to give opinion evidence as an expert in the field of education of children with exceptionalities.

His expressed understanding from a review of literature is that it, in his words, "...does not speak clearly to any social and academic gains particularly resident in special education as we presently structure it. ...within the past ten or 12 years...we've come to an understanding of literature that in some cases says 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 a regular classroom has at least equal effect to placement in special education classrooms. ...we cannot consistently and concretely prove that [a separate structure] has had the effect that we wished. ...it has had some less than positive effects on the relationships of children and the acceptance of children within the school systems and within community generally" (Vol.6,pp.1043&1044).

He refers to the de-institutionalization movement and the trend to integrate children diagnosed as mildly or moderately challenged in their learning. Regarding integrated vis a vis special class placement, Dr. Bunch asserts, "I consider the parents the most informed people to make a decision on placement" (p.1048). He speaks of the Contact Hypothesis, "That children who have been labelled, through interaction with regular children...will benefit from seeing normal behaviour... laughter...anger...abilities, exceptional abilities" (p.1051).

Decisions on where to draw the line with respect to regular class placement are determined through the IPRC process, but, he says, "...the regular classroom teachers, with appropriate support and encouragement, can effectively accept responsibility for almost any student..." (p.1054).

Dr. Bunch states that standardized tests tend to become weaker as the subject to be tested becomes more distant from the average population. Determining a child's potential for learning is, in his words, "...best approached through a multidisciplinary, multiperson discussive functionally oriented type of approach" (p.1061). The educational situation is formal, and parents, according to Dr. Bunch, "...just see a heck of a lot that teachers will never see" (p.1062).

In a qualitative, three-year research study, Dr. Bunch studied 32 pupils whom he described as "...severely and profoundly challenged in their learning' (p.1067). These pupils were fully integrated into regular classes for the first time at the beginning of the study, and were enrolled at that time in Kindergarten to Grade 9 by three separate school boards. The changes in a child were evaluated through assessing the changes in stated objectives for the child. Dr. Bunch's conclusion is that "...inclusion of pretty well all children in a regular classroom is a very possible, pragmatic, and practicable educational dynamic" (p.1071).

In reply to a question, Dr. Bunch expresses the view that students with the kinds of needs he understands the student to have can be taught by average classroom teachers "...with the support of qualified specialist personnel" (p.1081). His research study finds that special education resource personnel consult and plan with regular classroom teachers and administrators, "Sometimes directly teaching a number of

children, most often in the regular classroom... Being the person...who would...make sure that things were moving well...responding to any particular glitches that came up on a day to day basis" (p.1085).

In Dr. Bunch's opinion, a teaching assistant "...is most appropriately assigned to a class...or...in a variety of classes...as a resource to the total program of a school...when a person is assigned one-on-one...there is a chance of a dependency relationship...to the exclusion of interaction with other children and...the classroom teachers..." (pp.1088&1089).

Dr. Bunch describes the Circle of Friends peer support system, "...stimulating, initiating, eliciting the volunteer support of peers...to...befriend...support...assist...any child who is in the classroom" (p.1091). His opinion is that the effect of Circle of Friends would be limited in situations where an educational assistant takes care of any needs which arise with respect to a particular pupil.

From a one-year study, Dr. Bunch concludes, using an attitude scale of his own design, that whereas teachers' attitudes about inclusionary education were congruent in the absence of experience in either inclusionary or special education roles. Attitudes change after a year of such experience. Teachers who took a special education course and became special education teachers had become, quoting Dr. Bunch, "...more reserved in their approbation of inclusionary education. People who had taught in the inclusionary system...by and large liked it more...[but] there were concerns [about]...teacher/resource teacher's relationships, administrative support" (p.1102). In cross-examination, Dr. Bunch reveals that there was a total of 32 teachers in the study, and that those in the inclusionary group did not necessarily have any profoundly challenged pupils in their classes, nor indeed necessarily any exceptional pupils at all. He states, "I think a variety of situations could be hypothesized" (p.1143).

Dr. Bunch says he would not integrate into a regular classroom a child who is dangerous to self or others. This is where he draws the line on integration. But for a child as severely challenged as the student appears to be, Dr. Bunch says, "My experience is that regular classroom teachers if they have some good in-service preparation, teacher training...support of colleagues, resource teachers, leadership...good interaction with parents, appropriate in-class support systems, can work to the benefit of children...more effective than what the child would receive in a special education setting" (p.1106).

Dr. Bunch is Chair of the Board of the Centre for Integrated Education and Community, which advocates for, consults on, and advises on inclusionary education, but he does not view himself as an advocate.

Without appropriate support in the regular classroom the exceptional pupil will not necessarily experience increased social interaction or social acceptance, according to Dr. Bunch, but the child will imitate the behaviours of normal children.

He agrees that there has to be some comparability in terms of social, intellectual level for mainstreaming to work.

In a discussion about the Ministry of Education and Training *Consultation Paper on the Integration of Exceptional Pupils* attention was drawn to the statement that the wishes and preferences of the parents are as important as are the opinions of educators in the process of making placement decisions. Dr. Bunch asserts, "In instances where educators and parents disagree it is my position that the position of the parents is the one that should hold" (p.1121).

Asked in cross-examination where there are data to support the Contact Hypothesis, Dr. Bunch replies, "...without being able to cite a particular study, [he] would think there is data to support the hypothesis" (p.1133).

In a discussion about the qualitative research studies of pupils and teachers undertaken by Dr. Bunch, he disagrees that assessing the progress of pupils by means of examining changes in teachers' goals is unduly subjective. He says, "...I wouldn't use the term subjectivity in that context" (p.1153). He acknowledges that two of the three inclusionary school boards in which he conducted his studies did have pupils in segregated special education classes.

Dr. Bunch agrees that in his study of the 32 children his intent was not to demonstrate that educating children in a fully integrated classroom is necessarily superior to educating such children in a segregated setting. He states, "I had no comparative intent...inclusion is a challenging concept; people have to think hard about it; people have to be willing to be flexible and regear themselves to some degree" (pp.1173&1174).

### **Mrs. D.**

Mrs. D. states that her child was in the same class as the student in kindergarten, Grade 1 and Grade 2. Mrs. D. feels that her child's exposure to the student, a physically disabled person, enabled her child to be comfortable with wheelchairs and handicapped persons in general.

### **E., the mother**

The mother describes circumstances surrounding her child's birth in 1984. Twenty-four to thirty hours after birth, her child had a grand mal seizure, after which her child was placed in the McMaster Neonatal Intensive Care Unit. After her child had been in McMaster for five weeks, the mother says she and her husband were told, "...if we really wanted...take [the child] home and love [the child], but...[the child] would never feed independently....would be very lucky if [the child] wasn't tube-fed for the rest of [the child's] life. Their child was having 40 to 50 seizures every day that we were witnessing"(Vol.2,p.110). "[The child] was on oxygen 24 hours a day" (p.115). At 18

months [the child] was no longer on oxygen, bottles, or apnea monitor, and, according to the mother, "[The child] was totally breastfeeding" (p.116).

The mother explains, "[My child] was extremely sensitive to any kind of stimulation...could tolerate almost no stimulation in the beginning" (p.120). The mother says, "It took a long time to get a label of cerebral palsy from any medical profession" (p.124).

When our child was born, the child's siblings were five, three, and twenty-one months respectively. They eventually were told that our child had cerebral palsy, and the mother asserts, "They were taught to watch for [the child's] seizures...mainly just facial grimaces" (p.127). "...we had been specifically told by the doctor at Mac...[our child] would be...I believe his exact words were 'but a vegetable'. We told them [the child's siblings] that we were absolutely not willing to accept that diagnosis...we believed [our child] had more potential than that...[our child] was demonstrating it through [our child's] ability to learn to suck" (p.128).

The mother indicates that her child's condition is such that her child is hypotonic, i.e., "floppy rather than being rigid" (p.120). "...we will constantly look for methods to assist [our child] to develop the full potential that [our child] has...now [our child] is able to eat table food, usually with a spoon...to eat all finger foods easily...to pick up a glass...and get a drink...to weight bear and...with minimal assistance to walk using a...walker...to make sounds but not articulate. [My child] uses very little communication, but a lot more than we were given notice that [our child] would" (p.131). The mother continues, "[My child] has been signing a limited number of signs since [my child] was approximately three and a half years old" (p.142). "We started working with [our child] on signs when [our child] was about two or two and a half years old...it was particularly difficult to get [our child] to look at what we were trying to have [our child] look at and listen at the same time" (p.148). "[Our child] gradually built the ability to look at it when...having the sign made with [our child's] hands, hand over hand, by us" (p.149). "The limiting disability...does make some of the signs...difficult to make...signs such as 'eat' and 'drink'. [Our child] was making quite a few animal signs. Most of the ones [our child] makes now are fairly clear..." (p.150).

The mother explains that without ankle/foot orthoses (AFO's) the student has limited ability to stand unsupported. AFO's, the mother explains, "...cover the bottom of the [my child's] foot, go up behind [my child's] heel and cover the entire back of [my child's] leg up to [my child's] knee level" (p.155).

The mother affirms that her child uses a walker in the house, outside, and at school for walking to the bathroom. "Initially," says the mother, "[my child] was very resistant to touch it... [My child] actively resisted being in it in the beginning" (p.157). "[My child] is still touch sensitive...at times [my child] needs to be verbally cued to keep the [child's] hands on it" (p.158). "...[my child] mouths a lot of things...has eaten sand as have all of [the child's] siblings... We are working particularly on looking at things with [our child's]

eyes rather than [my child's] hands. Children who are very tactile like to reassure themselves with mouthing" (p.159).

The mother says that Carolyn Williams, a special services worker, works with the student at the family home from 3:30 to 5:30 Monday to Friday. Carolyn was shown on videotape facilitating sit-ups, tall kneels, and using a peg-board to reinforce pincer grasp, visual focus, and turn-taking. The mother says that the child's "...improvements for long lengths of time tend to be quality rather than quantity changes" (p.170). "The specific goals are set by the therapists, physiotherapists, occupational therapists, and speech therapists" (p.171). The therapists are said to receive input from the parents and the school. The special services worker contacts the therapists every six weeks, or more frequently if necessary.

The mother asserts that her child "...likes...stories about children or animals which, I guess, is pretty typical of kids that age" (p.180). "If I've got a lot of time I spend as much as two or three hours with [my child] looking at books, reading stories, augmenting it with story tapes on and off" (pp.185&186). The mother says that [her child] will vocalize if [the child] is discontent or not interested and that [her child] also indicates when [her child] is happy and content. "[My child] giggles, does a lot of smiling...uses full body activity to let us know that [my child] is really involved in what [my child] is hearing" (p.186). "...[my child] does have [my child's] own library card and [my child] does check [my child's] own books out of the library" (p.189).

A videotape shows the student's birthday party in February, 1993. Asked to comment on the student's action of mouthing a box, the mother replies, "...[my child] uses the oral method of checking in the same way that babies often mouth a lot of things...reverts to checking orally to make sure that [my child] understands what [my child] is getting in a visual or tactile method" (p.204). "For the most part we ask [our child] not to put things in [our child's] mouth, but to use [our child's] vision..."(p.205). "...we don't make a thing out of it because...if you accent the negative behaviour...it only makes the negative behaviour become worse" (p.206).

The mother describes the slow progress of teaching her child to use a pincer grasp. Of the videotape, the mother remarks, "I think it's a pretty good picture of the way the kids interact with my child...when we're at home. It's also... indicative of [my child's] enjoyment level of the normal activities with children [my child's] age"(p.213).

The mother says, "...music and food are the two incredible motivators for [my child]" (p.222).

At about 18 months, according to the mother, her child "...started...to lift [her child's] self up and sit a little bit unsupported... [My child] gained more trunk strength...more balance" (p.226). Visual tracking activities were used with her child, as well as auditory stimulation designed to elicit a visual focus. At three and a half or four, her child was strapped to a standing frame to get a feeling of weight-bearing. By age four her child

was doing what the mother describes as "...a very intensive physio program...four hours per day" (p.231). When her child was four and a half her child broke [her child's] leg.

The mother describes her child's acquisition of eating skills -- learning to keep food in her child's mouth and swallow, and learning to use a spoon, which involves overcoming her child's reluctance to grasp the spoon in extremely touch-sensitive hands.

The mother explains that her child has learned to roll over. "[My child] uses rolling mainly to move [my child's] self from one place to another... Now [my child] can get down off [my child's] bed" (p.244). "We're working on the reverse... The getting back on is very slow" (p.245). "[My child] certainly lets us know when [my child] is happy...not happy...if [my child's] pants are wet...if [my child] wants to eat or drink...if [my child] wants the radio on... Sometimes the Communication is still a little bit iffy for us" (p.246). "[My child] will 'uh-huh' or turn [my child's] head away to indicate 'no' for an answer" (p.247).

The student attended a developmental day centre, the Andrew Donaldson Centre, for a year before starting school.

The mother describes her child's toilet-training protocol and the regression which occurred when her child broke her child's leg, and the mother goes on to summarize the areas of physical development currently under way: gross motor activities involving the trunk and arms; correct walking posture; body movement; fine motor skills such as grasp, release, palmer grip, pincer grasp, use of a spoon; strengthening neck muscles; kneeling. The mother asserts, "Most things [my child] can do now. [My child] can sit. [My child] can walk. [My child] can stand. It's building the quality of how [my child] does it that we're working on now" (p.255).

The student is described as having had a very strong startle reflex as an infant. Originally, the mother explains, her child did not look at sounds, and then, "We started noticing that with certain sounds, [my husband] and I and the boys or music, [my child] would become quiet. Then [my child] started looking..." (p.264). The mother says that her child now "...will make and maintain eye contact...will respond yes or no in various ways" (p.267). She indicates that her child shows preferences, "...prefers to listen to music than do physio" (p.268).

The mother affirms of the student, "[My child] has known the meaning of words like mom and dad and dog and cat and bird and fish and brothers and [child]...drink, food, toilet, since [my child] was probably around three, three and a half" (p.269). "In terms of spoken language [my child] only has one word and that's 'mom'..." (p.271). "[My child] attempts -- [my child] will do a lot of signs when we ask [my child]; they're not always coming close to what we would recognize even as signs, but [my child] is physically moving [my child's] body, we feel, in an attempt to make the signs" (pp.270&271). The mother describes working with her child on colours and shapes. "Initially [my child] would have to be told what the colours were" (p.269). "[My child] recognizes the shape triangle, circle, and square every time that [my child] is asked at home" (p.293).

The appellants went to Dufferin School in Brantford to register their child for kindergarten. The mother explains, "So that would still have been our first choice, to have [our child] in a school where [our child] could be exposed to the constant French language... Then as a second choice...we looked to our neighbourhood school" (p.296). The mother states that she and her husband wanted their child to have the opportunity to learn in the same school environment as other children. "We felt...that there was very limited opportunity for [our child] to learn academically in the contained classes...we have no way of proving that [our child] is learning academically, neither does anybody have any way of proving that [our child] does not learn academically " (p.300). "I think the major point is that [our child] has got to live in our world and not we in [our child's]" (p.301).

Pending a decision by an IPRC, the appellants agreed to let the student attend Jane Laycock School in Brantford, where the student was placed in a T.M.R. class in September, 1989. An IPRC meeting, convened in November 1989, identified the student as exceptional and determined that the student would be placed on a trial basis in a regular grade in the neighbourhood school. The mother asserts, "It was agreed that [my child] would need an Educational Assistant" (p.319). "[My child's] first day [at Maple Avenue School] was April 30, 1990" (p.323).

The mother describes the method of communication between home and school. "We...communicate in a book which...goes back and forth in [my child's] bag every day" (p.327).

An IPRC in June, 1990, determined, according to the mother, "...that [the student] would be maintained...in the regular grade with the support in place" (p.328). "[The student] had a tendency to fall asleep during [the student's] first year at school and has continued to do that on occasion... Primarily we feel that's a mechanism that [the student] uses, when over stimulated" (p.329). The student continued in kindergarten in September 1990. The class was organized as a full-day program on alternate days. The mother states, "The desire to increase [the student's] physical stamina, to stay awake, to keep [the student's] chin dry, to walk like the other students, to increase [the student's] toileting abilities were things that we felt were happening there" (p.334). "At the last meeting with school people [before the IPRC meeting of May 28, 1991] ...it was felt by the entire team...that it would be appropriate for [the student] to remain with the peer group...and move on into the Grade 1 class..." (p.343). "On more than one occasion parents would tell me how valuable they found it to have [the student] in the community school...that their children loved having [the student] there..." (p.346). The IPRC determined that the student be in the Grade 1 class at Maple Avenue School for 1991-92. The mother outlines a number of concerns which arose during 1991-92 regarding the student's school experience, e.g., the student falling asleep in class, the student biting other pupils, the student mouthing the student's clothing and hair, the student being afforded opportunities for activities which were parallel to those of other pupils and at the appropriate level, and the student's vocalizing at inappropriate times.

The appellants were notified of an IPRC meeting to be held on February 4, 1992. The mother delineates her disagreement with a number of written assessments about the student contained in a conference report of the same date: "What it appeared to us they did was show all the negatives of [the student's] present placement in order to justify changing [the student's] placement" (p.374). Issues cited include the difficulty of measuring the student's academic and social growth and of assessing the student's level of contentment; the under-responsiveness of the peer group to the student; the student's responses to auditory and visual stimuli; the student's co-ordination and difficulty in signing; the student's laughing and giggling at inappropriate times; the difficulty of assessing the student's receptive language; concern about the student's placing objects in the student's mouth, about the student's social interaction with peers, and about the absence of a means of communication between the student and the student's peers. The meeting is said to have confirmed the student's identification as an exceptional pupil, and, the mother says, "The placement decision would be made at a later date" (p.389). The determination of the IPRC was to place the student in a special education class.

The appellants requested that a review meeting take place before the Board of Education be notified of the IPRC determination. The mother summarizes the reasons for wanting the student in a neighbourhood school: opportunities for increased communication ability, for academic growth, for peer interaction and consequent age-appropriate development. She adds, "It is important that we normalize as many of the physical activities as possible in order to encourage [the student] to be physically more able" (p.397).

The review confirmed the determination to place the student in a special class, whereupon, in the words of the mother, "...we commenced the appeal of the decision" (p.401). "The Appeal Board hearing was May the 11th" (p.403). The appellants submitted to the Appeal Board a Statement of Disagreement, With Reasons. The mother explains, "Because we stated that we would be going to appeal the decision of the Appeal Board to the Tribunal we anticipated that [our child] would remain a student at Maple Avenue School under the stay of proceedings" (p.414). "We were offered a placement at Maple Avenue School half-time or a full-time placement in the special ed. classroom which would probably be at Banbury Heights School" (p.415). "We felt that [our child] was entitled to stay in the regular grade classroom full time..." (p.418).

The mother states that alternative special education placements mentioned following the special education appeal were Agnes Hodge, Greenbrier, and Prince Charles, none of which were considered by the appellants to be in the student's best interest. The mother describes having "...had to go to court to resolve the issue and get [the student] back into school full days" (p.423). "Immediately after the injunction [granted September 11, 1992, by Mr. Justice Borins of the Ontario Court - General Division] the student has attended full days with full support at Maple Avenue School in the Grade 2 class..." (p.427). The mother states that the student's school experience during 1992-93 "...appears very positive" (p.428).

The student is described by the mother as having a "...remarkable sense of humour. ...The student has always liked to tease" (p.431).

Asked to comment about the effect on the student of moving to a new school, the mother replies, "I think it would be a major step backwards. I think we would see negative behaviours developing. I think that the student would not progress in the manner that the student is able to now. I think the student would lose in a lot of ways. The student would lose the community. The student would lose the opportunity for academics. The student would lose the role modelling of peers. The student would lose the opportunity to interact in the classroom with children. I think that the student would become upset. I assume that the travel distance would add fatigue to the student, which would interrupt the student's opportunity to learn in the classroom. I think that it would just be an entirely negative experience for the student to move" (pp.434&435).

Under cross-examination the mother says that the student was probably two and a half or three years old when Doctor McIntyre, a paediatrician on the Board at Lansdowne Treatment Centre, confirmed the student's diagnosis as cerebral palsy. The mother goes on to name several physicians and other medical practitioners who have treated the student. The family physician is Dr. Lock. The student has not been taken to the Hugh McMillan Centre. The mother expresses the view that "...Hugh McMillan Centre covers basically the same treatment approach as the Lansdowne Children's Centre which is in our area" (p.446). The mother describes the student's visual problems: "...eyes which both turn in and turn out...jump, do a fluttering kind of motion. [The student] has a tendency to not use [the student's vision] or to use [the student's] peripheral vision" (pp.446&447).

Asked why medical reports were not given to the Board, the mother responds, "...we...have been able, we felt, to provide the information that the reports may contain to School Board officials" (p.448).

The mother says that the student has been observed in the classroom by two psychologists, Dr. Toby and Dr. Silverman.

The mother agrees that the student, with appropriate support including the walker, can walk about 200 metres, not 2000 as she had earlier stated. The mother describes the activities in which the student is involved with the home services worker, Carolyn Williams; activities having physio, occupational, and speech therapy goals.

The mother asserts that the student "...had full bowel control and had pretty close to full bladder control...at approximately age four, four and a half" (p.465). The student has regressed since breaking the student's leg; however, bowel training at home is said to be virtually 100 percent successful, and bladder training to be at the 50 percent level. There was regression in using signs, too, after the student started attending school. The mother says, "There were a lot of new people who were not seeing the signs that [the student] made or not interpreting them. It appeared that [the student] just quit trying"(p.467).

The mother cites her dissatisfaction with the school program for the student when the student was enrolled in Jane Laycock School, and she clarifies that socialization is not the primary concern for her wanting the student in a regular class. She says, "...it was important for [the student] to be exposed to the academics and the normalization" (p.473).

In kindergarten, according to the mother, the student "...was learning correctness of movement, correctness of body position. [The student] was learning appropriateness" (p.478). "[The student] was communicating on a much more involved level than ever before" (p.479).

According to the mother, her child tested negative for hepatitis B when there was concern about her child's biting of other pupils.

The mother affirms her and her child's preference for [certain clothes] over [others] notwithstanding the student's tendency to lift clothes to bite and chew .

Regarding the priority which should be given to finding a communication system for the student, the mother agrees that communication is very important, but the mother says she "...would not agree that it is the only way for [my child] to be able to learn or for [my child] to be able to express [my child's] self" (p.499).

The mother expresses the view that if the student were removed from Maple Avenue School, "...[my child] would be seen as less worthy" (p.500) Asked about communication between the appellants and the Board of Education, and about the communication books which have always accompanied the student to school and back to the student's home, the mother states, "I would be willing to see that the most recent pages are photocopied by us, but I'm not prepared to give permission to the Board to copy. ...I am uncomfortable with originals, that I believe belong to me, going out of my possession" (p.512).

Under re-examination the mother says that she has no recollection of the Board requesting medical reports. She indicates that the student has been referred to the Hugh McMillan Centre for a global communication assessment.

In reply to a question about the proposed placement of the student in Prince Charles School, the mother says that there was not any discussion about a total communication program to be provided there. She says she was informed that the transportation to and from Prince Charles School would take an hour each way.

The mother clarifies her method of determining that the student can identify colours and says, "It would probably be in the 75 to 80 percent range that [my child] would identify the correct colour..." (p.549). Regarding the student's signing the student's need for toileting, the mother explains, "The sounds and the face is what makes us aware that [my child] does have to use the bathroom" (p.522). Hypotonia is said by the mother to

affect the student's fingers and hands significantly. Whether the student can control the strabismus which was apparent in the videotape, the mother is not certain.

The student has not taken anticonvulsant medication since the student was 18 to 20 months old. The student's response to over stimulation, asserts the mother, is "...that [my child] goes through that process of...shutting down" (p.559). "...it is, at least to us, apparent, the difference between this shutting down due to stimulation and the shutting down due to need of sleep because of physical fatigue or illness" (p.560).

Whether the student has startle seizures is not clear, but in view of that possibility the mother feels that it is inappropriate to leave the student unattended.

The mother indicates that use of the Wolfe Communication System, which was tried with the student for about four months during the latter part of 1989, was discontinued because it was unreliable, was not used consistently, and was considered inappropriate at that time.

The mother clarifies the details surrounding the student's referral to the Hugh McMillan Centre, and she states that medical and other health care specialists have not been able definitively to determine whether the student's inability to communicate verbally involves a cognitive or developmental source. The mother says that she has tested the student's understanding of speech at various times using nonsense syllables and other such techniques: "...it is something that I tend to do with [my child] a lot..." (p.787).

The mother says she was unaware of instructions during the past year to the educational assistant about not putting negative information in the communication book. She states that she did not know about the second record kept by the educational assistant nor of the extent of the student's crying, vocalizing, and sleeping at school until the Tribunal hearings.

The mother asserts that the student recognizes the student's siblings by name. She explains that the appellants have a large variety of specialized materials for the student, which they have offered for use at school. She says it is all right for the student to have a nap at school, that the student could be toileted three times per day instead of hourly at school, and that the one-to-one intervention could be reduced.

The mother acknowledges having received a February 1993, letter from the principal describing the student's increased tendency to sleep and the student's disruptive crying. She agrees that at the one meeting, which she attended at the school during the past year, she did not offer to bring in pieces of equipment or material.

The mother clarifies her expectations regarding the educational assistant, indicating that the latter's assistance is not necessarily needed by the student 100 percent of the time.

## **The father**

The father is a teacher employed by the W. Ross Macdonald School in Brantford.

The father testifies, "We want [our child] to be a part of our community, of [our child's] community... I think society, in its enlightenment, and provincial governments, in their attempt to save money, have decided that the student should be integrated with our family now, with our family within the community. I think our community includes the student's neighbourhood school" (Vol.4,p.613).

The father states, "What [my child] really needs at this point is a program in sensory integration where the student needs to be able to use all of the student's senses at the same time... A program of sensory integration can be offered in an integrated setting, one that would perfectly adequately meet the student's needs. Once that's in place then the communication goals can be met. And I don't know of any communication programs that could not be used within an integrated setting" (pp.614&615). During Tribunal questioning the father states, "In a school setting it most likely would be carried out by the classroom assistant... To set up a proper program there would probably need to be some expert advice from people trained in that field... These types of programs are used extensively for deaf/blind children who are integrated into the regular classroom and the expertise is provided to the interveners and they are the ones who carry out the program:(p.747).

When speaking about his own career choice (to teach in a special school) and what he chooses for his child he states, "They're at opposite ends of that continuum, but the philosophy is that the parents should have all the choices within that continuum. And my position at Ross Macdonald offers parents one of those choices" (p.615). "The general purpose of the program was to bring the students in and provide them with basic literacy skills...and to provide the children with a way of accessing printed material so that they can go back to their home community in their home setting and complete their education there" (pp.616&617).

The father testifies that since breakfast and lunch are therapy sessions for his child they try to keep supper as a meal to enjoy. He says he has "been working on a program to help [my child] lift [my child's] elbow off the plate" (p.621). The father states "...when my coffee comes out [my child] usually decides that [my child has] finished the meal time... My child turns around and physically looks at the radio and gives a big smile to me and that's my cue to go and turn on the radio because [my child] knows supper is over and...[my child] quite enjoys the program that comes on after supper" (p.623). The father says it takes his child about twenty minutes to complete the meal.

The father testifies, "[My child] understands everything that we tell [my child] as long as it's within the context of [my child's] life. ...[my child] understands the words we say and responds to them appropriately; not the same response that another eight year old might have, but an appropriate response" (p.628).

With regard to his child being influenced by his child's peers, the father testifies, "At [my child's] birthday party we had a paper tablecloth. [My child] was trying to bring the paper tablecloth up to [my child's] mouth to get a bite of the tablecloth, I guess, or maybe [my child] was trying to get the feel of the texture and hear it rattle and crinkle. But I was trying to get [my child] to leave it down and I was giving [my child] the stop sign and asking [my child] to stop lifting the tablecloth up and [my child] wasn't listening to me... So, I said 'well [my child is] not listening to me, why don't you children give [my child] the stop sign?' So, all the children around the table...made the stop sign for [my child]. And from that point on [my child] didn't lift the tablecloth any more" (pp.637&638).

The father feels that the student needs to be taught the appropriate times to vocalize and that people need to look at why the student is vocalizing when [the student] is.

He says the student tried to use a Wolfe Board as a method of speech output. "The student could make the choices in a situation where the student was motivated...with the crackers and juice...the student never got to the point where the student would spontaneously use the board to make the choice on the student's own. But...if you prompted the student and asked the student to make the choice the student would use it for that and that would be the one where the student would have the most success... I think that the choice not to use it was more that, at that point, it wasn't a useful thing for the student in the student's life either as a therapy tool or useful for the student to use in the student's daily life" (pp.647&648&649).

The father comments on Exhibit A2 (a video tape). He says," [My child] reacts to the Little Rabbit Foo-Foo even before the other children...[my child] is clearly involved with what's going on with the other children" (pp.652 & 653). The father also testifies, "[My child] was opening the gifts at that point and when [my child] finished the gifts and was holding it up I was asking [my child] to look at the camera and smile while holding the next gift. And [my child] was paying attention to what I was saying and responding appropriately"(p.653). He says his child was not being tickled at the time.

The father testifies that when the student was first placed at Maple Avenue School, "We were told that [my child] would be placed in a pilot project to evaluate how [my child] could be accommodated, how [my child] would adapt to the program" (p.660). But by the end of Grade 1 it had become his "...understanding that that was [my child's] placement. It didn't appear to be a pilot project at that point" (p.661). He further states, "We weren't given any specifics about what the [special education] program would offer to [my child] other than that it would be conducted by qualified and caring teachers who would be capable of meeting [my child's] needs... That was during the original IPRC. I believe it would have been in February [1992]" (pp.66&662).

The father testifies, "I think throughout the kindergarten year we had no indication that they were having any difficulties and they seemed quite pleased with their success" (pp.672&673). He further states, "This past year has been a generally positive year for the most part. Mrs. W. has an excellent relationship with [the student] and she has some excellent skills with providing programming for [the student], adapting the program that

Mrs. L. presents to [the student] and providing appropriate materials that relate to what's going on in the classroom" (pp.673&674). When asked to compare the student's Grade 1 year with the student's Grade 2 year he says "This year is more positive... The student's really quite enjoying this year, but I'm not sure that for the student last year was a negative year" (p.674).

When questioned about directing the educational assistant to include only positives in the communication book, the father states, "I can't recall that specific incident" (p.703).

During cross-examination the father agrees that his position about a regular class placement has become stronger and firmer.

The father visited the special class at Prince Charles School for about an hour and states "...we saw what went on for that hour...specific programs for the student were not discussed" (p.708).

The father is aware an Individual Program Plan is created once the child is in a placement. He states "It makes it awfully difficult for parents to choose a program when they don't know what it is" (p.708).

## **Jennifer Huxley**

Jennifer Huxley is an occupational therapist at Lansdowne Children's Centre.

She states that the student is working on fine motor skills relating to grasp and release. When asked if she noticed any progress in the development of the student's grasping over the last year Ms Huxley replies, "I can't say" (Vol.5,p.883).

In a document dated 26 January 1993 Ms Huxley reports that the student eats in the student's classroom with other children. She says the student watches other children and therefore eats most of the student's food after they leave the classroom. With regard to chewing Ms Huxley states that "Once [the student] has the food in [the student's] mouth, [the student] can manoeuvre it around to chew it...before [the student] swallows (p.887). When asked about a subheading referencing choking she testifies "The mother provided...information to me that [the student] would generally only choke if [the student] was ill (p.888).

Ms Huxley states, "I was very impressed with the educational assistant. She works very closely and comfortably with [the student]...[they]...sort of work as one when she is working hand-over-hand with [the student]" (p.891).

During Tribunal questioning Ms Huxley is asked questions relating to the appropriateness of specific goals within a grade 2/3 class. Specifically, clarification is requested relating to pulling off plastic container lids independently once the lip had been started and to place five objects through a cut out top into a container

independently. Ms Huxley responds "I don't see that as totally inappropriate...maybe that some variance of the activities can be done on the part of the teachers, but these are just general ideas of...types of activities that can be used to develop those skills" (pp.902&903).

### **Malcolm S. Lock**

Dr. Lock is a physician in family practice. He says that he was in attendance at the student's birth, and the student has been one of his patients ever since. Dr. Lock confirms that the student has cerebral palsy, and he describes this as an umbrella type of diagnosis with a collection of symptoms. He thinks it is not possible to completely predict what any child's abilities are, and he cites his experience concerning a child at whose birth he assisted 12 to 13 years ago.

This child, he explains, was born with basically half a brain and multiple disabilities. Dr. Lock says he did not expect the child to develop to be a functioning member of society, but the child is now communicating by means of a Bliss board and shows quite remarkable abilities in some academic areas. Dr. Lock asserts, "...I've altered my perceptions of what handicapped children can do" (Vol.8,p.1474). He acknowledges that the child attended a special class.

Dr. Lock asserts that the student is not a fragile patient.

### **Murray McCutcheon**

Murray McCutcheon is a chiropractor who sees the student approximately once every three or four weeks to adjust the student's spine in the upper cervical area in an attempt to "improve the mobility and the function of the motor units of the spine" (Vol.5,p.832). Each session lasts about five minutes.

Dr. McCutcheon states that the student has been his patient since 1986 but did not seem to be aware of him or responsive to him until 1990. He says this awareness, along with physical gains seems to have increased with each subsequent year.

### **Nerida Parkhill**

Ms Parkhill is employed as a physiotherapist by the Lansdowne Children's Centre. She has been treating the student since the fall of 1984. Ms Parkhill describes the student's condition when she first started working with the student: "The student just was a very floppy, nonresponsive baby" (Vol.4,p.967). Ms Parkhill further describes hypotonia and the type of physiotherapy program needed for a hypotonic client. She points out that because gravity pulls one down, one must develop enough muscle strength to resist gravity and to hold joints in place in order to be able to achieve and maintain an upright position.

Ms Parkhill designs the student's program, and she meets regularly with the student's parents, special services at home worker, and school personnel. She states the student needs to feel confident doing what the student is doing, and adds, "We know, and it is obvious, that [the student] is more confident with [the student's] dad than anybody else when it comes to standing alone..." (p.977). Ms Parkhill explains that she is working with the student on tall kneeling, on trying to get the student up to standing from tall kneeling using furniture, and on trying to get the student's gait pattern more independent. She states, "It would be nice to see [the student] take, say, two or three steps without somebody holding the walker even" (p.979). Ms Parkhill sees qualitative changes in the student's walking and sitting, and confidence in tall kneeling.

The student has the strength to perform a pointing motion, but not to do a smooth motion up against the force of gravity, Ms Parkhill explains. The student possibly would be able to target a large switch plate, Ms Parkhill points out, and she states, "...there is ongoing improvement in the gross motor at a very slow pace" (p.991). Asked about the importance of motivation for the student, Ms Parkhill states that the student needs "...a lot of repetition...imagination and incentive" (p.993).

### **Fiona Robertson**

Fiona Robertson is employed at Lansdowne Children's Centre as an occupational therapist specializing in paediatrics. She states that she assumed the student on her case load in 1988 when the student was about four years old.

Fiona Robertson describes the student as "a child that has low postural tone, who doesn't have a lot of strength around the student's shoulder and, therefore, the student has trouble high reaching and...targeting to an object: (Vol.5,p.802).

With regard to feeding, Ms Robertson observed the student at Maple Avenue School and states, "at the time the student was doing some spooning and the student was finger feeding and was drinking from a cup. The student needed verbal prompts and sometimes a little bit of physical prompting for spooning. The student was independent, at least physically, for a large portion of the meal: (p.807). In a report Ms Robertson noted gains in fine motor skills, shoulder control and reaching.

A report dated 13 January 1992 outlined areas that were addressed during a school visit as feeding, toileting, wheelchair and classroom seating. Ms Robertson states that, "It seemed that they [the school] were trying to work on...the fine motor skills and the strengthening goals and trying to do some of the ...recommendations...around toileting that we had provided" (p.818).

With regard to recognizing objects Ms Robertson feels that the student recognized objects that the student was familiar with like "...spoon and a bowl, a cup..." (p.821).

During cross examination, Ms Robertson was read a quote from the 1991-92 communication book (exhibit A39). The quote contained instructions from the mother to

the school: "To reiterate, as with phys. ed., we want [the student] included in classroom activities - ALL activities - in an adapted manner. We do not want you doing an O.T. or physio or speech therapy program at school. Those should ONLY be used as a guide to "how to" make [the student] integrated into the adapted age appropriate grade level goals of the regular academic classroom program. While the father feels that stacking rings, et cetera, are appropriate in a Grade 1 class, that is why we would like to see them there and not because they are to be used to carry out "[the student's] O.T. program." [The student] has a daily therapy program done at home to be more specific, while we feel strongly that at school the same goals should (and same methods where appropriate) be used only as a tool to aid [the student] in being involved in the regular program" (pp.854&855). Ms Robertson was asked if she was aware that the mother was giving instruction like this to the educational assistant at school. She replies, "Not specifically" (p.856).

### **Mara Sapon-Shevin**

Dr. Mara Sapon-Shevin is accepted as an expert witness in the area of education of children with exceptionalities in the inclusionary system in the United States.

Dr. Sapon-Shevin explains that an "inclusive school is one in which all children regardless of level of ability or disability are educated within a common setting within a regular classroom without segregation" (Vol.7, p.1233). Children are grouped according to their chronological age, and adequate support services are provided to ensure a productive and meaningful role within the regular classroom. She feels that special education is a service not a place.

Dr. Sapon-Shevin feels that when it is not clear how much a child is learning, one should always lean towards the side of rich stimulation in the education environment. She says this would only occur in a regular class with age appropriate peers. She feels placement in a neighbourhood school ensures that special children share the same experiences as their siblings, and there is continuity when they go out into their neighbourhood after school hours.

Dr. Sapon-Shevin testifies that when children have a positive self-image and are confident about their acceptance within a community they will be more open to learning. She is of the opinion that this can only occur in a regular class setting. She feels that parents' wishes are very important and the Individual Program Plans should be established with their input and some negotiation.

Dr. Sapon-Shevin encourages the concept of using the "educational assistant as a second teacher, as someone who maybe works with a small group of children including, maybe, the child with the disability, but not just one-on-one because that, in many ways, kind of negates the whole point of having a child included" (p.1279). She says peers can become involved in an inclusive setting as "cross age tutors" (p.1270) where older children help the younger ones. When Dr. Sapon-Shevin was asked during cross if all children should be served in the neighbourhood school in a regular class with age

appropriate peers and whether that placement would meet the needs of all exceptional youngsters, she replies, "The services that are provided and the structures that are provided could meet the needs... There has to be extensive curriculum modification and teacher preparation and support systems" (p.1318).

In cross examination when asked if there is research data that may show there is no benefit to integrated settings, or that may be inconclusive about benefits, she replies "I'm sure there is. There's much that's inconclusive in this field, that's why it's tricky" (p.1330). When asked if the research supporting integration includes children who can't be assessed for intellectual ability or social awareness he replies, "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 is some hole in our information we have to think about the things that we can observe..."(pp.1333&1334).

Dr. Sapon-Shevin acknowledges that she has not seen the student's placement.

### **Harry Silverman**

Dr. Harry Silverman is an associate professor at the Ontario Institute for Studies in Education in the Instruction and Special Education Department. He is accepted as an expert witness.

Dr. Silverman states that "cognitive stimulation...should be an important component of any educational process...particularly ...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" (Vol.8,p.1385). He says, "There is no substitute for effective thinking and problem solving" (p.1385) and the "point of any cognitive education program...should be to develop a generalized ability...to apply those skills to situations other than just academic areas:(p.1387).

Dr. Silverman states, "I fully subscribe to the No Reject Concept" (p.1389) and in his opinion, a school board does not have the moral or legal right to exclude any child from education in a regular classroom.

He feels that a regular classroom would provide a stimulating environment and varied opinions with regard to problem solving and that this would be lost in a segregated setting. He also feels that social stimulation and appropriate models would be missing in a segregated class setting.

In terms of meeting the needs of a child with cerebral palsy, who is physically involved and nonverbal, Dr. Silverman feels that with appropriate sensitivity to the needs and learning level of the individual and adapting the curriculum in accordance with those needs, any classroom teacher would be capable of, and should be expected to, provide for such a child.

When asked is the program within a placement rather than the placement itself what is looked at in order to determine whether a child's needs are being met, Dr. Silverman replies that the important things he looks for can be summed up under the heading, quality of instruction. This heading carries with it the social and the academic climate and he is not convinced that a quality education, given all of the characteristics that he thinks it needs to have, can be provided in a segregated setting.

Dr. Silverman suggest that the best way to set up an augmentative communication system would be to have the "individual needs assessed by people who are occupational therapists who can determine the positioning of the board relative to the individual in the wheelchair" (p.1413). He suggests that the Hugh McMillan Centre in Toronto would be able to provide an evaluation in order to set up a Blissymbolics system, and that training of teachers could occur there or staff from the centre could present a workshop within the school board itself.

Dr. Silverman discusses how the Wellington County Separate School Board, with which he had been associated on a consultative basis for several years, adopted an inclusive system of education and postulates that positive social interaction and general benefits accrued to all students and teachers involved. He also enunciates the benefits of inclusive education as opposed to segregated education.

After observing the student for a full morning and viewing two video tapes, the ninth birthday party and general interaction with other family members, Dr. Silverman concluded that the student could function effectively in a regular classroom with some adaptation to programming.

Dr. Silverman feels that the "type of social interaction presently occurring in the classroom could be characterized as benign neglect. There wasn't any antagonism on the parts of the other children towards [the student], there wasn't any obvious rejection of the [student], but by the same token there wasn't any obvious acceptance of [the student] or interaction directly with [the student]. The children tended to be rather indifferent to [the student's] presence in the classroom" (p.1446). He further states, "the students have not developed the notion, I don't think, that [the student] is an integral part of that classroom and, therefore, perhaps after initial stage of asking, 'What happened to [the student]?' they would probably just go on with their typical reactions: (p.1465).

Dr. Silverman feels that the children's interaction with [the student] was modeled after the teacher, and that the teacher did not capitalize on opportunities to interact with [the student]. He feels that all modelling reflects to the teacher, and when a teacher has a receptive, accepting attitude, she encourages and demonstrates these qualities to the children in the class and they in turn will adopt them. This he feels is also the basis for peer modelling.

Dr. Silverman feels that there should be consistency in terms of stimulation and inclusiveness, between the family environment and other environments. This

consistency will promote a positive self-image, which contributes to the levels of interest and motivation when confronted with learning tasks.

Dr. Silverman was asked if he was aware that the student's siblings did not attend the neighbourhood school. He states, "It's not whether you go to the neighbourhood school necessarily. It's whether or not you are seen as different such that you cannot attend a regular classroom in any neighbourhood school" (p.1529).

#### **Ms. V.**

Ms V. says that her daughter was in kindergarten with the student, and, according to Ms V. "She loved [the student]" (Vol.8,p.1360). Ms V. describes her children's acceptance of handicapped people, and she relates that her daughter cried when told by the student's mother that the student might be moved to another school.

#### **Ms. S. W.**

Ms. S. W. is an educational assistant with the Brant County Board of Education. She states that she worked with the student in April 1990 for approximately six weeks and then again from September until the following May at Maple Avenue School.

Ms S. W. states that the student was involved in all outings and participated in the various centres within the kindergarten room. She says she feels that the student was integrated within the class.

#### **Carolyn Jean Williams**

Employed by the Lansdowne Centre as a special services at home worker, Ms Williams has worked with the student two hours a day, five days a week, since September, 1991. The goals and activities are written by a physiotherapist, an occupational therapist, and a speech therapist. Ms Williams typically works with the student on feeding skills, grasping skills, walking, standing, kneeling, crawling, sit-ups, balancing, visually attending, signing, turn-taking, and imitating sounds. Ms Williams feels that the student knows and can distinguish among several colours, and that the student has a sense of humour, manifested, for example, in a teasing kind of behaviour.

#### **Bob Williams**

Mr. Williams is a Policy Associate of the United Cerebral Policy Association, Government Activities Office, Washington. He recounts his experience of being in segregated self-contained classes during a period of about ten years before he entered mainstreamed classes in high school, adding, "Well, that was when [at age eight to ten years] it started to dawn on me that being different and having a disability somehow made others think less of me" (Vol.14,p.546). He states, about being in the segregated class, "It ripped me apart and I think still does to this day" (p.547). He asserts, "...I think

because of the lack of opportunity to get to know me, many kids used to call me retard and pelt me with stones" (p.549).

Mr. Williams says of observing children with disabilities in an inclusionary education setting, "What I have seen is kids like [the student] with the same labels being befriended and surrounded by other kids. In these instances communication seems to become easy, free-flowing and natural..." (p.555). He explains that the segregated class placement affected his self-esteem: "...I think I can fairly say those early feelings of inadequacy and inferiority left scars" (p.556). He asserts, "Even as a child in the special class, I knew that my teachers and others held few expectations that I would do anything in life" (p.559).

Mr. Williams says he had met the student for an hour or two the previous day. He says the student was interested in what he had to say and in his manual communication board. He outlines his impression of the student: "[The student] seems like a [child] who is very aware of what is going on around [the student] and seems to make a real physical effort to be social" (p.561). Mr. Williams says that the student cried when he stated, "I do not think that anyone is nonverbal, because we all use language, and the term has really become a shorthand for saying that somebody has nothing to say" (pp.562&563). He says that [the student] cried inconsolably when he suggested to [the student] that [the student's] tears resulted from years of having people think [the student] didn't have anything to say.

About transferring a child like the student to a segregated class so that a communication system can be learned, Mr. Williams says that opportunities for communication became greater after he was mainstreamed. Missing for him in the segregated setting were the opportunities, in his words, "...to see communication as the most vital means of exerting choice and control in life" (p.572). He says that a segregated class does not afford opportunities for greater friendship and peer interaction. He says, "It robs kids with and without disabilities of the opportunity and cause to look past obvious differences in all people and to look for similarities" (p.573). About vocalization he asserts, "...kids need to know not just when to speak, but when and whether it is most effective to do so" (p.574). In Mr. Williams' view toileting is not justification for segregated placement, nor is expertise of personnel.

Mr. Williams says he had a typewriter at age six, and he typed a card for his mom when he was around eight.

### **Ms. C. W.**

Ms C. W. says that her child has been in the same class as the student for the past two to three years, and her three other children also are acquainted with the student. She says that her children have enjoyed attending two of the student's birthday parties.

Ms C. W. feels positive about her children's exposure to the student and about the latter's presence in the grade 2-3 class.

## **Ms. B.**

Ms B. was the educational assistant for the student during the school year 1991-92 and for over a month during September and October, 1992. She describes her adaptation of various programs for the student, and says she saw no indication that the student knew or recognized numbers, letters, colours, or shapes. The other children in the class were very kind to the student in Ms B.'s view, and they were encouraged to interact with the student. Ms B. says that she did not see any friendships develop with the student.

Ms B. recalls one occasion when the student was crying, [the student] made a sound which sounded to Ms B. like "mama". She describes strategies used for involving the student in classroom activities, and she affirms that the student showed improvement in physical development throughout the year. Ms B., in describing the student's role as chip monitor, asserts that she saw the student make the "eat" sign three or four times, and the "you're welcome" sign once. In response to questions about a videotape of the student's class (Exhibit R10), she explains that the student was not placed in the centre of the group of students in order to avoid over stimulation, to promote physical ease of placement and access for toileting, and to allow the student's proximity to Ms B.

The student's toileting regime prior to and following the parents' request for hourly toileting is outlined by Ms B. She describes an occasion in November of Grade 1 when she found it difficult to keep the student awake or to awaken the student after falling asleep.

With reference to the student's biting, Ms B. states, " The original incidents of biting that we saw started back in October..." (Vol.11,p.157). "...just after it started...there were a few days where there were instances of biting and then after that they would be sporadic..." (p.158). She describes an incident in which the student tried to put a brooch she was wearing into the student's mouth. Ms B. says, "Some days were worse than others. Literally everything [the student] picked up went into [the student's] mouth and other days, the behaviour was less frequent" (p.159).

Ms B. elucidates an incident in which the student vocalized in conjunction with having independently placed the student's hand on Ms B. throat, where the student presumably felt vibrations.

In September of Grade 2 the student is described by Ms B. as having started to make a new sound which was distracting to other students, "...a sound that was very prevalent and happening often..." (p.178). Ms B. says she would remove the student from the classroom when the student persisted in making this sound, and would return the student to the classroom when the vocalization ceased. Such removal might be necessary on a couple of consecutive days, she affirms, followed by a respite of a few days. The maximum period of each removal from the class is said to be five minutes.

Ms B. says the student enjoyed working with the joy stick during computer games.

During the period from September 1991 to October, 1992 Ms B. says, "I saw changes in the relationship of the peers with [the student] but not [the student's] relationship with them" (p.183). She indicates that a number of Grade 2 students did not wish to be wheel chair monitors, in contrast to the situation in Grade 1, and students were doing more individual work in Grade 2 than in Grade 1.

Ms B. describes strategies employed to encourage the student to use more than one sense at a time. With reference to communication, physical needs, and toileting, Ms B. says she does not feel good about the student's present school placement, and about a special class placement she states, "I think it would provide a happy setting for [the student]" (p.198).

Ms B. agrees that the student's episodes of crying decreased as the Grade 1 year progressed; likewise the frequency of startle responses. She also agrees that the student teased her sometimes and that this was a form of communication. She acknowledges that the student sometimes has a puzzled, questioning look on the student's face when faced by unfamiliar persons or situations.

Ms B. thinks that the student had a sense of achievement when the student did well, e.g., when the student performed well as chip monitor and needed only minimal reminders not to mouth the box. Ms B. says she accepts that the student may know the student's colours as indicated by the student's parents, but the student hasn't communicated this to Ms B.

### **Brian Cronkwright**

Mr. Cronkwright has been the principal of Maple Avenue Public School since September 1990. He says that throughout that period he has visited the student's class an average of three times per week.

He describes procedures implemented to ensure the student was not left unattended when she arrived at school between 8:20 and 8:30 a.m. Mr. Cronkwright explains his consultation with the student's parents relating to his concerns about Hepatitis B after the student had bitten him, the teacher, the educational assistant, and another student, and relating to his suggestion that the student wear slacks to obviate the student's tendency to mouth various parts of the student's [clothes].

Regarding a February 4, 1992, conference report, Mr. Cronkwright denies any punitive intent and asserts he instructed the teacher and the educational assistant in the Grade 1 classroom to record their observations of the student exactly. He describes a team effort by all the staff of Maple Avenue School to try to integrate the student successfully. Although he recommended the student's Grade 1 placement, he admits he had concerns about the student's fatigue in a full-time program and about the student's potential success with the gradually increasing independence required of students as

they move beyond kindergarten. He explains that problems and activities become increasingly complex through grades 1 to 3.

Mr. Cronkwright observes that other students engage in decreasing interaction with the student because they do not receive any response from the student. He expresses concern about a reversal in the student's social growth under these conditions.

Mr. Cronkwright asserts that although he has not seen the student signing, he sees the student's communicating through reaching gestures, smiling, and crying. He says he has not observed imitative behaviour by the student, nor evidence that the student is learning by modelling. He affirms that the student has shown growth in gross/fine motor areas, but states that school personnel are unable to assess the student academically. He expresses the opinion that a special class placement would best meet the student's needs, which he specifies as gross/fine motor development and a communication system. The student would be happier in a special class, Mr. Cronkwright feels. He expresses apprehension about the student's placement in a Grade 3 class because of the student's loud vocalizations, the student's crying, and the student's sleeping.

Mr. Cronkwright says that he never taught for a school board which had an inclusive policy, but that he has taught exceptional pupils in regular classes. He describes his pattern of visiting classes, the team approach used by his staff, and the typical activity groups in the classrooms. He denies having been apprehensive about the student's placement in the school when he became principal there, and he clarifies his view about the role of the parents, the role of personnel from the Lansdowne Centre, and the role of personnel from the Special Education Department, in the functioning of the team approach at Maple Avenue School. Mr. Cronkwright acknowledges that he did not consult with personnel of a school board having an inclusive education policy regarding the student's I.P.P.

Regarding the role of the educational assistant, Mr. Cronkwright says she is not the person primarily responsible for the student, but she is primarily responsible for interaction and communication links. He states that all of the student's teachers have interacted with the student.

With reference again to a conference report dated February 4, 1992, Mr. Cronkwright repeatedly points out the inability of school personnel to assess the student's receptive language, comprehension, academic development, and rationale for various behaviours; and he acknowledges the record of two occasions when the student was observed in the school to be making a sign, one for "welcome" and one which was an approximation for "eat". He acknowledges a consensus among school staff that the student's needs would be better met in a special education class. There, he states, "...they would be able to use the expertise, support and materials and equipment they have to make more progress on [the student's] needs hopefully" (Vol.9,p.1713). He feels that the student would be happier in a special education class, asserting, "Our observations indicate to us that [the student] is less happy this year than last year and less happy last year than the year before..." (p.1715).

## **Jackie Ireland**

Ms Ireland is a Superintendent of Education for the Brant County Board of Education. She explains STEP, the congregation of special classes in designated schools instead of establishing special classes in neighbourhood schools: structure, time, encouragement and praise, and the opportunity for practice. The Board's philosophy regarding inclusion of exceptional students, Ms Ireland explains, is "...integration where possible. Hence, there is support, total support for a continuum of services" (Vol.13,p.356). If all the students from special education classes were integrated, Ms Ireland asserts, "The costs would escalate out of sight" (p.359).

Ms Ireland indicates she was present for all the IPRC meetings concerning the student except the annual review in 1991. Regarding the student's placement in kindergarten at Maple Avenue School she explains, "...I felt...[the student's]...needs would best be met at Jane Laycock School. However, the appellants made an impassioned plea... So, we did go along with the parents' wishes, but it was not the IPRC's recommendation. It was an agreement" (p.363).

About the 1992 determination of the IPRC that the student be placed in a special class, Ms Ireland says, "I felt that the priority was to develop a communication system" (p.371). She identifies the student's other needs as physical and social. Ms Ireland says that she suggested in a September 3, 1992 letter to the appellants a modified school day, because, she asserts, "[The student's] needs were not being met... [The student] was losing a fair amount of time sleeping...perhaps [the student] could rest the other half of the day...it would reduce the need for a full-time educational assistant..." (p.373).

Ms Ireland describes the renovated classes for multihandicapped students, where the teacher/pupil ratio is one/six. She states that the special class students are integrated with regular students through a buddy system and through inclusion in school activities and in regular classrooms. She explains that the student's transportation to such a class in Prince Charles School would be direct and would take about twenty minutes.

Ms Ireland acknowledges that while exceptional students are not labelled as such, there are labels on the classes they attend, e.g., developmentally delayed, developmentally handicapped, developmentally challenged. She says she has met the student only once. She asserts she was present for about a half hour while Ms B. and the student were watching a video.

Of several schools having special classes, which Ms Ireland considers suitable for the student, she says she prefers Prince Charles because staff there have had experience in some of the methods of communication advised through such centres as Hugh McMillan. She describes most of the students in the special classes at Prince Charles School as multihandicapped. Ms Ireland believes the student to be developmentally delayed, but she acknowledges that she doesn't know for sure because the student can't communicate. She expresses disagreement with expert witnesses who state the

opinion that the student's lack of a communication system is not an impediment to the student's integration into a regular class. She indicates that the Board had never, before, integrated into a regular classroom a student who was multihandicapped and non verbal, and that she does not know of anyone within the Board who has experience doing that.

Ms Ireland explains that she has responsibility for the Paris family of schools, not Burford; however, she has responsibility for Special Services and the IPRC process. The student is in the Burford family of schools.

Ms Ireland does not agree that the Board never requested from the appellants medical information about the student. She asserts that Dr. Lock, the student's family doctor, did not say anything as a witness that would assist with educational programming.

Ms Ireland agrees that by August 1992 the options offered for the student by the Board were Maple Avenue School half time or Prince Charles full time. She thinks there would be more opportunity for the student to communicate and to socialize in the special class setting at Prince Charles School than in the regular classroom at Maple Avenue School. At Prince Charles, in Ms Ireland's view, the student's vocalizing would not disturb other students as in a regular class, and personnel could capitalize on the vocalization to get some two-way communication going. She states that no multihandicapped students from the special education class at Prince Charles School have moved into a regular placement.

Ms Ireland says that the Board never discussed with the appellants the principle of maintaining a regular class enrolment for the student with the possibility of extensive withdrawal for compelling reasons.

**Ms. L.**

Ms L. teaches the grade 2-3 class in which the student is enrolled. She explains that she operates a design and technology program, which involves computers and manipulatives: saws, hand drills, screwdrivers, awls, woodworking tools. Ms L. outlines the variety of grade/group instruction/activity in the student's classroom.

She explains that the principal advised her and the educational assistant to record positive things about the student in the communication book, and to deal with negative issues through the principal. Such issues are recorded in an observation book.

Ms L. describes the modification of the Grade 2 program for the student, e.g., use of tactile material and provision of multisensory stimulation. She states that she rotates around the room to speak to individual children, including the student, and she explains, "I don't sit down and specifically work with [the student] without the educational assistant being present" (Vol.14,p.598).

About the student's vocalizations Ms L. says they vary from low sounds which do not disturb the other children in their activities, to loud crying or distracting sounds which are disturbing. She observes that lately the student tries to sleep first thing in the morning, is revived by a walk in the hall, and again tries to sleep as soon as the student is back at the student's desk in the classroom. The student consistently enjoys physical activities and music according to Ms L.

She says of the other students in the classroom, "They're very careful and considerate of [the student], but I don't find they interact with [the student] as a peer" (p.605).

The student is described as having made physical progress in the grade 2-3 classroom, but not academic or social progress. Ms L. feels that the regular class placement does not meet the student's needs. Ms L. says the necessity of removing the student from class because of the student's vocalizations, and the student's tendency to sleep or try to sleep at the student's desk, are of concern to her. She feels that a special class placement would have a positive impact on the student because of the smaller number of students, the opportunity for less restricted vocalization, and the access to physical activities within the classroom.

In Ms L's class there are two other pupils besides the student identified as exceptional. She explains how she attempts to modify the program for individual students, and she estimates the student's planning time to be 10 to 12 hours per week. Ms L. and the educational assistant often consult on modifications for the student during recesses or spontaneously as required. She indicates that she and the educational assistant have not tried changing roles, the teacher working one-on-one with the student and the educational assistant working with the rest of the class.

Ms L. says that the student enjoys sitting in the big chair in the hall. The student is more alert to taped stories heard through earphones than to stories read by Ms L. She observes, "Ms W. [the educational assistant] is wonderful with [the student]. She loves [the student] dearly, and she treats [the student] with that same feeling" (p.645). She says that she and the educational assistant made the decision about how to work with the student, and while Ms L. may have consulted with Mr. Boyd, the learning resource teacher, she did not consult a psychologist or other special education consultants, nor did she visit a school board having an inclusionary policy.

Ms L. acknowledges her inability to assess the student academically. She says she doesn't know whether the student should be learning academic things, that the student wants to sleep frequently and cries or vocalizes in the academic setting of the regular classroom. Ms L. states that on the basis of her teaching experience she imagines a special class would be a better setting for the student. She acknowledges that she has not taught a special class and has not observed a special class of physically challenged students.

In Ms L's opinion, the student needs easy access to the opportunity for physical activity and she needs a setting where the student's vocalization can be encouraged. She says

she reached independently the conclusion that the student's needs would be better met in a special class, but she discussed the decision with many people. She acknowledges having been aware before the student's placement in her class that the School Board had made a decision to place the student in a special class.

Ms L. expresses the opinion that if the student were left unattended, the student would probably fall asleep or mouth articles within the student's reach.

**Mrs. P.**

Mrs. P. has been a primary teacher for thirty-two years and was the student's Grade 1 teacher. She states, "I team teach with another Grade 1 teacher. We plan activities together that involve cooperative learning and child-centred learning. We try to plan activities which will address different learning styles and also that will address the whole child... I've taught children with learning disabilities. I've taught children with physical disabilities. I had another child with cerebral palsy, a child with Down Syndrome. I've had hard of hearing children. I had a hydrocephalic [child] that had a shunt. I currently have a child with cleft palate and a child who has alopecia (Vol.10,pp.1745&1746).

While discussing the other pupil with cerebral palsy she says, "I was able to assess the strengths and needs and plan a program and to administer the program and then I was able to assess the growth that had taken place" (p.1748).

Mrs P. discusses the Individual Program Plan of December 1991 saying she had more input with it than the previous one. She states, "One of the difficulties was consistent involvement in a modified Grade 1 program. I found that in the modified program usually you're modifying your language and math to meet the child's, at the child's level. So, we worked with the parents at the December 6th meeting and came up with the word 'differentiated' and it allowed [the student] to be doing a language activity that would meet [the student's] needs" (p.1752). During cross examination Mrs. P. agrees that differentiated was meant to mean parallel program (Vol.11,p.39).

Mrs. P. states that throughout the year she utilized board resources like the "learning resource teachers, my vice-principal, the principal and special services" (Vol.10,p.1752). With regard to her understanding of what the parents wanted for the student she testifies "...they wanted [the student] integrated into the room and to be exposed to all the academic areas and that we would try to use [the student's] occupational goals as best we could" (p.1752).

Mrs. P. testifies that in the student's class the educational assistant "...was responsible for the physical needs of [the student]. She prompted [the student]. She intervened for [the student]. She worked with me to adapt activities. She sometimes helped in the planning of activities" (p.1753).

Mrs. P. was asked about the amount of time she spent working on the student's integration into the classroom, on the student's program or issues surrounding the

student. She replies that compared with any other individual student, she spent a great deal more time.

She further testifies she spent no one-on-one time with the student "because [the student's] academic needs were very different than the other children" (p.1757). The nature of her interactions with [the student] included "...oral language input and more or less a social context...maybe an event...written in [the student's] communication book...something that was happening at the school" (pp.1757&1758). Mrs. P. states [the student] was her responsibility and "We tried to include [the student] in everything" (p.1760).

During examination in-chief, Mrs. P. comments on an assessment for the student for the IPRC, in the spring of 1992. When asked to comment on "no accurate way to assessing [the student's] level of contentment and the difficulty in attaching a reason to observed behaviour", Mrs. P. testifies, "What I observed in the class was sometimes [the student] would laugh and I could not find any reason why [the student] would be laughing at that particular time or [the student] would cry and I wouldn't know why [the student] cried at that particular time and I could see no connection between the times that [the student] did things" (pp.1761&1762).

Mrs. P. comments on the student's signing saying, "You have to be very knowledgeable of [the student's] approximations to signs in order to see [the student's] signs" (p.1765). She feels that given the size of the student's class she was not able to spend the amount of time with the student necessary to gain that kind of knowledge.

When questioned about her concern that the student might choke if the student put some of the small supply materials from the classroom into [the student's] mouth Mrs. P. says the parents "didn't feel that was a problem..[the student] only swallowed food" (p.1771). This did not allay her concerns because she felt she "...was ultimately responsible for [the student] while [the student] was in my class" (p.1771).

With regard to integration and interaction with peers Mrs. P. testifies "...[the children] would like to dress [the student] up in the scarves and some clothing. Then they would treat [the student] like a much younger child than they were" (p.1777). Mrs. P. further testifies "...[during] cooperative learning groups [when] it would come to [the student's] turn they expected Ms B. to respond... It seemed the ones that needed a little extra help knew that and they would go ask [the student] to be their partner"(pp.1777&1779).

When questioned about socialization, and if the student seemed to have friends, Mrs. P. states, "[There were] children who treated [the student] kindly and friendly" (p.1790). During cross, when asked if the student paid more attention to the other children in the class by the end of the year Mrs. P. testifies, "I didn't find that [the student] socialized more with the other children" (Vol.11,p.69). During Tribunal questioning when asked about the amount of time the other children in the class spent with the student Mrs. P. says, "in September...they would spend more time with [the student]. In the classroom,

if...everybody had to have a partner, they would choose [the student], but...[the student] would be one of the last ones chosen: (p.109).

When asked if she observed any academic progress, any indication that the student was imitating or modelling the behaviours of the student's peers, any indication that the student was benefiting from instruction in the regular class, Mrs. P. replies "no".

During cross examination when asked about the basic teaching method she uses, she states, "Any child should learn well, but it doesn't necessarily mean that the child will learn well" (Vol.10,p.1811). When questioned about making special provisions for the student Mrs. P. testifies, "I would discuss with my team partner and we would prepare activities that we thought [the student] would be able to participate most in...things that would be very, very difficult for [the student] to do then we would adapt...the ones that [the student] wasn't able to do...we would get alternatives for [the student] to do right within the group with the children" (p.1814). Mrs. P. says planning was done before and after school and during recess.

### **John Shurvin**

John Shurvin states that he has been with the Brant County Board of Education for eight years since September 1988. During this time he has taught in a special class setting at Prince Charles School.

Mr. Shurvin says the special classroom is a double room, which currently houses twelve students whose age range is six to eighteen or nineteen years. Some of these students may be proceeding to a high school program. The nature of the disabilities in the classroom involves an intellectual and physical component, presently all students are nonambulatory and have very limited verbal skills.

He explains that the types of programs are multi-sensory, and focus on the child's skills and level of functioning. They include thematic units, self-help, feeding, communication encompassing cognitive development, community awareness and choice making.

Mr. Shurvin says the special class is integrated with the regular classes through morning circle and a buddy system which may include hand-over-hand art activities, music, reading, outings such as walks and recess, special activities like assemblies, mini olympics, interactive games, including rolling balls and playing catch.

Mr. Shurvin says he viewed the video tapes of the student (exhibits A1 & R10) and would not make an assumption of the student's cognitive potential but feels the student would do well in his class and he would "look forward to having [the student] in my class and working with [the student] and finding out [the student's] potential and trying to realize it" (p.929).

Mr. Shurvin says each day basically runs from 9:00 a.m. to 3:00 p.m. beginning with a music circle for approximately half an hour. The children then work on their physio,

occupational, gross motor and fine motor goals along with a rotation of computer, switch plate and/or tape recorder tasks. He says that work on thematic units occurs either in the morning or afternoon, depending on time allotment.

When asked during cross about the student's intellectual abilities Mr. Shurvin states, "I would say that they're not being expressed in what I see, whether there is a potential there, I can't tell from what I've seen. The children in my class can have a potential much higher than what they express and that would be my comment that the children in my class may have a tremendous ability, a tremendous potential. It's that it's not being used and that's our focus, is to develop" (p.933).

### **Jeffers Toby**

Dr. Toby testifies that he has been employed with the Brant County Board of Education since 1984. He visited the class to observe the student eight times for a total of eight and a half hours. He visited twice when the student was in Grade 1 for a total of two hours and six times in Grade 2 for a total of six and a half hours.

Dr. Toby noticed that what appeared to be fatigue was exhibited by the student in the morning as well as the afternoon. He says during one observation period distracting vocalizations decreased/stopped when the student was removed from the class and increased in volume and pitch when the student was returned. He states the class instruction at this time was interrupted and could not begin again until the student was removed for the duration. He says the vocalizations sounded like there was some distress.

Dr. Toby noticed that during a lesson involving cooperative efforts between students in terms of goal completion the other children tended to interact with the educational assistant rather than go to the student. He says during one observation session the educational assistant continuously stimulated the student verbally and physically in an effort to get the student to attend, which the student did for only seconds to minutes. The student was observed participating in a music period but this type of attending and participation was not noticed during sessions like reading, writing and environment studies.

Dr. Toby testifies that while observing the student he saw no indication of imitative behaviours, modelling behaviours, general understanding of what was going on in the classroom on the student's part. He feels that a person must understand the why of a behaviour before he will imitate it.

Dr. Toby feels that the student would fall into the sensory motor stage of Piaget's theory of Development although, during cross, he agrees that this is difficult to determine because of the physical involvement and limited verbal skills that the student possesses. He says this stage involves the individual identifying what kinds of motoric behaviours bring you pleasure and how your body works. He feels that a regular class placement does not reinforce these types of behaviours since certain behaviours must be stifled

thus reducing the chance of imprinting brought on by repetition of the behaviour. This repetition is often too distracting to the class to be allowed, therefore, the level of reinforcement necessary to shape a behaviour could not occur in a regular class. He also feels, the amount of stimulation in terms of pictures et cetera displayed in the classroom should be geared towards the individual. Dr. Toby feels too much can be as detrimental as too little.

Dr. Toby states that a major concern when dealing with children "...is academic or intellectual competence... In a regular class you appear to be competing with regular students in the stage where the individual cannot win...[whereas]...if you're competing on the stage where your program is so individualized, everything around you is geared towards you...the probability of achieving a higher level becomes easier and much quicker (Vol.13,p.530).

Dr. Toby feels that there could be integration to the class as well as from the class to other classes thus eliminating an either/or situation. He says by eliminating an either/or situation you create a continuum type situation where you can deal with the people who fall outside of the inclusionary concept of education.

Dr. Toby states that he hates to recommend a child for special classes but he looks at whether or not they will be lost in a regular class setting, does the special class have the materials, personnel, time and patience to deal with the particular child and, whether or not more damage will be done especially in the area of self-esteem should the child remain in a regular class.

During cross examination, when asked about the student's level of integration Dr. Toby states, "I think the Grade 1 class is an extension of your kindergarten class and for the kids that are going into kindergarten, it's more a play atmosphere, blocks and colours and water and sand and all that kind of stuff. Most kids seem to do fairly well with that kind of material, hands on type of...material assessment (p.809).

When he visited the class he was concerned about the physical problems with regard to space and wheelchair mobility, later the negative affects of over stimulation. During cross, Dr. Toby states that there was no direct discussion between himself and the appellants regarding placement of the student.

During cross when asked whether or not he felt the teacher could at times spend one-on-one time with the student while the educational assistant circulated within the room Dr. Toby says he has seen it work in other situations but that he had never seen it tried with this student.

During cross Dr. Toby states that there was considerable patience and time given to the student in the regular class, however the quality of time becomes a factor when it cannot be, due to the class structure, spent reinforcing individual goals. He feels that the necessary materials seemed to be available in the regular class.

Dr. Toby states that based on his many conversations with Mrs. Ireland, Mr. Cronkwright and the classroom teacher all possibilities had been expended and the regular class placement was not working.

### **Ms W.**

Ms W. is employed as an educational assistant with the Brant County Board of Education. Her role is to, in her words, "Under the supervision of the principal and Ms. L, I work exclusively with [the student] one-on-one at all activities" (Vol.14,p.686).

Mrs. W. kept a communication book in which she "would write back and forth to the appellants on a daily basis all the activities [the student] and I did together in the classroom". (p.676). She also kept another book. When asked she states, "I was told only to report to the parents what went on in the classroom that day and that they were well aware that the student did sleep and did excessive mouthing and vocalizing in the classroom and there was no need to report that and the only time I did report that, the sleeping or the excessive mouthing or the vocalization, is if we in the classroom, Mrs. L. and I, felt that maybe [the student] was ill" (p.685). During cross, Ms W, when asked if only negative went into the book, states, "I was to record the sleeping and crying and excessive mouthing, things that mom and dad were aware that [the student] does and don't need to be repeated day after day after day after day" (p.714).

Ms W. says that she worked with the classroom teacher to adapt the curriculum and together "...[we] decide...what materials we could use to best suit [the student], a lot of tactile materials" (p.688).

Ms W. says that the student's program included number recognition from one to five, shapes, and rote counting from one to five. She further states that she used "lots and lots of tactile materials" (p.689). When asked whether she felt the student recognized any one of the numbers one through five, geometric shapes, and colours, Ms W. replies "no".

Ms W. states that during language arts she was working on letter recognition with the student. "I was working on the letters of [the student's] name" (p.692). When asked if she had any sense that the student is recognizing any letters, she replies "no".

With regard to socialization Ms W. states, "[Mrs. L. and I] make sure that [the student] is put in a group. Basically making sure that [the student] is in the group and that the children know that [the student] is a part of their group... There's little interaction. They tend to ask me questions and not really interact with [the student] in the group...[I say]...I'm not part of this group. I'm here for [the student]. [The student] is your group member" (p.693). During cross Ms W. states "I wanted them to ask the questions to [the student], whatever questions that they had or, you know, I wanted them to interact with [the student]." (Vol.15,p.761).

Ms W. says kindergarten children sometimes interact with the student at recess but no one from the student's class on a regular basis. During cross when questioned about a get well card Ms W. agrees that the children of the class had some understanding of the student and what the student enjoyed.

When asked if she observed any social development on the student's part over the year or any indication that the student is imitating or modelling the behaviour of the student's peers she replies "no". In terms of the student's sleeping, Ms W. testifies, "We have found that [the student is] sleeping more now than in the beginning. We find that [the student is] - sometimes [the student] comes and is very, very tired and right after chip duty, if I put [the student] at [the student's] desk, sometimes [the student] starts to nod off right then. To the best of my ability in the afternoon [the student] begins to get very tired again... Sometimes just by rubbing [the student's] cheek and saying 'Wake up. Wake up.' [the student] will wake up for me. Sometimes I find if I loosen [the student's] top buckle or belt around [the student's] chest and just stir [the student] a bit, that we wake [the student] up. Sometimes I have to physically remove [the student] and take [the student] out and have a walk. That will do it. Sometimes if we just change activities, [the student will] wake up... Sometimes I continue to work with [the student] hand-over-hand when [the student] is sleeping and sometimes if I feel [the student] is extremely tired and needs the sleep, I'll let [the student] sleep and I'll sit beside [the student]" (Vol.14,pp.597&698).

When asked about types of vocalizations Ms W. states, "Just a soft murmur, like a humming. Sometimes it's a little bit louder than a hum and sometimes it's a very loud noise... I take [the student] out of the classroom when it's disrupting the other students... Sometimes it could be five minutes, sometimes it could be a little bit longer, ten, fifteen minutes...just before a b.m. the student becomes very vocal" (pp.699&700).

Ms W. says she has not seen the student sign independently. Toileting takes approximately ten to fifteen minutes each try and the student is toileted hourly on the half hour. Ms W. feels there has been no progress in this area. She feels that there has been improvement in the student's physical development.

During cross, when questioned about other people seeing the student independently press a button on the computer, Ms W. agrees it would surprise her "Because I haven't seen it happen and I'm with [the student] every single day... I believe that if [the student] could do it, I would have seen it by now and if somebody else says they have seen [the student] do it, they have seen [the student] do it. I only know what I see" (Vol.15,p.721).

During cross Ms W. states, "I don't know if [the student] was enjoying what was being said or [the student] was enjoying the sounds that were going on in the tape, the airplane and all the other noises that go on. I don't know if [the student] was enjoying that, the pitch of the voice of the man that was speaking. I don't know which one [the student] was enjoying" (p.723).

During cross, a skating party is discussed where Ms W. comments that the student enjoyed watching the other children. She says, "[the student's] eyes were going around watching..[the student] is staying awake, is alert, is happy" (pp.729&730).

During cross, when questioned about providing the opportunity for the student to do things independently Ms W. testifies, "I will do it first and then do it hand-over-hand with [the student] and then ask [the student] to do it for me... [The student] will go sometimes for the object, not always. I always end up doing it hand-over-hand with [the student]... I don't know exactly how long I wait for [the student] to do it before I help" (p.744).

During cross, when Ms W. was presented various instances of teasing behaviour on the student's part, she testifies she has never seen this type of behaviour displayed by the student. Ms W. testifies she would do physical things as well as verbal with the student in an attempt to elicit a response. However, she does agree that the student responded only when the verbal cue was presented with regard to going on a walk.

During cross, Ms W. agrees that the student enjoys "being outside...physical activity...music and tape(s) stories" (p.762). She says, "I'd say that was what [the student] liked to do at school"(p.762).

During cross, Ms W. was asked about the purpose of doing hand-over-hand when the student was asleep, and she replies, "Because sometimes [the student] will just nod off for a few minutes and start back and be back, you know, be conscious again, so that's why I sometimes keep doing it, in case [the student] does wake up" (p.768).

During re-examination, Ms W. was asked about a visit from the speech pathologist who testified earlier that the student was able to name the parts of a doll, pick out colours and was successful with choice making, for example, a ball or a shoe. Ms W. testifies that the student was not able to indicate the body parts and was inconsistent with choice making (pp.778&779).

## **Decision**

The Tribunal unanimously denies the request of the appellants and affirms the determination of the IPRC of 24 February 1992.

## **Basis For Decision**

The principal issue in this decision is whether the student's special needs can be met best in a regular class or in a special class. Bearing upon this principal issue are several immediately relevant, significant, and interdependent considerations: the wishes of the student's parents; the empirical evidence available from the student's three school years in a regular classroom setting; the evidence available from the literature on placement; the testimony of individuals presented as experts in the matter of classroom placement; the effect of the Ontario Ministry of Education and Training's proposed directions in

regard to integration of exceptional pupils; and the impact of the *Charter of Rights and Freedoms* and the *Ontario Human Rights Code* and related case law. We address these matters separately below.

## **The Student's Needs**

Like those of any other unique person, the student's needs are specific, and like those of any other person, those needs arise out of the student's physical, intellectual, and emotional makeup. Because the student is clearly exceptional the student's needs are special, and in school, they can only be met in a manner that is qualitatively and quantitatively different from the way in which the needs of the vast majority of students are met. By itself, the fact that the student has different needs does not, ipso facto, call for special class placement. What distinguishes the student, and provokes consideration of special placement, is the nature and extent of the student's particular needs.

### **Intellectual and Academic Needs:**

The Tribunal received no convincing evidence that the student responds to the type of curriculum and instruction typical for children at the student's age level. On the contrary, the weight of evidence strongly suggests that the student has not assimilated, throughout three years in regular classes, even a fraction of the learning which the student is said to have mastered in the more intimate and less anonymous environment of the student's home and family. In fact we received considerable evidence that, viewed with objectivity, and notwithstanding the student's communication needs, suggests the student has a profound learning deficit. Despite the contention of the appellants that the student's intellectual ability is undetermined and unspecified, it is unrealistic in our opinion, and, we believe, a disservice to the student, to discount the extensive empirical evidence that points to a profound intellectual handicap.

From evidence and testimony it is clear that what the student may be learning in school, and what the student may be expected to learn, is not remotely similar to that which is being learned by the student's age-level peers. There is a wide and significant intellectual and academic gap between the student and the student's peers. This is readily apparent from evidence and testimony of the school personnel who have been responsible for the student's education.

The testimony offered by witnesses presented as experts, is that the student requires a "parallel curriculum" in the regular classroom setting, one adapted to the student's uniquely different needs. The Tribunal is familiar with the concept of "parallel curriculum" and has immediate, hands-on experience with its implementation. Experience demonstrates that in practice, "parallel curriculum" benefits the receiver when it is realistically parallel. But when a curriculum is so adapted and modified for an individual that the similarity or the parallelism is objectively unidentifiable, the adaptation becomes mere artifice and serves only to isolate the student.

In this student's case, it is clear from evidence and testimony that a "parallel" learning program specifically designed to meet the student's intellectual needs, isolates the student in a disserving and potentially insidious way.

It is the unanimous opinion of the Tribunal therefore, that the student's intellectual and academic needs cannot be met best, if indeed they can be met at all, in a regular class.

### **Communication Needs:**

It is clear from evidence and testimony that although the student vocalizes, the student does not appear to be developing the kinds of expressive skills that could be construed as a foundation for oral communication. Also, the evidence is very strong that the student's comprehension of speech is extremely limited. It appears therefore, based on the evidence presently available, that the student will not be able to use oral speech as a principal means of communication.

The mother testifies that the student uses and comprehends a small number of manual signs. She also testifies that the student rarely repeats signs, and that the student often presents them quickly and idiosyncratically. The mother and the educational assistants testify that to learn sign, the student needs repetitive, hand-over-hand instruction; they testify further that this practice has indeed been followed with the student for several years. Nevertheless the testimony of the teachers and educational assistants is that they have very rarely, if ever, seen the student use signs spontaneously, or at least in a manner that adults versed in sign can interpret. Based on this testimony, the Tribunal concludes there is reasonable doubt that the student will be able to use sign meaningfully.

We also have testimony that the student may one day communicate with assistive technology, e.g., an electronic, computerized device, custom-designed to the needs and abilities of an individual. Whether such a device is currently available to meet the student's unique needs, or whether one can be designed for the student, or whether the student will ever be able to use such a device, is unknown and unpredictable.

Appellant witness, Robert Williams, an adult male with cerebral palsy whose limbs are fully involved, and who is non-verbal, testifies (by means of assistive technology) that once he was able to communicate, he was also able to demonstrate his abilities, and people around him then modified their view of what he could accomplish. He also testifies that he was placed in a special setting for his elementary schooling and that what was "missing in the segregated setting for me and the others were the easy, natural opportunities, not just to communicate, but to see communication as the most vital means of exerting choice and control in life." (Vol.XIV,p.572)

While this witness's personal situation is a persuasive example of the potential benefits of assistive technology, and while we have his assessment of the benefits of integration, we have no evidence that simply because, like him, the student has cerebral palsy and is non-verbal, the student will have the student's communication needs met in the way

that he did. From Robert Williams' evidence describing his childhood, the point at which comparison with the student is most meaningful, it is clear that his strengths at that time were significantly different from the student's.

Given the evidence we have and do not have, it is the Tribunal's unanimous opinion that the student's need to communicate is going to be met only with very individualized, highly specialized, extremely intense, one-on-one instruction. Because this need is of such over-riding importance for the student, it makes sense to address it, at least initially, and until the student demonstrates some minimal competence, in a setting where there will be maximum opportunity for such instruction.

### **Emotional and Social Needs:**

In assessing the extent to which these very important human needs can be met for the student in the regular classroom, the Tribunal pays particular heed to the testimony of the parents, and of the teachers and educational assistants.

The testimony of the parents is that the student responds well to the student's peers and is happy among them. In Exhibit A-2, a videotape presentation of the student's birthday party in February, 1993, the parents point to examples of the student's response and involvement when surrounded by age peers. Although parents are frequently very subjective in assessments of their own children, family intimacy may enable them to identify behaviours in their children that strangers may not see. Nevertheless, despite several viewings of the videotape by the Tribunal, and despite granting the parents full benefit of the doubt, we are unable, separately and in concert, to detect the nature and depth of response in the student that they describe. We believe that if the videotape is viewed and assessed with reasoned objectivity, the contents illustrate the student's spontaneous response to the student's father, but very minimal reactions to others, both peers and adults, and then only when prompted.

The testimony of the student's teachers and educational assistants is that generally, the student's classmates tend not to involve themselves with the student in class or at play. The contents of a videotape (Exhibit R-10) showing the student's Grade 1 class in three different activities, illustrates that during these times there was very limited interaction between the student and the student's classmates, especially compared to the interaction of the classmates among one another. The evidence of appellant witness, Harry Silverman, is that the children [in the student's Grade 2 classroom] "have not developed the notion,...that [the student] is an integral part of the classroom." (Vol. VIII, p.1465) In further testimony, he offers the opinion that this indifference is possibly a consequence of the teacher not pro-actively involving the student. However, this witness saw only one class for a period of about two and one-half hours, and in our opinion therefore, would not be competent to make such a judgement. Further, the Tribunal notes that the student had been a classmate of many of that group of children for almost three years by that point, and if a pattern of natural interaction were going to develop, it is our view that it would have developed by this time, with or without the teacher's intervention.

The Tribunal notes that although the empirical evidence is that there is limited, if any, interaction between the student and the student's classmates, it may be possible that some of the student's social and emotional needs are nevertheless being met. Because the student does not communicate effectively, it is conceivable that the student is enjoying the experience and cannot tell us. However, the student's classroom behaviours--the increasing incidents of crying, sleeping and vocalization--suggest that this is not the case. There appears to be little if any, social interaction between the student and the student's peers in the regular class.

### **Physical and Personal Safety Needs:**

There is extensive testimony from both appellant and respondent witnesses that while the student's physical abilities when walking, sitting, standing, focusing, and using the student's hands in purposeful activity, have improved, these abilities are significantly less well-developed than the norm for the student's age. However, the student's physical abilities by themselves ought not to be the deciding factor in evaluating whether the student's needs can be met best in a regular or special class. Although the student's need for a wheelchair, a walker, and a special desk, as well as physical assistance, together require much extra time and attention from the responsible adults in a classroom setting, it is not unreasonable to expect this of them, even though a special classroom may be better designed and equipped to address special physical needs.

What is unreasonable, in our opinion, is to treat lightly, the student's habit of mouthing objects. This habit is attested to by both appellant and respondent witnesses as consistent and well-established. The Tribunal notes that some of the objects mouthed may be relatively innocuous in small amounts (e.g., sand, paper) but we have evidence that the student also mouths potentially harmful objects (e.g., pins).

The parents assert that they are not distressed by this habit in the student, and that they are confident the student will not swallow harmful objects. However, a home setting that is adjusted to a child with pervasive muscular dysfunction, and idiosyncratic communication abilities, and who regularly mouths objects, is significantly different from a regular classroom setting. It is unreasonable to expect the student's age-peer classmates to manage their classroom materials with the student's mouthing habit in mind. It is also unreasonable to expect a school to treat the student as though the student will never swallow something potentially dangerous. Therefore, the school has a choice of establishing a level of adult supervision of the student that is more intense than mere watchfulness, or, of cleansing the classroom of mouthable materials. It is the Tribunal's unanimous opinion that for the student's personal safety, one of these conditions must prevail, and neither condition can reasonably be realized in a normal, integrated, regular classroom.

## **The Student's Experience in The Regular Classroom Setting**

The Tribunal regards as fundamental to its decision, the fact that the student has spent more than three school years in a regular class, with many of the same classmates for that period of time. Our unanimous opinion is that the evidence and testimony indicate strongly, that this placement has not been successful for the student.

The experience with early-childhood integration in western education, and the limited longitudinal research in this area, seem to confirm that integration of exceptional children in schools has greater potential for success if begun at kindergarten or earlier. The student has been in a regular class since kindergarten, and has been with many of the same children for three years. Yet the testimony of Maple Avenue School staff, the adults who have been in the classroom with the student every day is that the desired outcome of integration for an exceptional child, namely, fulfilment of intellectual and especially social and emotional needs through regular and natural interaction, has not been realized in the student's case.

Although some witnesses called by the appellant were directly critical (e.g., Mara Sapon-Shevin) and indirectly critical (e.g., Harry Silverman) of the practices and procedures of the Maple Avenue School staff in regard to the student, the appellants' counsel argues that the staff has generally been doing for the student what experts and specialists in integration would recommend for a special child in a regular class. Still, despite the fact that the staff has been implementing recommended procedures, and despite the fact that appellants' counsel describes the staff as having "positive things to say about the experience [with the student]" (29 July 1993, p.23) the witnesses' own testimony is that these procedures were not meeting the student's needs. Also it is evident from testimony and from the Communications Books between the school and the parents (Exhibit A-39, Books 1-4) that the frequency and intensity of the student's expressions of discontent crying, sleeping, vocalizing have been increasing over the three year period.

We note that school staff at Maple Avenue testify that the children there are very kind to the student and that they (the staff) encourage this. We note also that three mothers of the student's classmates testify they feel their children have benefited from the student's presence. Nevertheless, for integration of an exceptional child to be meaningful and fulfilling, the child must not be just physically placed in a regular classroom, but must be intellectually, socially, and emotionally involved. He or she must be accepted naturally as a regular member of the class despite a need for special support and consideration. Integration can be given momentum by adult intervention, but at some point over a reasonable amount of time, it must of itself, grow past artifice and manipulation. There must be regular, natural, spontaneous interaction between the exceptional child and the class. We have no convincing, objective evidence or testimony that over three years, any of this has developed for either the student or the student's classmates.

Thus, while the Tribunal agrees with appellants' counsel that there is "clear evidence of benefits from integration, the value of integration psychologically for children with

disabilities..." (p.64) we do not agree that, from evidence and testimony, there is indication of benefits in the student's case. In fact, the testimony describing the student's three years in a regular classroom indicates that the nature and extent of immediate adult intervention and care essential to meet the student's profound intellectual, physical and emotional needs even minimally, has the counter-productive effect of isolating the student, of segregating the student in the theoretically integrated setting. In the opinion of the Tribunal this is a far more insidious outcome than would obtain in a special class.

### **The Wishes Of The Parents**

The Tribunal notes the submission of appellants' counsel that the parents' "decisions in regard to [their child] were carefully thought out and reasoned and based on an over-all philosophy." (29 July 1993, p.10) We note the contents of Exhibit A-6, a summary of the parents' reasoning and philosophy submitted to the IPRC of February 1992. As well, we note the testimony of both parents, wherein they express their wishes regarding the student's placement, particularly, that they wish the student to be placed in a regular class in the neighbourhood school because, in their opinion, it is where their hopes for the student will be fulfilled.

While we accept that the appellants have reflected on the student's situation at great length, in considering the parents' wishes regarding the student's schooling and evaluating their testimony on the matter, we are struck by what appears to be an inordinate amount of inconsistency and contradiction.

For example, the parents state that they want the student to attend Maple Avenue School because of the benefits that will accrue to the student being in the student's neighbourhood. Yet the student is not enrolled in any community activities in the neighbourhood (Burford) area. The student's three siblings do not attend the neighbourhood school, and the student was initially enrolled, at the parents' choice, in Dufferin School in Brantford. In Exhibit A-39 (Communication Book 3) the parents write that for Hallowe'en, the family "go[es] out trick or treating, usually in Cambridge where my parents live in a nice lengthy street as it's no fun driving from place to place in the country esp. when we know so few people out there."

The appellants say they want the student to be in a regular class so that the student can model the student's peers. Their testimony is that the student's regular class experience thus far, offers dramatic proof of such modelling. The mother says in Exhibit A-4 "We feel...that until [the student] had contact [in the regular class] with other children who walked, the student did not realize that [children] (sic) are able to walk...". However, the mother acknowledges in testimony that before the student began attending school, the student had seen other children the student's age in the community who could walk, and that she [the mother] "did not know" and "was supposing" (Vol.III,p.477) that it was the regular class experience which taught the student that children walk.

The impact of the modelling to which the parents point does not appear to extend to the student's attire, even though it is well-established in the child behaviour field that

clothing styles are an especially powerful element in peer modelling. When the school suggested to the family that the student be dressed like the other children in the class, the reply was "it is ALWAYS (sic) [the student's] preference to [dress this way]". (Exhibit A-5)

Further, although the parents testify that the student learns from modelling, it is clear from their own evidence, and from the testimony of the school staff, and from the testimony of social services personnel that the student learns best with repeated, one-on-one, hand-over-hand instruction.

The Tribunal is struck by the significant discrepancy between the parents' and the school personnel's assessment of the student's abilities. Whereas the parents testify, for example, that the student can identify a range of colours, and even distinguish shades within a colour, both the teacher and educational assistants testify that the student's responses indicate the student is not capable of such identifications and distinctions. There are also differences in the testimony of how far the student can walk with the student's walker, and of how well, when, or even if, the student uses sign.

While recognizing the parents' very strong insistence that the student attend a regular class in the neighbourhood school, and given that parent volunteering and on-site participation is a long accepted and beneficial practice in elementary education, especially in cases of unique needs like the student's, we are perplexed by what appears to be rather limited in-class, on-site involvement on their part. We have no evidence or testimony that either parent volunteered or participated on a regular basis in the student's kindergarten, Grade 1 and Grade 2 classes, which were in a school that they report to be only five minutes away.

The Communication Books (Exhibit A-39) contain regular, pointed, lengthy, and extremely specific directions to the school in regard to what should or should not be done in the student's classroom experience (e.g., from Exhibit A-39, Communication Book: "..We want [the student] included in classroom activities ALL Activities in an adapted manner. We do not want you doing an O.T. or physio or speech therapy program at school.") It is apparent that the parents were intensely involved, but from a distance, and it is apparent that imperatives and directions outweighed participation. We believe that much of the difference of opinion over the student's needs and abilities, and quite possibly, much of the disagreement and disputation in this case, has arisen because the parents did not observe personally and at first hand, on a regular, frequent basis, what was happening in the student's classroom. In our opinion, this lack of direct involvement diminishes the appellant counsel's argument that the parents' wishes and decisions are "carefully thought out and reasoned and based on an overall philosophy". (29 July 1993, p.10)

Taking these discrepancies, contradictions and inconsistencies into account, it is the Tribunal's view that the parents' request that the student be placed in a regular classroom, full time, is not based on a reasoned, empathetic assessment of what the student needs and what the student can do, outside the student's family home.

## **Ministry of Education And Training's Proposed Directions Regarding Integration**

Our decision in regard to the student takes into account the Minister's statement in the Ontario legislature on 28 May 1991, during which she indicated her intent to initiate a policy for the province wherein "the integration of exceptional pupils into local community classrooms should be the norm in Ontario, wherever possible, when such a placement meets the pupil's needs, and where it is according to parental choice".

The Minister also stated in the same address that her Ministry recognizes that "an integrated setting will not be appropriate for every child".

## **Evidence Available From The Literature On Class Placement**

In testimony from witnesses presented as expert, the Tribunal heard numerous references to the literature on placement as a part of special education practice. We are unable to conclude from this testimony that the literature clearly establishes any one setting as the best to meet the needs of exceptional children. (E.g., Mara Sapon-Shevin: "There is much that's inconclusive in this field; that's why it's tricky." Vol.VII, p.1330); Gary Bunch: "...we've come to an understanding of the literature that in some cases says, yes, there is a beneficial effect...and other literature says there is a neutral effect...and other that says that placement in regular classrooms has at least equal effect..." (Vol.VI, p.1044)

Accordingly, since the Tribunal itself has expertise in the literature on placement, and having regard to our discretionary powers under Section 16(b) of the Statutory Powers Procedure Act (R.S.). 1980, Chapter 484) we completed for ourselves, an extensive and intensive review of the placement literature and conclude that this body of literature, taken as a whole, is seriously flawed

- 1) by very poor research methods (e.g., lack of controls; cf. the study described by Gary Bunch, Vol. VI);
- 2) by the polemical stance taken by many of the researchers and writers (cf. Exhibits A-33, A-34, entered with the testimony of Mara Sapon-Shevin);
- 3) by the inherent difficulty in controlling variables while conducting research on human learning and behaviour (e.g., confounding place with what happens pedagogically and socially in the place);
- 4) by extrapolating conclusions that fit a hypothesis rather than the other way around (e.g., studies of social status and self-image among disabled children do not show that if they feel stigma and isolation, it is necessarily the result of being educated outside a regular classroom; yet the argument is regularly advanced by advocates of integration that this is indeed the case, and that a significant proportion of the literature verifies this contention);

5) by the regular use of non-cognate cases and situations to demonstrate outcomes for other cases (e.g., reference to the successful integration of, say, a child who is blind, to establish regular class placement as the best setting for a child who is deaf); and,

6) by the inexplicably wide acceptance and citation in the same context as refereed journals of what has come to be called "gee whiz" literature (e.g., descriptive, anecdotal, journalistic, and clearly unscientific reports on individual cases of exceptionality).

Most important, the references in the literature to situations that are even vaguely analogous to that of the student are extremely limited.

The Tribunal therefore, in its own review of the literature, does not find support for placing the student in a regular class.

### **Testimony Of Expert Witnesses**

Three witnesses, Gary Bunch, Mara Sapon-Shevin, and Harry Silverman were presented to the Tribunal as experts by the appellants' counsel.

Harry Silverman observed in the student's classroom for approximately two and one-half hours on the morning of 27 January 1993. Neither of the other two witnesses saw the student in a school setting.

In our opinion, all three witnesses are committed to a philosophy of full inclusion (integration). Harry Silverman testifies "I fully subscribe to the 'no reject concept' which suggests that no school board has the right to exclude a child from education in a regular classroom...[and that a school board] does not have the moral or legal right to exclude any child". (Vol. VIII, p.1389)

Gary Bunch testifies that he is chair of the board for the 'Centre For Integrated Education' the purpose of which is to "advocate for, consult on, advise on inclusionary education". (Vol. VI, p.1112)

Mara Sapon-Shevin testifies that she is a member of 'Schools For Everyone', which is "a group devoted to promoting inclusion for children with disabilities in regular classrooms." (Vol. VII, p.1206) and of an organization called the 'Association For Persons With Severe Handicaps' and says "that my work with that organization has been primarily again, in the field of inclusion". (Ibid.) She also testifies that she has been involved in several other projects in the U.S.A., which have had inclusion of exceptional children in regular classrooms as a principal objective.

All three witnesses manifest an entirely subjective view of class placement, and in fact could not reasonably be expected to testify in any other way than strongly supportive of

integration. Given the absence of clear research support and clear empirical support for the integration of exceptional children like the student; viz., the uncertainty in the area for which they are presented as expert, and given that they did not, except for Harry Silverman, observe the student in a school setting, we do not find their testimony significant in the specific matter of the student's placement.

### **The Charter Of Rights, And Human Rights Issues**

We accept the argument of appellants' counsel that we are bound by *The Charter* and by the *Ontario Human Rights Code* (OHRC) in making our decision and that *The Charter* would take precedence over the *Education Act* if there is conflict between the two. We also accept that consideration of *The Charter* and the OHRC are within our mandate as a tribunal. Accordingly, we considered at great length the submissions of both counsel in regard to the impact of *The Charter* and the OHRC in the student's case. Although we find that the case law presented to us offers analogous principles, it does not have relevance in the matter of the student's placement.

It is our opinion that where a school board recommends placement of a child with special needs in a special class, contrary to the wishes of the parents, and where the school board has already made extensive and significant effort to accommodate the parents' wishes by attempting to meet that child's needs in a regular class with appropriate modifications and supports, and where empirical, objective evidence demonstrates that the child's needs are not being met in the regular class, that school board is not in violation of *The Charter* or the OHRC.

We find that in the case of the student, the Brant County Board of Education, in placing the student in a special class, is not acting in contravention of *The Charter* and is not violating the student's human rights.

### **Obiter Dictum**

The fact that the disagreement over the student's class placement has been allowed to continue to the level of a Special Education Tribunal hearing is a grave disservice to this child. The Tribunal has no doubt that everyone involved with the student has the student's present best interests and future well-being at heart. But we also feel that both are being put at risk by an unnecessarily rigorous adherence to principle and by the tyranny of moral certainty.

Having examined the historical development of this disagreement over the student's placement, it is clear to us that the student, the child, is now at risk of becoming the student, the symbol. It is also clear to us that engaging legal counsel, turning to judicial and quasi-judicial avenues of redress, in short, taking an adversarial approach, has pushed this disagreement away from compromise and into competition, away from

accommodation and into dispute. The student's present and future well-being will not be served by going farther down this road.

We have evaluated the student's school situation in a manner we consider rational and dispassionate, and we are convinced by the evidence, and by common sense, that a regular class is not the best place for the student. Nevertheless, our decision in favour of a special class placement does not relieve the school board and the parents of the obligation to collaborate creatively in continuing effort to meet the student's present and future needs. [This] is so unusual a case that unusual responses may well be necessary for the student. Such achievements can only be realized through cooperation, and most important, compromise.

For the Tribunal

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Professor Kenneth J. Weber, Chair

Date

19 November 1993