

PROBLEMS
WITH THE SUPREME COURT'S *EATON* DECISION
delivered on February 6th, 1997

David Jory, August 2001

Table of Contents

INTRODUCTION	1
FACTS WHICH WERE NOT PART OF THE CASE BUT PERHAPS SHOULD HAVE BEEN	3
INACCURATE REPRESENTATIONS OF THE LAW.....	5
A MISLEADING STATEMENT BY COUNSEL FOR THE ATTORNEY GENERAL FOR ONTARIO.....	9
INACCURATE REPRESENTATIONS AND MISQUOTATIONS OF THE DECISION OF THE ONTARIO SPECIAL EDUCATION TRIBUNAL	10
OTHER PROBLEMS WITH THE SUPREME COURT DECISION.....	13
PROBLEMS WITH THE TRIBUNAL DECISION.....	23
AN ALTERNATIVE TO THE IDEOLOGY OF EXCLUSION	35
A CONTEXTUAL REVIEW OF RELEVANT LEGISLATION	38
END NOTE	45
APPENDIX.....	46
ABOUT THE AUTHOR	53

PROBLEMS WITH THE SUPREME COURT'S *EATON* DECISION

INTRODUCTION¹

This document makes little reference to interpretations of the *Charter* or to legal theories or arguments. It is concerned with educational matters — policy, practice, history and classroom reality — and with use of language.

Many of those charged with formulating and implementing education policy in Canada have drawn the following lessons from the Supreme Court decision in the case of *Eaton v. Brant County Board of Education*, delivered on February 6th, 1997, and have acted on them:

- (a) education law, regulation and policy rooted in eugenics and education practice rooted in the 1950s institutions are acceptable;
- (b) efforts by parents to get appropriate education programs and services for their child can always be trumped by bureaucratic convenience or segregationist ideology, and the child and the parents deserve punishment when this happens;
- (c) provincial government education (and, presumably, other) service providers can exclude any child with a significant disability under 16 from “mainstream society” (66) and force him or her into a segregated service whenever they feel like doing so. All they have to do is fail conspicuously to provide the appropriate services they are supposed to provide in a non-segregated service setting. Using the “best interests” test, the segregated setting can then be said to be in the “best interests” of the child²;
- (d) there is no requirement that education (or, presumably, other) programs and services provided in a segregated setting be appropriate or in any way useful to the child forced to submit to them;

¹ Unless otherwise indicated, throughout this document figures in brackets refer to paragraphs in the Supreme Court's *Eaton* decision and figures in brackets preceded by “p.” refer to pages in the Ontario Special Education Tribunal decision in the same matter.

² Two early examples.

(i) The mother of an ‘exceptional’ pupil ‘integrated’ into a regular class at Macville School in the Peel Board of Education was repeatedly told by the school that whenever the Teacher Assistant assigned to her child (T.A.s are supposed to be assigned to classrooms, not to specific children, but, as is clear in the Ontario Special Education Tribunal's *Eaton* decision, this is a polite fiction in the case of many ‘integrated’ pupils) was sick - which occurred with surprising frequency - she had to come to the school and take her child home because this was in the “best interests” of her child. In February 1998 this mother had an appointment to enter a hospital for the induced delivery of an overdue pregnancy. She was ordered by the school to pick up her child from the school on the way to the hospital because this was in the “best interests” of her child, the Teacher Assistant again being sick. Though this is not in accordance with Board policy, the parents are afraid to complain in case their child is victimized and/or placed in a segregated setting as a consequence - a fear that is not unjustified.

(ii) According to reports from people who were present, when the provincial director of special education services of one of the Western provinces was told during a meeting that the Supreme Court had found for the Brant County Board, he said: “Oh, good! We've won. We can go on segregating them”.

(e) while a presumption in favour of “integration” would be bad (79), a presumption in favour of segregation is acceptable;

(f) where a provincial government education (and, presumably, other) service provider needs only to change ideology and attitude and increase competence in order to accommodate a child with a disability, to require this accommodation can be considered unreasonable.

So far there is no evidence that other provincial government service providers are using the precedents to reinstitutionalize children on a large scale but it is difficult to see what recourse there could be through the courts if they began to do so.

As a direct consequence of this decision, thousands of pupils with developmental (and certain other) disabilities are now wasting their school years in segregated classes. Decades of research and lived experience show that many, probably most, will never overcome the negative effects of this and will spend their post-school lives primarily in segregation.

This was probably not the intent of the Supreme Court but it all flows naturally from the way the decision was crafted.

Reviewing an Ontario Special Education Tribunal decision in the operative pages (pp. 58-74) of which competence, rationality and impartiality are not evident characteristics, and which squeezed hard to make the evidence fit its purposes, the Supreme Court inaccurately represented to itself both the law it was interpreting and the Tribunal decision; inaccurately represented to itself the legal and educational contexts; accepted opinion as fact; suspended operation of its critical faculties; decided the case according to its own belief statements rather than the facts; equated exclusion with accommodation; and misapplied its own test. Study of the Supreme Court decision suggests that its analytical principles for section 15 of the *Charter* were established in such a way as to justify a conclusion consistent with the Tribunal's findings.

FACTS WHICH WERE NOT PART OF THE CASE BUT PERHAPS SHOULD HAVE BEEN

(1) By the time the Supreme Court heard the Brant County Board's appeal of the Ontario Court of Appeal decision in favour of Emily Eaton, Emily had been "integrated" successfully into regular classes in her neighbourhood school for three years by the Brant County Roman Catholic Separate School Board in which she lived, and had received "appropriate special education programs and services" in those regular classes. That remains her situation today. Apparently (this is not first-hand information) that fact was not mentioned at the Supreme Court hearing because it was understood that new evidence cannot be introduced at that stage. Had it been introduced, the Supreme Court might have been led to consider whether the problem was the attitude and competence of the Brant County Board, rather than Emily and her "placement"; whether it was faced with a "defective" Board rather than a "defective" pupil.

(2) It is a fact that there is no valid instructional, financial or administrative argument for segregated classes. In New Brunswick this had been proven in practice ten years before the *Eaton* decision.

A national report prepared for Health and Welfare Canada in 1992 by the Institut Roehrer Institute noted that: "[...] too often young people [with disabilities] are denied access to regular schools because of confused educational policy and lack of leadership. Other problems include improperly conceived and executed funding practices, inadequate support infrastructures, inadequate teacher training, fear, lack of determination to include young people with disabilities, lack of knowledge on the part of educators and systemic inertia.[...] Inclusive education³ is possible. We can either find reasons for falling short of that goal, or we can choose to move resolutely and do what ultimately must be done" (Crawford and Porter, p.2). This was true in Ontario at the time of the Supreme Court's *Eaton* decision and it remains true today.

The Organization for Economic Co-operation and Development (commonly known as the O.E.C.D.) has a Centre for Educational Research and Innovation which stated in a March 1999 report *Sustaining Inclusive Education: Including Students with Special Educational Needs in Mainstream Schools. Lessons from the Case Studies*: "[...] given certain safeguards, there are few, if any, organizational, curriculum or pedagogical reasons to maintain segregated provision within the public sector. [...] It seems safe to conclude that well-developed inclusive practices, which give equivalent attention to disabled students, are less expensive than segregated ones. Furthermore, the evidence on educational progress is such as to suggest tentatively that well structured and supported inclusive practices are beneficial for both disabled and non-disabled students alike" (p.2).

The report also identified the same barriers on the international level that the Institut Roehrer Institute had identified in Canada: "[...] funding models which are biased against inclusion" (p.2), and "[...] the training systems for teachers and other professionals appear to be inadequately oriented for preparing trainees for the demands of working in inclusive settings. The paucity of appropriate training would seem to be helping to maintain an unnecessarily high level of segregated provision" (p.13). To which could be added for Ontario, the bias towards segregation of both the Ontario *Education Act's* Regulation 305 (which was current when the *Eaton* decision

³ For the difference between 'integration' and inclusive education, see below, *An alternative to the ideology of exclusion*, p. 42-44.

was handed down and was quoted in paragraphs 9, 10, and 11) and Regulation 181/98 which replaced it.

INACCURATE REPRESENTATIONS OF THE LAW

(1) Parts of paragraph 69 of the Supreme Court's *Eaton* decision read as follows: "In some cases, *special education* [emphasis added] is a necessary adaptation of the mainstream world which enables some disabled pupils access to the learning environment they need in order to have an equal opportunity in education." "Schools focussed on the needs of the blind or deaf, and *special education* [emphasis added] for students with learning disabilities indicate the positive aspects of segregated education placement."

So this paragraph, which sets out "the basic principles in respect of which the Tribunal's decision should be tested in order to determine whether that decision complies with s. 15(1)" (70), equates "special education" with "segregated education placement". But this is contrary to the letter and the spirit of the Ontario *Education Act* and its Regulation 305. As quoted in paragraphs 9, 10 and 11 of the decision, these refer to "special education program", "appropriate special education programs and services", and "special education placement". Nowhere in these sections is there a reference to "special education". Nowhere is there any hint that "special education" means "segregated education placement".

In law, policy and practice in Ontario, "special education programs and services" are provided to "exceptional students" in a variety of settings - following what is called a "range of options" model⁴ - from full integration in a regular class to total segregation in a segregated school or a hospital. "Special education" in Ontario does *not* mean "segregated education placement".

So "the basic principles in respect of which the Tribunal's decision should be tested in order to determine whether that decision complies with s. 15(1)" (70) were based on a fundamental mistake as to the spirit and letter of the law being interpreted.

Analysis suggests that it was Brant County Board practice and the Supreme Court's faith in the benefits of segregation, rather than the law itself, which framed the discussion of the law in this decision.

Emily Eaton did not need a "segregated education placement" in order to receive "appropriate special education programs and services". She needed a Board that was willing and able to provide "appropriate special education programs and services" in a regular classroom. The evidence given to the Tribunal shows that the Brant County Board was neither willing nor able to do this; the Brant County Roman Catholic Separate School Board has shown it is both.

(As noted elsewhere in this document (p. 16-19), the statements quoted above from paragraph 69 are non-factual belief statements which do not reflect reality.)

(2) in its *Eaton* decision the Supreme Court uses the terms "disabled children" and "exceptional children" as if they are interchangeable, though the largest group of "exceptional children" in the Ontario school system is composed of those labelled "gifted". Hence the statement in paragraph 71: "It is clear that the distinction between 'exceptional' and other children is based on the disability of the child" is inaccurate. The actual definition of an "exceptional pupil", quoted in paragraph 9 of your Court's decision, does not mention "disability", only "exceptionalities" - which is why it can also refer to those labelled "gifted".

⁴ This model is in fact the old "cascade" model. The name given it in Ontario may be deceptive: the "range of options" refers to the different "placements" in which system administrators can choose to "place" an "exceptional" pupil. There is no "range of options" from which pupils (or their parents) can make a free choice, at least, not pupils with developmental disabilities.

Attitudes of “exceptional” students and their parents to segregated settings vary according to their exceptionality. Many students labelled “gifted” and their parents, for example, often fight for more segregated settings because they consider themselves superior to “normal” students (as is clear from the presentations they make before school board trustees), while many students labelled “developmentally disabled” and their parents fight to escape from segregated settings in which they are “placed” against their will because they are considered inferior. However, students in both groups (like all students labelled “exceptional”) are supposed to receive “appropriate special education programs and services” whether the setting in which they are “placed” is “regular” or segregated.

(3) Paragraph 71 also states: “Exceptional children, in some cases, face an enquiry into their placement in the integrated or special classes.” This is incorrect for two reasons.

(a) According to section 2(3)(d) of the Ontario *Education Act's* Regulation 305, “the [Special Education Identification, Placement and Review] committee shall cause to be sent to a parent of the pupil and to the principal who made the referral, as soon as possible after the making of its determination, a written statement of [...] (ii) where, in the opinion of the committee the pupil is an exceptional pupil, the recommendation made in respect of the placement of the pupil”; i.e. in ALL cases, not “some”, exceptional children face an enquiry into their placement.⁵ Paragraph 60 implies that this is the case; it is not clear why in paragraph 71 “in some cases” is introduced to misrepresent the law. However, since this paragraph begins the section of the decision which found that this legal requirement is a “distinction” but not a “burden”, the misrepresentation may have had serious consequences.

Regulation 305's section 8(1) states: “Where an exceptional pupil is placed by a committee,

(a) a committee shall review the placement of the pupil at least every twelve months or pursuant to an application made under clause (b), whichever first occurs:

(b) a parent of the pupil or the principal of the school at which the special education program is provided may, at any time after the placement has been in effect for three months, apply in writing [...] for a review by a committee of the placement of the pupil.”

i.e. every exceptional pupil is “IPRC'd” at least once a year and may be “IPRC'd” every three months.

So “every exceptional child” 's conditional and limited “right to be part of the mainstream of education⁶” (59) is subject to extinction every three months and must be reviewed once a year. An exceptional pupil who manages to get “placed” in a regular class remains under an ever-present threat of banishment into segregated confinement for reasons which typically concern other people's convenience, priorities and attitudes rather than “the true characteristics” (68) of the pupil. Yet this situation, which is imposed on no other group of pupils, was not considered by the Supreme Court to be a “disadvantage or burden” (62), only a “distinction” (71).

⁵ What happened to Emily Eaton was the norm, not an unusual procedure. In 1995-96 there were around 160,000 meetings of Identification, Placement and Review Committees (usually referred to as IPRCs) in Ontario. Over 90% of them served no useful purpose. A conservative estimate of the cost of these 90% to the education system alone (without consideration of the costs to parents) for one year is just over \$100,000,000, mainly in staff time.

⁶ The term “mainstream of education” is burdened with conflicting interpretations and its use by educators is rarely innocent. It is not in common use in Canada and it is not clear what the Supreme Court (or the Ontario Ministry of Education) thought it meant.

(b) Nowhere in Regulation 305 (or, as far as I can see, anywhere else in the Ontario *Education Act*) is there a mention of “integrated classes” (mentioned in the second sentence of paragraph 71) or of “placement in the integrated or special classes”. This is because, according to the law, “special education programs and services” may be provided to exceptional pupils (not “exceptional children”) in a variety of placement options. The choice is not just between “integrated and special classes” and it is a serious misconception to think that it is.

Moreover, since the only pupils who can be “integrated” are those who are designated “exceptional”, to call regular classes in which there are no “exceptional” pupils “integrated classes” (71) is incoherent and confusing. “Placement” of an “exceptional” pupil in a regular class is a necessary, but not a sufficient, condition for that pupil’s “integration”. Educators and those involved in deinstitutionalization have known for at least a decade that the “placement” of children or adults with significant disabilities in a normal community or a regular classroom is the beginning of the “integration” process, not the end, and that “integration” is typically a goal that has to be planned and worked hard for, not a spontaneous and natural occurrence. An “exceptional pupil” may be “placed” in a regular class but not “integrated” into it; this was Emily Eaton’s experience (and that of too many other pupils with developmental disabilities in Ontario). Even if an “exceptional” pupil is fully “integrated” into a regular class, it is clearly the pupil, not the class, that is “integrated”.

(The unfortunate use of confusing and misleading terminology is discussed further on page 21-22 of this document.)

(4) Statements concerning “[t]he current legal framework for the education of exceptional pupils” on paragraphs 59 and 60 are incomplete and misleading.

Ontario Regulation 554/81 is not the same as the Regulation 305/90 which was current at the time of the Supreme Court’s *Eaton* decision. Regulation 554 contained numerous references to “trainable mentally retarded pupils”⁷. Through the 1980 *Education Amendment Act*, the Province of Ontario took over from the non-profit sector responsibility for, and the administration of, schools and classes for children with this label who had been entirely excluded from public education under successive eugenics-based legislation from 1913 to 1974. However, there was no intent in 1980 to put “trainable mentally retarded pupils” on the same footing as other pupils, only to fund and administer the schools and classes to which they continued to be confined⁸. Since they were then considered only “trainable” and this meant that they were incapable of being “educated” (a “distinction based on presumed rather than actual characteristics” (66)), the intent was that they remain segregated from other pupils, including most other pupils with “exceptionalities”. Had the clearly discriminatory wording of Regulation 554 been current in 1996, it would have been difficult to ignore the discriminatory intent.

Following pressure from parents and advocacy groups for pupils with the label “trainable mentally retarded”, in 1990 Regulation 305 was passed to replace Regulation 554. All but one⁹ of the references to “trainable mentally retarded pupils” were eliminated in Regulation 305 but parents and advocates were disappointed to find that little changed in practice and their children — still widely considered only “trainable” and not “educable” — were still systematically excluded from

⁷ See below, (p. 48) for an explanation of the significance of this term, which is usually shortened to “TMRs”.

⁸ Hence the existence in Toronto at the time of the Supreme Court’s *Eaton* decision of a segregated school system so extensive that it had its own school board, and the large segregated school system in Ottawa-Carleton. Both are essentially continuations of the former “TMR” school systems.

⁹ Section 3(4) of Regulation 305 refers to “a trainable mentally retarded pupil”.

regular classes¹⁰ in almost all boards by Regulation 305's IPRC process¹¹. Efforts by parents and advocacy groups since 1990 to change this situation have been unsuccessful.

It is an example of "Special Education"'s "special" use of language that "special education programs and services" includes programs and services to pupils not considered "educable".

(5) The final sentence in paragraph 60 is incoherent but seems to indicate a misunderstanding of Regulation 305. Under that regulation there is no single "identification and placement process"; "identification" and "placement" are separate processes, as is clear from section (2)(3) and from the name of the committee. With respect to provision for appeal, section (4)(1) of the regulation lists three determinations of an IPRC that a parent can appeal:

- “(a) the identification of the pupil as an exceptional pupil;
- (b) the decision that the pupil is not an exceptional pupil; or
- (c) the placement of the pupil as an exceptional pupil.”

Again, the "identification" and the "placement" are separate determinations and either (or both) can be appealed. The intent of the statement "[...] appeal of the identification with a placement decision of the board" (60) appears to be to imply that the two determinations are linked.

¹⁰ Over 75% of pupils with the label "developmental disability" were in segregated classes in the 1995-96 school year, as noted on page 10.

¹¹ See below, (p. 52) for a discussion of the way that process often works in reality.

A MISLEADING STATEMENT BY COUNSEL FOR THE
ATTORNEY GENERAL FOR ONTARIO

At the hearing of the *Eaton* case the Supreme Court was told by counsel for the Attorney General for Ontario that “integration is the norm in Ontario”. Even allowing for the most elastic use of language and interpretation of reality, this statement cannot be reconciled with the facts.

It is true that according to the Ontario Ministry of Education and Training a pupil is “integrated” if he/she spends more than 50% of her/his time in a regular classroom¹², even if the pupil is completely isolated at the back of the room with a teacher assistant and has nothing to do with the other students in the class¹³.

That being said, if counsel for the Attorney General for Ontario was referring to pupils with developmental disabilities¹⁴, his comment defies understanding.

According to calculations made by the Ontario Coalition for Inclusive Education on the basis of figures collected by the Ministry of Education and Training and made available in October 1998, over 75% of pupils with developmental disabilities were in segregated classrooms. There had been little change in this percentage in the two years between the *Eaton* appeal and the production of these figures. Moreover, in the large segregated school systems in both the provincial capital city and the national capital city, even higher percentages of pupils with developmental disabilities were segregated (Toronto 93%; Ottawa 92%). To call a “norm” a situation which applies to less than 25% of the pupils concerned and which is absent from the provincial and national capitals is a serious abuse of language and a misrepresentation of the facts.

So Emily Eaton was not an exception and the “norm” was not “integration”; her situation was itself the “norm” and her parents’ struggle was also the “norm”. Would the Supreme Court have viewed her situation differently if it had known this?

¹² The rest of us do not typically operate in worlds in which 51% = 100%. The use of such a definition is an indicator of the extent to which students with developmental (and some other) disabilities are viewed by the Ministry as different from, and alien to, the regular education system, and helps explain why they are so often considered “outsiders” in the schools in which they are supposedly “integrated”.

¹³ It would appear that either (i) the Ministry is not aware that “placement” in a regular class and “integration” in it are separate situations, the second of which does not necessarily follow the first - i.e. the Ministry is incompetent - or (ii) it continues to equate “placement” in a regular classroom with “integration” deliberately to confuse the issues and strengthen its presumption in favour of segregation? It is not obvious what third explanation could fit the facts.

¹⁴ Emily Eaton has a developmental disability. She could also be classified in Ontario as “multihandicapped”. The Brant County Board classified her as “multihandicapped” for its own reasons.

INACCURATE REPRESENTATIONS AND MISQUOTATIONS OF THE DECISION OF THE
ONTARIO SPECIAL EDUCATION TRIBUNAL

(1) Paragraph 72 of the Supreme Court's *Eaton* decision cannot be reconciled with the Tribunal decision. The Tribunal decision does not mention “the best interests of Emily”¹⁵ or her “receiving the benefits that an education provides” or enabling her “to benefit from the services that an education program offers”. The Tribunal did not “str[i]ve to fashion a placement that would accommodate those special needs”.

The Tribunal decision states: “The principal issue in this decision is whether Emily Eaton's special needs can be met best in a regular class or in a special class” (p.58). And states as grounds for its decision to uphold the determination of the IPRC: “that, having regard to Emily Eaton's needs, the best placement for her is in a special class” (p.2). The key concepts of the Supreme Court decision — “best interests”, “benefit(s)”, “education”, “accommodation” — are absent from the Tribunal decision, which deals solely with the very different concepts of “needs” and “placement”.

(2) In two instances paragraph 73 also provides an inaccurate representation of the Tribunal decision.

(a) The Tribunal did not find “that Emily's communication needs would be best met in the special class”. As correctly noted in paragraph 75, it found that “it makes sense to address [Emily's need to communicate] [...] in a setting where there will be maximum opportunity for such instruction” (Tribunal decision, p.61). Nowhere did it state that this was in the special class. In fact the special class described in paragraph 76 of the Supreme Court decision is not, and cannot be made, “a setting where there will be maximum opportunity for such instruction”; the kind of activities listed as taking place there make it unsuitable for the “very individualized, highly specialized, extremely intense, one-on-one instruction” the Tribunal, following the Brant County Board staff, concluded that Emily needed. However, paragraph 75 implies that the Supreme Court believed that this “segregated placement” was appropriate for this instruction.

(b) The Tribunal did not consider “each of the various categories of needs relevant to education” as it made no reference to “education”. The Supreme Court may have decided that the “categories of needs” outlined by the Tribunal are “relevant to education” or that they define Emily as a person (the “bag of deficits” approach) but the Tribunal wrote only: “Like those of any other unique person, Emily's needs are specific, and like those of any other person, those needs arise out of her physical, intellectual, and emotional makeup” (p.58).

It then went on to discuss these “needs” under the headings: “Intellectual and Academic needs” (p.59); “Communication needs” (p.60); “Emotional and Social Needs” (p.62); and “Physical and Personal Safety Needs”(p.63). Nowhere are these “categories of needs” stated to be “relevant to education”. It would be interesting to find out the basis for the Supreme Court's decision that these “categories of needs”, and only these “categories of needs”, are “relevant to education”.

¹⁵ Except for a statement in the *Obiter dictum* that “The Tribunal has no doubt that everyone involved with Emily has her present best interests and future well-being at heart”. This is not relevant to the use of “best interests” as a consideration in a “placement” decision.

(3) Paragraph 75 adds three more inaccuracies.

(a) The Tribunal did “group its findings into several categories of needs” but it is silent on “interests”. The Supreme Court’s judgement that the “several categories of needs” are “implicated in education” is not consistent with good educational theory and practice, which focuses on learning and abilities and building on what already exists. It is, however, consistent with the usual “Special Education” focus on “deficits”.

(b) The Tribunal did not find that “with respect to Emily’s physical safety, the special classroom was superior to the integrated classroom”. It said that neither of the conditions which it believed must prevail for Emily’s personal safety “can reasonably be realized in a normal, integrated, regular classroom” (p. 64). It does not mention the segregated classroom in its discussion of Emily’s “habit of mouthing objects” (p. 64). There is not even an implication that either of the conditions could be met in a segregated classroom. They could not be met in the “special class” described in paragraph 76.

(c) Nowhere does the Tribunal decision say, directly or by implication, that “the segregated classroom would be superior”¹⁶.

Paragraph 75, in response to the Court of Appeal’s opinion that the Tribunal never actually answered the question it asked itself (74), must be one of the stranger paragraphs to have received the Supreme Court’s unanimous agreement in recent decades. The facts prove that the Court of Appeal, not the Supreme Court, was right, which weakens significantly the Supreme Court’s attempt to justify segregation.

(4) Paragraph 76 again introduces into a discussion of the Tribunal decision concepts and statements that are absent from that decision. The Tribunal cannot be said to have “balanced the various educational interests of Emily Eaton” when such interests are not mentioned or considered in its decision. Those interests were not a factor in the Tribunal’s decision, let alone the primary motivation for it that paragraph 76 implies that they were. Moreover, “the best possible placement” has a different emphasis than “the best placement”, the actual words of the Tribunal (p.2).

I have not been able to find where “the Tribunal alluded to the requirement of ongoing assessment of Emily’s best interests so that any changes in her needs could be reflected in the placement” [emphasis in paragraph 76]. The closest approximation appears to be statement from the Tribunal’s *Obiter dictum* quoted immediately after this sentence. But this speaks of “a continuing effort to meet her present and future needs”, omitting any reference to “Emily’s best interests” or their “assessment”, or to “changes in her needs” being “reflected in the placement”.

It might be worth noting that the description of the “special class” quoted in this paragraph (evidence from one of the parties to the case, so not impartial) is of what the jargon calls “reverse integration”. While this is marginally better than total segregation, in that it allows the segregated pupils at least occasional contact (how often do the activities described actually take place?) with their peers in other classes, it reinforces the idea of difference between pupils. Pupils from the “regular” classes learn that some pupils are so “different” that they belong away from other pupils in segregation, where they spend their school days doing silly things. Pupils in the segregated

¹⁶ The careful statements on page 2 (“[...] the best placement for her is in a special class”) and page 74 (“[...] a regular class is not the best place for Emily”, “[...] our decision in favour of a special class placement”) lack the certainty of “superior”.

classes, who understand much more than they can express and typically much more than educators and other professionals realize, learn that they are rejects and condemned to involuntary segregation from those considered “normal”.¹⁷ At an impressionable age, children learn that it is right to segregate children who are “different” or who look or act “differently”. The groundwork is laid for “discrimination by the attribution of stereotypical characteristics to individuals” (66, 67) and to groups. When paragraphs 66 and 67 state that “the purpose of s.15(1) of the *Charter*” is to prevent such discrimination, it is odd to read implicit praise in paragraph 76 for a process which promotes such discrimination. If the Supreme Court is going to make forays into segregated classrooms, it would be preferable that these be informed.

Conceptually there is a relationship between this “reverse integration” and children visiting a zoo to see strange animals and touch some harmless fuzzy ones. And with the Sunday visits to Bedlam asylum by social worthies in the nineteenth century to laugh at the activities of the unfortunate inmates behind the bars.

(5) Paragraph 73 of the Supreme Court's *Eaton* decision states: “[The Tribunal] found that it was not possible to meet Emily's intellectual and academic needs in the regular class without ‘isolating her in a disserving and potentially insidious way’ .” This is inaccurate. What the Tribunal actually said (and what the Supreme Court decision correctly quoted in paragraph 17) is: “In Emily's case, it is clear from evidence and testimony that a ‘parallel’ learning program specifically designed to meet her intellectual needs, isolates her in a disserving and potentially insidious way. It is the unanimous opinion of the Tribunal therefore, that Emily's intellectual and academic needs cannot be met best, if indeed they can be met at all, in a regular class” (p.60) which, whether one agrees with it or not, is not the same thing.

(6) Paragraph 16 states: “The Tribunal then reviewed Emily's needs under a number of headings and made numerous findings of fact upon which it based its decision”. The “opinions” (Tribunal decision, pp. 60, 61, 64, 66) and “view” (p. 69) are not, and could not be, presented as “findings of fact”.

¹⁷ I speak from many years of experience with my own son and his classmates in segregated classes under the old system in New Brunswick, and listening to the heart-rending stories of adults with developmentally disabilities who lived segregated classes in Ontario (and elsewhere).

OTHER PROBLEMS WITH THE SUPREME COURT DECISION

(1) The description of Emily Eaton in paragraph 6 of the Supreme Court's decision.

This description is not impartial for the following reasons:

(a) while accurate as far as it goes, it is not complete and as such is not true. There is no mention here or anywhere else in the Supreme Court's decision of any positive qualities that Emily might have, or of any of the things of which she might be capable. We do not know how Emily thought of herself at that time but we do know that her family thought of her in terms very different from those used in this paragraph. This description excludes Emily's family's point of view of Emily and adopts the view of the Brant County Board - the other party in the case. Considering that a fundamental issue in this case is the different ways in which children like Emily (and other children considered to have disabilities) are viewed, the different ideologies which underpin the different points of view, and the practical educational consequences of these different ideologies, a description of the person at the centre of the case which takes only one point of view, and hence comforts only one ideology, has serious consequences which reverberate through the rest of the decision. Some might suggest that this gives rise to a reasonable apprehension of bias.

This description, which identifies the child and pupil Emily Eaton only as a "bag of deficits", reflects the medical/institutional conceptual framework in which "Special Education" operates (especially with respect to children like Emily) and its origins in eugenics. Segregated classes in Ontario for pupils identified by diagnosis and label are a product of eugenics-based laws¹⁸. When created their purpose was to "protect the purity of the white race" and to "cleanse the gene pool". When such rationales were no longer acceptable, these classes were justified by the assumption that children with the same label or diagnosis were so similar - because they shared the label that others had put on them - that they had the same educational needs, which could best be met if the pupils were grouped together and separated from "normal" pupils. This is one of the "distinctions based on presumed rather than actual characteristics [which] are the hallmarks of discrimination" (66).

No educational case can be made for the above assumption¹⁹. My adult son with Down's syndrome (a developmental disability) has more in common with his brother and sister (who do not have a disability) than with any other of the many persons with Down's syndrome I have met. He learns and has always learned when exposed to the same good educational practices as help other people learn. Much of the time he spent in segregated classes was wasted because his well-intentioned teachers had been trained to believe that "pupils like that" require different, "special", education. The same could be said of the thousands of children and adults like him who have experienced segregated classes.

However, the *Eaton* decision has given credence to this false and discriminatory assumption.

¹⁸ See below, the section on A contextual review of relevant legislation.

¹⁹ As noted below (p. 46), it was disproved by experience over 100 years ago. Such groupings in segregated classes are, however, administratively convenient.

Good educational practice is based on pupils' abilities, capacities and attainments. Gaps or inadequacies in pupils' learning are overcome by building on the positives which already exist. Educational practices concerned solely with "deficits" and diagnoses, such as comprise this description of Emily Eaton, fail. That is why the Tribunal's findings and comments quoted in paragraphs 72-76 of the Supreme Court's decision are so ill-advised. It is also a major reason for the dismal record of "Special Education" and its segregated classes for students with developmental disabilities. Should the description of Emily not have been educational, rather than medical/diagnostic, in content?

(b) It is clear from the evidence given to the Tribunal that the Brant County Board and its treatment of Emily could be described in an equally deficit-centred manner. For example: *The Brant County Board is committed to the forced segregation of certain students on the basis of presumed characteristics and diagnoses. It is not competent to provide appropriate special education programs and services to pupils like Emily Eaton in the regular classroom and has declined to take the actions required to become competent. It failed Emily Eaton in many ways and so seriously that an investigation for child abuse might be warranted.* No such description of that Board appears in the Supreme Court decision. In fact, at no point since the Tribunal hearings has there been serious consideration of the possible responsibility of the Brant County Board in the failure of the "integrated placement".

(2) The use of non-factual belief statements to outline the "basic principles in respect of which the Tribunal's decision should be tested" (70).

The statements in paragraph 69 of the Supreme Court's *Eaton* decision about the "positive aspects of segregated education placement" are belief statements, not statements of fact. The arguments in their support are neither sustainable nor relevant to the case under discussion.

The first statement ("In some cases, special education is a necessary adaptation of the mainstream world which enables some disabled pupils access to the learning environment they need in order to have an equal opportunity in education") would be true if it meant that "regular classes have to be adapted to accommodate some disabled pupils and some pupils not considered to have disabilities". But since this decision wrongly identifies "special education" with "segregated education placement" (i.e. in a segregated class), the statement is simply wrong.

The same can be said of the next statement, which speaks of "pupils who require special education [i.e. "placement" in a segregated class] to achieve equality". There are no such pupils.

It is a fact that there are some pupils who require significant accommodation and that this accommodation could legitimately be provided under the rubric "appropriate special education programs and services". Emily Eaton falls into this category. There are some pupils who cannot stay in a classroom, or can only manage to stay for restricted periods of time, because that is the way they are. There are some pupils who require accommodations which tax the best efforts of dedicated professionals. There are some pupils for whom nobody has yet found educational answers. There are some pupils whose medical situation requires that they receive their education in a hospital or at home. All such pupils - some, but not all, of whom may be labelled "exceptional" (Ontario *Education Act*) or "disabled" (Supreme Court's *Eaton* decision) - require "appropriate education programs and services" and some require "appropriate special education programs and services"; some require an appropriate mixture of "special" and "non-special" (or "regular") "education programs and services". In all instances the "appropriate education programs and services" must be individually focussed and designed for the particular pupil who requires them. In some instances these programs and services, or some of them, may require that the pupil not remain in the "regular" classroom throughout the school day. Those in hospital or at home are an obvious example; another example might be a pupil who cannot manage to

stay in a classroom - any classroom - for extended periods of time. *But in no instance do these highly individualized programs and services require that a pupil be in a segregated class.* In most instances “placement” in a segregated class is harmful to the learning of a pupil like those identified above (including Emily Eaton).

Equality is achieved when appropriate education programs and services (“special” or “regular” or a mixture) are provided to ALL pupils. If they are indeed appropriate (and those provided to Emily Eaton clearly were not), they can be provided in the regular classroom so that ALL pupils can receive “the benefits [integration] generally provides” (69). The question to be asked is: **“What educationally appropriate activities which can be carried out in a segregated classroom cannot be carried out at least as well in a regular classroom?”** Having asked that question in many places for nearly twenty years without getting a rationally sustainable reply, my experience and research lead me to believe that the answer is **“There are none.”** If my belief statement is based on twenty years of experience and research, what is the basis of the belief statements in the Supreme Court’s *Eaton* decision which state that segregated educational placements are required for some pupils?

The third statement (“Schools focussed on the needs of the blind or deaf, and special education for students with learning disabilities indicate the positive aspects of segregated education placement”) cannot be sustained for two reasons. Firstly, the fact that segregated schools exist cannot be taken as an argument for “the positive aspects of segregated education placement”. In reality segregated schools for “the blind or deaf” continue to exist in some jurisdictions such as Ontario (New Brunswick withdrew all its students from such schools more than a decade ago) only because historically “the blind or deaf” were institutionalized because they too were considered “defective”. Like segregated schools and classes for pupils with developmental and some other disabilities, segregated schools for “the blind or deaf” are an unfortunate and unnecessary relic of eugenics-based institutionalization.

Secondly, the harmful effects of segregation in schools for the blind or deaf are now so widely recognized that pupils are increasingly being “repatriated” from them so that they can be integrated (with appropriate supports being developed) into regular classes in their home schools.

The question of whether pupils with learning disabilities are best served in segregated classes is hotly debated. Rational advocates for these pupils freely admit that they would be better off in “integrated” settings, provided that they were adequately supported there. The problem is that past experience leads the advocates to believe that schools and school systems are not willing or not able to provide the supports required in the regular classroom. It is again not a “placement” problem but a problem of supports, training and educational practice. Recent research indicates that early identification of learning disabilities would allow remedial practices which would render segregated settings unnecessary and undesirable for these pupils.

So the examples selected by the Supreme Court to “indicate the positive aspects of segregated education placement” fail.²⁰

Even if the above belief statements were factual, they would be irrelevant to the situation of Emily Eaton. Though she “has some visual impairment” (6) she is neither blind nor deaf and nobody

²⁰ As I was involved at the time of the *Eaton* decision in the process of developing an *Inclusive Education Model proposal* at the request of staff of Peel Board of Education (the largest in Ontario at that time), for possible implementation in part of that Board’s system, I am acutely aware of the need to ensure that pupils who are deaf or blind or who have learning disabilities can receive an adequate and appropriate education in an inclusive model. I am also aware that this is possible. Unfortunately the chaos brought about in the Ontario education system by restructuring and changes in funding models made implementation of the model proposal impossible.

has ever suggested that she has a learning disability. Even if there were merit in segregated classes for some classifications of “exceptional pupils”, this would have no bearing on the question of whether there was merit in segregated classes for pupils like Emily. And it would be two steps removed from the question of whether Emily should be forced into a segregated class.

It is unfortunate that in this key paragraph (69) which attempts to establish “the basic principles in respect of which the Tribunal's decision should be tested in order to determine whether that decision complies with s. 15(1)” (70), this decision not only misrepresented the law it was interpreting and the consequences of that law, but also founded those basic principles on non-factual belief statements.

The author of a recent book on children labeled as having a very different kind of disability writes of segregated “Special Education”:

To many parents of children who've been labeled A.D.D. [Attention Deficit Disorder], these 'exclusive' special education options sound all too tempting. It simply makes intuitive sense that if a child is having trouble in a regular classroom environment, he ought to be removed from that environment and placed in another setting where he can succeed. Then, when he's 'better', he can be placed back in the regular program. That's the theory, anyway.

The truth of special education, however, is something altogether different. Special education is its own self-contained universe, with its own special tests, special texts, special materials, special jargon, and special problems. Your child has every chance of entering a world where he will be defined according to his disability. Like a prison, the special ed classroom could be the place where your child will learn special misbehaviors from the school's real troublemakers. Kids in regular classrooms can begin looking at your child as a freak, a 'tard', or worse. Teachers in regular programs begin to see your child as a 'disabled' learner. Instead of being surrounded by teachers and curricula that seek to draw out the best from your child, the special education classroom is likely to spend a great deal of time concentrating on your child's weak points. How many adults would like to have their own personal limitations highlighted six hours a day, five days a week?

[...] It's the Special Education System, with its own ethos of deficit, disorder, and dysfunction that does the most damage to children. At its best, it's like a maze filled with red tape, testing, time lines, and eligibility criteria that parents need to patiently endure in order to get special services for their children. At its worst, it's like a mechanical monster that eats up children, judges them according to tests far removed from reality, sorts them according to their problems, feeds them boring special education workbooks and behavior modification programs, and keeps them locked in a cycle of failure for the rest of their school days.”²¹

This description represents reality in Ontario (and many other jurisdictions) much more accurately than anything in the Supreme Court's *Eaton* decision.

²¹ Thomas Armstrong, Ph.D.: *The Myth of the A.D.D. Child* (Dutton, 1995), p. 148-149. [Dutton is a division of Penguin Books, U.S.A.] Some would suggest that the final words should read “for the rest of their lives”. See also : *Winners All: a call for inclusive schools*. 1992 report available from the National Association of State Boards of Education, 1012 Cameron Street, Alexandria, VA 22314, U.S.A.

(3) The unquestioned acceptance of the term “integration” and its connotations.

“Integration” can apply only to people who are “segregated”. The Ontario *Education Act* identifies as “exceptional” - and hence segregated from the regular school system - only pupils who have one or more physical or mental disabilities (save pupils labelled “gifted” - and the Supreme Court did not know these pupils are considered “exceptional”). These pupils - and only these pupils - may be “integrated” to a greater or lesser degree (depending on their “placement” and the competence and extent of the efforts made by educators to “integrate” them after they are “placed”) into the regular system or they may continue to be segregated from it but in either case legally, because of their “exceptionality”, they start from a position of segregation. And, as Emily Eaton found, if they are “integrated” temporarily into the regular school system procedures are in place to enable school boards to segregate them again.

It is not the case that segregation is occasionally permitted in those instances in which the Supreme Court (wrongly) believed it would enable “some disabled pupils access to the learning environment they need in order to have equal opportunity in education” (69)²²; under the Ontario *Education Act* segregation is the legally established norm for “disabled pupils” and “integration” is a permitted variant when certain conditions are met. The language clarifies the practice and the underlying ideology.

This stance is ideological, not educational, and in Ontario it has been consistent since the exclusionary legislation of the eugenics era²³. Nevertheless, it was not considered by the Supreme Court to be a “disadvantage or burden” (62), only a “distinction” (71).

(4) The absence of any reference to, or consideration of the potential consequences of, the fact that Emily was in the regular class only because a court had made an order that she be “placed” and kept there.

The Brant County Board had been the adversary in litigation of the Eaton family for years before the 24 February 1992 decision of the Brant County Board's IPRC which led to the Tribunal hearing. Though the court order forced the Brant County Board to keep Emily in the regular class, that Board had near-total control over what happened — and what did not happen — to Emily in the regular class, and over the two significantly different versions of what happened there (one for the adversaries in previous and current litigation — Emily's parents — and the other to the Tribunal) which were presented to the outside world²⁴. Appropriate attention to these facts and to the potential consequences of them might have led to a different approach to some of the evidence.

²² The Supreme Court rejected the Ontario Court of Appeal's finding that “the *Charter* required that segregated placement be used only as a last resort” (41).

²³ See below, the section on A contextual review of relevant legislation.

²⁴ See below, note 60.

(5) The uncritical acceptance of the Special Education Tribunal's decision as competent, rational, impartial and coherent.

A careful, analytical reading of the Tribunal decision should have led to a recognition of at least some of the flaws in it which are outlined in the section on *Problems with the Tribunal decision* and in the *Appendix*.

(6) The improper application of the Supreme Court's own test.

Given the Supreme Court's wish to retain and justify the forced segregation of certain pupils with disabilities, its test for when segregation could be justified: "[...]where aspects of the integrated setting which cannot reasonably be changed interfere with meeting the child's special needs, the principle of accommodation will require a special education placement outside of this setting" (77) is reasonable. It allows for children to receive their education in hospital or at home, etc. It does not, however, justify "placement" in a segregated class. As noted above, if a pupil can be in any class, he/she can be in a regular class and can receive "appropriate education programs and services", special or not, in that regular class.

In the case of Emily Eaton, given that only the attitude, ideology and level of competence of the Brant County Board and its staff needed to change in order for Emily to be fully included in the regular class²⁵, and since it is not unreasonable to expect competence and a non-discriminatory attitude and ideology in a Board and its staff, proper application of the test would have led the Supreme Court to find for Emily.

(7) Unequal treatment of "presumptions"

The Supreme Court rejects the Court of Appeal's view that there should be "a presumption in favour of integration" (78-79)²⁶. However, it accepts without question the presumption in favour of segregation implicit in Ontario law, policy and most practice as they relate to pupils with developmental (and some other) disabilities²⁷.

(8) The use of misleading terminology

It is confusing and misleading to use the terms "integrated classes" (71), "integrated placement" (74, 75), "integrated setting" (77) and "integrated classroom" (75) when no "integration" was involved in any of them. Emily was "placed" in a particular classroom setting but the evidence given to the Tribunal proves that she was not "integrated" into it. The case before the Supreme Court revolved around the reasons for this state of affairs. The evidence given to the Tribunal showed that the Brant County Board had been trying for years to get Emily out of the setting in which she had been "placed" and that its staff did not have the competence or the attitude necessary to "integrate" Emily and over three years made no serious attempt to acquire that competence. The Tribunal was determined to exculpate the Brant County Board and its decision carefully avoided reference to, or consideration of, this evidence²⁸. It focused exclusively on trying

²⁵ As the Brant Roman Catholic Separate Board has shown with Emily and other boards in numerous other jurisdictions on this continent have shown with pupils with similar limitations.

²⁶ The grounds are questionable but that is not the issue here.

²⁷ See below, the section on *A contextual review of relevant legislation*, and (3) above (p. 20).

²⁸ The contrast between the Tribunal's silence with respect to the evident inadequacies of those responsible

to make the case that the “placement” was responsible for the Brant County Board's failure to “integrate” Emily and “meet her needs”, and by implication to blame Emily's parents because they had insisted on that “placement”. It is reasonable to assume that the Tribunal's use of misleading and irrational (how can a “setting” or a classroom be “integrated” in this context?) language like “integrated setting” — to describe a setting which was not “integrated” — or the meaningless “theoretically integrated setting” — which implies falsely that in theory there is a direct link between “placement” and “integration” — was deliberate and intended to confuse the issues. A little more clarity of thought on the part of the Supreme Court might have led it to avoid this misleading terminology in favour of more accurate and meaningful terms and might have led its considerations down different paths.

(9) The equation of exclusion with accommodation.

Ontario education law and policy were silent on “accommodation” of disability before the *Charter* and they remain silent on it today. The whole direction of law and policy is inimical to the concept of such “accommodation”. In accordance with Regulation 305 (and its successor), policy and most practice is, as indicated in paragraph 59, that “exceptional” pupils must prove that they can “profit” from the “mainstream of education”²⁹ before they can enter it, and they must prove this at least once a year to an IPRC in order to remain in it. This is “shape up or ship out”, not accommodation. In fact, by law, policy and most practice a pupil with an exceptionality must adapt to, and accommodate the requirements of, the “mainstream of education”; it does not have to accommodate the pupil.

Educators, schools and school boards sometimes do try (with more or less knowledge, ability or commitment) to accommodate pupils with exceptionalities but this is to the extent they find convenient and in the manner they find convenient. If it ceases to be convenient — perhaps because a new administrator or a new teacher is appointed, or because the school loses a teacher assistant, or because a parent complains about something — in the case of a pupil with a developmental disability the IPRC process can be relied upon to segregate the pupil again in all but very rare cases.

The Supreme Court's attempt to interpret this law and policy in terms of “accommodation” and to introduce “accommodation” language into an environment to which it was foreign (67-69) led the court, when dealing with pupils who have been excluded from “the mainstream of education” by law and policy for over eighty years, to equate continued exclusion with accommodation. Curious in itself, this equation is also an unfortunate precedent.

(10) the superficial and inaccurate review of the legal and educational contexts.

The Ontario Court of Appeal did consider the “larger context”, consistent with previous Supreme Court practice³⁰ (34); the Supreme Court's review was so superficial, so narrow and so influenced by its determination to justify segregation in education that its results were incompatible with the facts and lived reality.

for what happened in the classroom and the Tribunal's ill-founded and surprisingly vindictive attack on Emily's family (p. 66-69, 74) is stark.

²⁹ That confusing term which may or may not mean the “regular class”.

³⁰ The Supreme Court returned to this practice in its *Eldridge* decision in 1997.

There were many influences other than the Williston report (58, 68) which led to “a change in attitude with respect to [developmentally] disabled persons” (58), though little would be served at this stage with an attempt to identify and analyse them. If there was indeed at that time “a recognition of the desirability of integration and de-institutionalization” (58) and if “[t]he change in attitude was reflected in changes to the *Education Act*”, it is hard to understand how, as noted on page 10 above, in 1998 over 75% of such children were segregated in the school system³¹. A contextual analysis of the 1980 *Education Amendment Act*³² and its consequences indicates that they were not intended to bring about “integration” and they did not.

For an analysis of the meaning and intent of the “policy of the Ministry of Education” quoted in paragraph 59, see the section on *A contextual history of relevant law* below.

There is simply no basis in law, policy or practice for the statements in the last two sentences of paragraph 68. Neither policy nor practice shifted, then or later, “to one which assessed the true characteristics of [developmentally] disabled persons with a view to accommodating them”. If they had, Emily Eaton would have been accommodated, instead of neglected, in the Brant County Board’s regular classroom. And “integration” was not, and is not, the “preferred accommodation” for pupils with developmental disabilities in Ontario. Otherwise 75+% of such pupils would not be segregated nearly twenty years later. Nor is it true to say that “if the pupil could not benefit from integration a special program was designed to enable disabled pupils to receive the benefits of education which were available to others.” In the first place, there is no pupil with a developmental disability who “could not benefit from integration”; all that is required is competent and appropriate accommodations on the part of the school board (as the Brant County Roman Catholic Separate School Board has proved with Emily Eaton). Secondly, the “special program” designed for use in segregated classes for pupils with developmental disabilities reflects the eugenics-based belief that such “defective” pupils cannot benefit from “education” but only from “instruction and training”.

(11) The failure to consider the broader and long-term implications of its decision and in particular the consequences of the decision (a) for Emily; (b) for other children with significant disabilities; (c) for children not considered “exceptional”; (d) for school boards and responsible Ministries.

(a) If Emily had been placed in the segregated class in all probability she would have stayed there throughout her school career. No pupil like Emily had ever left that class for the regular class³³ and there is no reason to think that the Brant County Board, once it had managed to get her in there, would ever have let her get out again. The reference in paragraph 76 to possible changes in Emily’s “placement” (which were, as noted, absent from the Tribunal decision) shows that the Supreme Court has an inadequate understanding of how the world of segregated “Special Education” works.

In the segregated class it is unlikely that Emily would have learned anything useful. It is likely that the silly “life skills” training she received there would have been inappropriate and inconsistent

³¹ And there are still many persons with developmental disabilities in Ontario institutions who do not belong there.

³² See below, the section on *A contextual review of relevant legislation*.

³³ “She [the Brant County Board’s Superintendent of Education] indicates that the Board had never, before Emily, 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 of that” (Tribunal decision, p. 43).

with what her family was trying to teach her. She would have been taught failure (with the ill-advised communication program, for example) and dependency. As the school was a long way from where she lived, she would have had no contact with the children of her neighbourhood during school days, and those children would have learned over time that she did not “belong” among them.

When she was old enough to leave school, the school would have directed her to segregated service providers in the community. Her parents would probably have suffered “burn out” trying to get their daughter accepted as a member of the community in spite of the efforts of educators and other service providers to exclude her by segregating her. The lives of the parents would probably have been shortened by their frustration and their anxiety over what would happen to Emily after they were dead. When they did die, Emily would probably have lived out a life of quiet desperation in a segregated hell hole.

Now that she is fully included as part of a regular class in the Separate Board, she attends school with children from her neighbourhood. These children are learning throughout their school career that although Emily is indeed “different”, she “belongs” with them and is one of them. When they all leave school, the other children will be her potential co-workers or employers and they may — just may — be able to find a place where she can play a productive role in her community. At least they will continue to recognize that she belongs among them and they will understand how to interact with her when they meet her.

Her parents will continue to feel anxiety about what will happen to her when she becomes an adult and after they die — that is the lot of every parent of a child with a developmental disability because service systems are so bad and safeguards so few — but at least they know she has a chance because she will have been included in a regular class during her school years. A chance the Supreme Court would have denied her.

(b) Thousands of children with developmental and other disabilities in Ontario and other provinces are being and will be denied an opportunity to be recognized as an integral part of their neighbourhood school community. The Supreme Court's “best interests” argument means that bureaucratic convenience³⁴, ideology and negative stereotyping take precedence over these children's education and their future prospects for a decent life in community. Segregationists can now segregate whom they like and say that segregation is in the pupil's “best interests”. Or, if a pupil manages to get into a regular class, they can just provide poor quality “special education programs and services” in that class and, faced with negative results, segregate the pupil. Whether or not a pupil with a developmental (or some other) disability is “placed” in a regular class depends almost entirely on the ideology of the school board in which the pupil attends school. Not on the pupil or his/her real or imaginary “needs”.

In the longer term, exclusion and segregation during school years are predictors of exclusion and segregation in adult life. The probable consequence of the *Eaton* decision is that thousands of children with developmental disabilities will face a lifetime of segregation and exclusion unnecessarily.

³⁴ The statement of the Brant County Board's Superintendent that the Board's philosophy is “...integration where possible” (Tribunal decision, p. 41) is code for “...integration where convenient” or “...integration when we feel like it”. The Separate Board has shown that Emily's “integration” is possible; the Brant County Board could not be bothered.

(c) Pupils not considered “exceptional” in the Brant County Board system and many other school board systems across the country are learning that children like Emily and many others with much less significant disabilities³⁵ do not belong among “normal” children. A message transmitted through lived experience over twelve impressionable years is not likely to fade. As adults these “normal” children will find it “normal” that people with developmental and other disabilities are segregated because they have disabilities. Existing discrimination against people with these disabilities is unlikely to decrease.

(d) School Boards can now segregate at will and do so. If a pupil is in a regular class and a parent complains about something, the typical response by educators is the threat of segregation. Since the *Eaton* decision and the changes in funding formulae introduced at the same time, many Ontario school boards have been operating outside the law — refusing to provide the “special education programs and services” they agree are “appropriate”; telling parents to keep their children at home because the school finds it inconvenient to have them at school; etc. As the Supreme Court found for segregation and punished the Eatons by awarding costs against them, desperate parents — and school boards — know that the risks to parents of going to court are too great, so abuse on a grand scale continues. The Ontario Human Rights Commission has recognized there are widespread problems with equality in Ontario school and plans to gather more information at public sessions, probably later this year. There is still hope; but it is in spite of the Supreme Court, not because of it.

The Ontario Ministry's post-*Eaton* ISA funding formula provides “profiles” of pupils for whom large sums (\$26,000) of extra money will be made available to school boards. The “profiles” for pupils labelled “developmentally disabled” are based on negative stereotyping and medical diagnosis — a return to “Special Education”'s roots in eugenics. School boards can get these large sums of money by “proving” that pupils fit these extremely negative and deficit-based “profiles”. However, it is stated Ministry policy that the school board does not have to spend the money it gets on the pupil whose “profile” got the board the money. It can, for example, buy supplies or a special school bus instead. The effect on a child's future and on her/his family of being identified as “ISA 2” or “ISA 3” pupil is devastating. The label follows the pupil throughout her/his school years and is intended by the Ministry to follow the pupil into adult life. For the school board, in difficult financial times the labelled pupil is a money cow. It is in the board's interests to make sure as many pupils as possible are assessed as fitting the “profile” and staff in some (many?) boards are instructed to ensure that this is done. Boards also ensure that the pupils do not progress enough to graduate out of the “profiles” because the boards would lose money. Ministry personnel now admit that this funding process harms the pupils concerned but the Ministry presses ahead regardless.

Section 17 of Ontario Regulation 181/98, which replaced Regulation 305 after *Eaton*, sets two conditions on “placement” in a regular class which are absent for “placement” in a segregated class. Segregation is still the norm in Ontario schools, and segregated classes still do not have to “meet the needs” of the pupils “placed” in them.

³⁵ The evidence of the Brant County Board's Superintendent began with a description of that Board's whole system of segregated classes (Tribunal decision, p. 41).

PROBLEMS WITH THE TRIBUNAL DECISION.

(1) The context of the Tribunal decision.

The Tribunal's stance was ideologically defined by its position at the top of an appeal system which assumes that segregation is necessary and exists to manage it, not question it. When a different ideology — one which segregates and rejects no pupil and structures the school system and the regular classes to include all children so that pupils like Emily receive “appropriate special education programs and services” in the regular classroom — was introduced into the Tribunal enquiry, instead of investigating it the Tribunal grasped at straws in unconvincing efforts to discredit it and its representatives³⁶. Like the Supreme Court, the Tribunal was unwilling to entertain serious consideration of alternatives to segregation-based education for children with certain disabilities.

As noted in paragraph 10 of the Supreme Court's decision, section 8(3) of the Ontario *Education Act* requires the Minister to “ensure that all exceptional children in Ontario have available to them, in accordance with this Act and the regulations, appropriate special education programs and special education services [...] and shall provide for the parents or guardians to appeal the appropriateness of the special education placement [...]”. So the law bars appeal of the appropriateness or otherwise of the special education programs and services.

But it is the education programs and services (“special” or other) which are key to a pupil's educational progress and the quality of the pupil's educational experience. “Placement” should not be relevant.

As paragraph 11 notes, Regulation 305 concerns itself with IPRCs and establishes an appeal mechanism where a parent disagrees with identification or placement decisions. The only reference to “special education programs” or “services” is in section 2(1) which just identifies when an IPRC must be established. Discussion of “special education programs and services” is outside the mandate of IPRCs and parents at IPRC meetings who try to raise questions about these or the extent to which they are “appropriate” for their child are so informed. Consistent with the law, the Tribunal, established as the result of an appeal of an IPRC decision, cannot discuss “special education programs and services” or the extent to which they are “appropriate”. Only “placement”.

In a rational education system, which “special education programs and services” are considered “appropriate” would not vary according to the “placement” in which those programs and services were provided. In Ontario, however, it is normal for the “special education programs and services” provided in segregated classes for pupils with developmental and other disabilities to be very different from those provided in regular classes. Simply put, in regular classes an effort (more or less serious, informed and adequate) is made to provide *education*; in segregated classes the Ministry curriculum for these pupils provides only *instruction and training*, almost exclusively in so-called “life skills”.

When Emily Eaton was in the regular classroom, the Brant County Board made an uninformed, inadequate and ultimately unsuccessful attempt to adapt the regular curriculum to accommodate her learning capacities and style. There is little discussion in either the Tribunal decision or the

³⁶ See below, 3(i) in this section (p. 40-41) and *Appendix*.

Supreme Court decision of the curriculum in the segregated class (except for the occasional “reverse integration” element discussed above, which apparently impressed the Supreme Court (76)) but that curriculum appears to be devoid of any academic or intellectual content. Given that this curriculum was to “meet Emily’s intellectual and academic needs”, and was presumed to be able to do so better than the curriculum in the regular class, perhaps it deserved more attention than either decision gave it.

The explanation for this non-educational curriculum lies in Ontario education policy and most practice³⁷ with respect to the pupils in these classes, which is based on ideology and negative stereotyping rather than on reason and the facts. The Ministry’s Special Education section (which frames policy and practice in this area) and most elements of the school system still conceptualize these pupils as being “TMR”s who still belong outside the regular system in the segregation to which the eugenics movement exiled them. When they are “placed” in a regular class it is on a temporary and conditional basis: they have to prove that they can “profit” from this “placement”³⁸. The only factor the pupils can control is their own effort; they cannot control the appropriateness of the “special education programs and services” they receive, the competence of their teachers, the willingness or otherwise of the teachers to have them in their class, the willingness or otherwise of school staff to try to “integrate” them into the school and the regular class, etc., all of which greatly influence the extent to which the pupils can “profit” from “placement” in the regular classroom. It is an unequal struggle, as Emily Eaton and her parents discovered. And if the pupils cannot win in this unequal struggle, they are thrown back on to the reject pile in the segregated “TMR” class. This is the reality to which the Supreme Court’s *Eaton* decision has given legal sanction.

The Ministry’s “life skills” curriculum for segregated classes for pupils labelled “developmentally disabled” continues to be based on curricula developed in children’s institutions in the 1950s and 1960s. At that time, the first moves to return institutionalized children to the community began and institution staff realized that the children needed to learn the “life skills” of life in the community. The same rationale does not apply today, when the children (with few exceptions) are living at home and learning “life skills” with their families in the environment in which those “life skills” are used. But the curriculum has not changed in its principles and has changed little in its details. It is still based on the assumption — itself based on negative stereotyping — that “TMRs” cannot be educated³⁹.

The Ministry recently ordered that this curriculum be “up-dated”. When the person doing this was asked why she was doing it, given the facts just outlined, and why she did not create a curriculum more appropriate to today’s reality, she had no answer.⁴⁰

It would take a book — half tragedy, half farce — to review the results of the implementation of the “life skills” curriculum, first inside institutions and subsequently in segregated school classes. Little good has been accomplished because a major problem for these children is applying

³⁷ The law is informed by the same ideology and encourages the practices outlined here, but does not mandate them. Hence some Roman Catholic Separate Boards (and some individual schools in other boards) are able to implement alternative, inclusive education practices. However, recent restructuring in the Ontario school system and changes in funding mechanisms and their method of application make such inclusive practices more difficult to implement.

³⁸ See Supreme Court decision, paragraph 59, and below, the section on *A contextual review of relevant legislation*.

³⁹ Decades of proof that this assumption is false have had little effect. Segregated “special education” is an empire which defends itself the way empires do.

⁴⁰ I was present at the meeting when this conversation took place.

knowledge and skills gained in one place and situation to another place or situation.⁴¹ At the simplest level, a child might learn to feed her/himself in an institution but be unable to feed her/himself in a real home. Or a child might learn to wash plates in the artificial “kitchen” area of a segregated classroom but be unable to wash the different plates he/she found in the real, but different, kitchen at home; or might not be able to adapt to the different ways her/his family washed dishes in the real world. Today, when segregated classes “train” pupils in “life skills” in the artificial school environment, the training is usually different from that given by the family in the home environment. It is very confusing for children whose ability to learn is impaired to be taught contradictory ways of doing the same things at the same time. The Brant County Board proposed to try to teach Emily Eaton a communication system different from the one that her parents thought she used, and in isolation from, and without reference to, anything the parents might be doing to communicate with Emily at home. Though this example is typical, it is not clear why the Tribunal and the Supreme Court thought it desirable or reasonable.

This does not matter. Ideology wins out over common sense and good educational practice and the farce (with tragic consequences for the pupils) goes on. Because of the ideology-based negative stereotyping which frames segregated education for these pupils in Ontario (and in some other provinces), it is not expected that they learn much. **Segregated classrooms are dumping grounds for rejects, relics of eugenics, an intrusion of institutional prejudices and practices into the school system, not “a necessary adaptation of the mainstream world which enables some disabled pupils access to the learning environment they need in order to have an equal opportunity in education” (69).** Every educator involved in the *Eaton* case (as well as Emily’s family) knew that the segregated class to which the Brant County Board wanted to banish Emily was the reject pile⁴², and that if she went into it she would waste the rest of her school years in segregated isolation with a nonsense curriculum. The Brant County Board and the Tribunal thought that that was where she belonged and the Supreme Court agreed, thus giving legal sanction to the continued existence of the reject pile, its segregated classes and schools, and the long term exclusion from community that is its natural corollary.

A proud moment?

(2) Flaws in parts of the Tribunal decision quoted by the Supreme Court

(a) The Tribunal’s findings with respect to Emily’s “intellectual and academic needs”, quoted in part by the Supreme Court in paragraph 17 of its decision, are demonstrably false. They appear to be based on the personal experience of the Tribunal chairman⁴³. His personal attempt to adapt a curriculum⁴⁴ clearly failed and his attempt “isolated the student”. Instead of looking at his

⁴¹ In the jargon: “transfer”. This is also a major factor in the almost universal failure of the segregated “sheltered workshop” concept. “Trainees” rarely learn skills they can transfer to the regular workforce. But Ontario still funds such segregated services and expects pupils with developmental disabilities to “graduate” to them from its segregated classes and spend the rest of their adult years there.

⁴² It was made up of pupils of all ages who had little in common but the label “multihandicapped” and severely reduced abilities to move and communicate.

⁴³ “The Tribunal is familiar with the concept of “parallel curriculum” and has immediate, hands-on experience with its implementation” immediately precedes the sentence beginning “Experience demonstrates”, quoted in paragraph 17 (Tribunal decision, p. 60).

⁴⁴ Though the term “parallel curriculum” was used by a Brant County Board witness (Tribunal decision, p. 46-47), the discussions of curriculum in the Tribunal decision are confusing and it is not clear whether or not Emily Eaton was receiving a “parallel curriculum”. The concept is a poor one and it is not surprising that it

own performance and methods as the cause, he drew the lesson that it was the concept which was the problem. A self-serving evasion of his own inadequacies as a teacher is passed off as objective truth and subsequently ratified by the Supreme Court. This is unfortunate.

There are a number of teachers in several Separate School Boards near Brant County (or in New Brunswick, Vermont, or many other jurisdictions) who could have taught the Tribunal chairman how to adapt a curriculum - using tried and tested techniques such as multi-level teaching, cooperative learning, experience-based activities, partial participation - so as to involve a pupil like Emily Eaton with the other pupils in the activities of the class, to give her a positive role to play, and to help her learn.⁴⁵ It is interesting to speculate on his response to the Eaton's appeal if he had had expertise himself in providing "appropriate special education programs and services" to children like Emily in the regular classroom and if his attempt to do so with another pupil had been successful.

Similarly, the Brant County Board blamed Emily's "placement" rather than its own demonstrated multiple inadequacies for its multi-faceted and multi-level failures with respect to her education. After appearing before a Tribunal whose chairman had also failed in similar circumstances, the Brant County Board's manifold failures were also ignored by the Supreme Court.

The victims in all this are the thousands of pupils who now find themselves in a system where the pupils are punished for their teachers' and administrators' incompetence with the approval of the Supreme Court.

The following statement is not rational: "In Emily's case, it is clear from evidence and testimony that a "parallel" learning program specifically designed to meet her intellectual needs, isolates her in a disserving and potentially insidious⁴⁶ way" (Tribunal decision, p. 60, quoted in the Supreme Court decision, paragraph 17). A program - any kind of program - cannot "isolate" a pupil.⁴⁷ Actions and attitudes of teachers and other staff isolate pupils. The Tribunal can avoid this truth - and its chairman can avoid accepting responsibility for his own failure in a similar circumstance - only by abandoning reason. Unfortunately it was followed in this by the Supreme Court.

Similarly, even if this sentence were rational and/or true, to leap from it to the "opinion" in the next sentence "[...] that Emily's intellectual and academic needs cannot best be met, if indeed they can be met at all, in a regular class" is not rational. The rational answer to demonstrated poor teaching practice is to improve teaching practice, not to segregate the pupil. The fact that neither the Tribunal chairman nor Brant County Board staff knew how to adapt curriculum and implement it so that Emily would be included instead of isolated cannot rationally be used to justify the conclusion that the job could not be done or that the fault was with the concept.

failed the pupils on whom it was tried by the Tribunal chairman and the Brant County Board. Whatever Emily Eaton's program was called, it was demonstrably of poor quality.

⁴⁵ They could have taught the Brant County Board staff the same thing but that staff made it clear in its evidence to the Tribunal that it was not interested in learning such things.

⁴⁶ "potentially insidious way" has a fine rhetorical ring to it and generates a sense of foreboding but it seems empty of meaning. How could anything, especially a "way", be "potentially insidious"? However, since the Supreme Court repeated the phrase three times (17, 73, 75) it must have been able to find some meaning in the phrase that is hidden from others.

⁴⁷ When my son with a developmental disability was in a grade 12 Math class in 1986, the teacher did not at that time know how to adapt the regular curriculum in a manner appropriate to him. So my son followed his own entirely different curriculum, at what might have been a grade 1 level. However, he was not "isolated" because the teacher treated him with respect and as a part of the class — which Emily's teachers, according to their own evidence, failed to do.

There is no discussion here (or elsewhere in the Tribunal decision) of whether or not Emily's "intellectual and academic needs" (to use the Tribunal's inappropriate terminology) would be met in the segregated class. This is crucial because **learning depends on program, not place**⁴⁸. The Tribunal's failure to assure itself that Emily's "intellectual and academic needs" would be met in the segregated class could be taken as an indication of a bias towards segregation.

In fact there is nothing on the relevant pages of the Tribunal decision (p. 59-60) which is directly relevant to Emily's undefined "intellectual and academic needs". The discussion, irrational as it is, centres on "isolation", which is also the centre of the discussion of Emily's "emotional and social needs" (p.62-63).

If the discussion is neither rational nor relevant to the topic supposedly being discussed, perhaps the "opinion" should be approached with caution, rather than enthusiastically embraced.

(b) The Tribunal's opinion with respect to Emily's "communication needs" (quoted in the Supreme Court's paragraph 18) is also seriously flawed. There is no question as to the importance of communication for Emily (or for anyone else) or that the Supreme Court was correct in stating (6) that at that time "Emily is unable to speak, or to use sign language meaningfully. She has no established alternative communication system." But the Tribunal's response to this situation makes no sense.

Children (and adults) learn when, and only when, they are ready and motivated to learn and able to learn what is presented to them. The Canadian government's program to teach the second official language to many of its public servants after the passage of the 1968 *Official Languages Act* is one good illustration out of many available. Initially courses were offered to almost any public servant who expressed an interest in taking them. The "instruction" was "very individualized, highly specialized, extremely intense" and with very small classes — as close to the model recommended by the Tribunal as we are likely to find where there was also careful research into outcomes. When courses were offered to all comers, success rates were found to be disappointingly low. Research showed that motivation and aptitude were the major factors in success. A remarkably good aptitude test⁴⁹ was developed to identify those with an aptitude for language learning and to screen out those who were not, and a similar test to screen for motivation. After all applicants were made to take these tests success rates rose dramatically.

Emily Eaton's parents had been trying for years to teach her a communication system with very limited success. The Brant County Board had been trying for years with no success. At that stage of her life and her development Emily was not ready to learn a communication system and showed no evidence of having any motivation or aptitude to learn one. So she would not have learned one, whether or not "very individualized, highly specialized, extremely intense, one-on-one instruction" was used or whatever the "placement" chosen, especially as the effort was being demanded to meet other people's "needs", not Emily's. Under the circumstances, to subject her to the treatment proposed would verge on abuse, especially if, as the Tribunal suggested, it was to continue "until she demonstrates some minimal competence" (p. 61).⁵⁰

It is almost inconceivable that similar treatment would be inflicted on a pupil not labelled "exceptional". It is another sign of the systemic discrimination against such pupils that in the

⁴⁸ This was raised at the Tribunal hearing (Tribunal decision, p. 32) but the very sensible evidence given there was ignored in the Tribunal decision.

⁴⁹ A better test than any available currently for pupils with developmental disabilities.

⁵⁰ The Tribunal heard one witness make a more sensible suggestion (Tribunal decision, p.32) but chose to ignore the testimony of that witness, finding it not "significant" (p.72).

world of segregated “Special Education” neither common sense nor the standard procedures of education apply.

If Emily did not learn to communicate effectively when surrounded by numerous age peers in a regular classroom or when at home with her family, is it rational to assume that she would learn when in the company of a single adult, and to formulate a “placement” decision on that assumption? Given that, according to evidence given by the teacher in the special classroom in which the Brant County Board wished Emily to be “placed”, “presently all students are nonambulatory and have very limited verbal skills” (Tribunal decision, p.49), is it rational that the Superintendent “thinks there would be more opportunity for Emily to communicate and to socialize in the special class setting” (Tribunal decision, p.43)? It is the Brant County Board's position that Emily cannot communicate at all; so how will she have more opportunity to communicate in a class of only twelve students who all have very limited verbal skills than she had in a larger class of students of her age who communicate normally? How can she socialize better in a class of twelve nonambulatory students with very limited verbal skills, some of whom are ten years older than her, than in a larger class of students of her own age who socialize and communicate normally?⁵¹

The fact that the Tribunal followed the Brant County Board Superintendent's obviously irrational proposal⁵² with respect to Emily's “communication needs” should have raised questions as to the Tribunal's competence and impartiality. Instead, the Supreme Court followed the Tribunal without hesitation or question.

(c) The extent of the Brant County Board's failure to meet Emily's “emotional and social needs”, as described in paragraph 19 of the Supreme Court's decision and in the Tribunal decision, is disturbing. If parents had failed so flagrantly to meet a child's emotional and social needs, they might risk investigation for child abuse. Again the Tribunal chose to absolve the Brant County Board of any responsibility for the situation it had created. When an expert witness (who worked for a Separate School Board which had no segregated classes, who had experience with “integrating” pupils like Emily into regular classes, and who had been in Emily's classroom) pointed to the teacher's role in creating the situation⁵³ (Tribunal decision, p. 32-33), the Tribunal discounted his opinion (p. 63). Given that this witness's expertise in the matters under discussion was clearly greater than that of either the Tribunal or the Brant County Board, it is unfortunate that the Supreme Court again accepted the Tribunal's findings without question.

And should the Supreme Court not have asked itself how much more “social interaction between Emily and her peers” (p. 63) would be likely when she was in a class of twelve nonambulatory students with very limited verbal skills, some of whom are ten years older than her; and how much less “isolated” (75) she would probably be there?

⁵¹ It is interesting to note that neither the Brant County Board personnel who talked of the need for Emily to learn a communication system, nor the Tribunal which made a very precise (if ill-considered) recommendation on this point, mentioned working with Emily's parents on a communication system. This idea that a communication system should be developed in isolation at school without any reference to the home, the community, or even the rest of the school shows the extent to which both Brant County Board staff and the Tribunal had an institutional - hence segregationist - mind set.

⁵² Other aspects of the evidence given by this Superintendent also raise questions as to her competence, as does the fact that she was primarily responsible for the failure of the Brant County Board to provide “appropriate special education programs and services” to Emily Eaton in the regular classroom.

⁵³ His evidence is entirely consistent with lived experience in many jurisdictions and with research and current best practice.

(d) The Tribunal's findings with respect to Emily's purported "Physical and Personal Safety Needs" are nonsense but they are nevertheless quoted without critical analysis in paragraph 20 of the Supreme Court decision. In its paragraph 75 (where they are quoted again) the Supreme Court adds an element of incoherence.

Though the stated subject — Physical and Personal Safety Needs — is broad, the Tribunal's focus is very narrow: "Emily's habit of mouthing objects" (p.64). As the Supreme Court noted, Emily was "a 12-year-old girl with cerebral palsy" (6) and "pervasive muscular dysfunction" (20) who "mostly uses a wheelchair" (6); she was provided with "a special desk, physical assistance and extra supervision from educational assistants" in the regular classroom (73); yet the Tribunal "found that it was not reasonably possible to cleanse [sic] the classroom of mouthable objects or to establish the level of adult supervision necessary in the regular integrated classroom" (20).

This is nonsense. A girl with cerebral palsy who is confined to a special desk cannot roam a classroom in search of "mouthable objects". The level of adult supervision she had in the regular classroom was sufficient to stop her from putting objects in her mouth. The other children in the class could have assisted. "Mouthing" is quite common among children like Emily (and others) and there are simple and effective ways to deal with it (the most effective being to give the child something more interesting to do). The Tribunal's ignorance of this fact again raises questions as to its competence and expertise.

According to the Tribunal, "the school has a choice of establishing a level of adult supervision of Emily that is more intense than mere watchfulness, or, of cleansing the classroom of mouthable materials. It is the Tribunal's unanimous opinion that one of these conditions must prevail, and neither condition can reasonably be realized in a normal, integrated, regular classroom" (p. 64). But the Tribunal carefully avoids any reference to the segregated classroom here so that it does not have to explain how either of these conditions could be realized in it, or in what kinds of educationally beneficial activities Emily could be involved if she were in any classroom where either condition prevailed.

The Supreme Court stated — wrongly — in paragraph 75 that the "Tribunal also found that, with respect to Emily's physical safety, the special classroom was superior to the integrated classroom". But the "special class" described in the Supreme Court's paragraph 76 - involving "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" - cannot, by definition, be contained in the classroom and cannot, by definition, be "cleansed" of "mouthable objects". So in what way can such a "special class" be said to resolve the problem, raised by the Tribunal and quoted by the Supreme Court (20), of "Emily's tendency to place objects in her mouth"?⁵⁴ This incoherence is of the Supreme Court's making.

This "opinion" of the Tribunal typifies "Special Education" 's "medical model" approach and the institutional origins of many attitudes and solutions among segregationists. In institutions, creating sterile environments by "cleansing" rooms of objects a child (or adult) might put in his or her mouth is common, especially as a punishment for behaviour the staff do not like.

⁵⁴ And to what extent could a student "with cerebral palsy" and "pervasive muscular dysfunction", who "mostly uses a wheelchair" and has no system of communication take part in activities such as "hand-over-hand art activities, music, reading (!), outings such as walks and recess [...] mini olympics (!) [...] playing catch" (76)?

In reality, talk of the “need” to protect a child with a developmental disability by “placing” him or her in a segregated educational (or other) setting is common among those who favour segregation and “mouthing objects” is an excuse commonly invoked.

The Tribunal notes (p. 64) that neither the parents nor the school found Emily's “mouthing” particularly troubling. The Tribunal was squeezing hard here to try to find justifications for its decision in favour of segregation and it made itself look foolish in the process. Unfortunately the Supreme Court followed without question.

(3) Other flaws in the Tribunal decision

(a) The Tribunal gave no explanation of why it chose to deal only with “Emily Eaton's needs” (p. 58), or why it divided these into the categories it did. Since good educational practice tries to identify and build on pupils' abilities and capacities, the basis of Tribunal's ideological choice to deal only with “needs” should have been stated and justified.

(b) “Needs” language has negative, if not discriminatory, connotations in this context — would consideration of the education of a pupil not considered exceptional have been based solely on vague and undefined references to “needs”? “Needs” language is unnecessary — “accommodations”, “capacities”, “learning styles” and similar terms permit the discussion of what is required without negative connotations. So the Tribunal's choice of this language requires explanation and justification.

(c) The Tribunal did not identify what it thought were Emily's “intellectual and academic needs” (p.59-60); its identification of her “communication needs” (p. 60-61) was wrong (see above); though stating that her “emotional and social needs” are “very important”, it did not define them and seemed to reduce them to “social interaction between Emily and her peers” (p. 62-63); its discussion of her “physical and personal safety needs” was focused on her “mouthing” and was nonsense.

(d) By framing its opinions and much of its discussion of “needs” in the passive tense, the Tribunal keeps the focus on Emily, as if she were somehow responsible for having her “needs” met. It avoids discussion of the fact that if her “needs” were not met, it was the Brant County Board and its staff who were not meeting them.

Though the Tribunal saw fit to launch an ill-founded and uninformed attack (p. 67) on Emily's parents for what the family did on Hallowe'en night — of limited relevance to what went on in the classroom — there is not even a mention in the Tribunal decision of the poor practice on the part of Brant County Board staff brought out in their evidence, the normal consequences of which would be the failure to meet Emily's “needs” which the Tribunal identified. There is a “smoking gun” and it is the Brant County Board, not Emily and not her parents.

For example, neither of Emily's classroom teachers spent any time teaching her one-on-one: “I don't sit down and specifically work with Emily without Diane [the educational assistant] being present” (Tribunal decision, p.44); “She indicates that she and the educational assistant have not tried changing roles, the teacher working one-on-one with Emily and the educational assistant working with the rest of the class” (p.45); “She further testifies she spent no one-on-one time with Emily” (p.47). It is the educational assistant whose role it is to “work exclusively with Emily one-on-one at all activities” (p.53). So the least trained person in the education system - the educational assistant - worked with Emily (someone that system found so challenging to teach) and the classroom teacher avoided her. No wonder her “intellectual and academic needs” were not being met. This evidence calls into question both the competence and the seriousness of the Brant County Board's attempts to provide “appropriate special education programs and services” to Emily in the regular classroom but the Tribunal ignored it.

Young children learn discrimination from adults, it is not a natural reaction. By setting Emily apart from the other pupils in different furniture with a different “teacher”, while the real teacher ignored her and interacted only with the other pupils, the Brant County Board practically ensured that the other pupils would over time stop interacting with her and that there would be “little, if any, social interaction between Emily and her peers” (p. 63) — the criterion apparently used by the Tribunal as the basis of its opinion that Emily’s “emotional and social needs” were not being met. Any competent educator knows this and also knows that the situation described indicates dereliction of duty — or “benign neglect”, as one expert witness put it (p. 32) — on the part of those responsible, in this case the Brant County Board.

(e) To understand a child with Emily’s limitations well enough to make an “assessment” of her abilities requires that one spend much time with her and expend much effort. Emily’s parents had spent years with her and took their responsibilities as parents very seriously. The evidence shows that the only Brant County Board personnel who spent enough time with Emily to make an “assessment” of her abilities were semi-trained assistants who were not competent to make such “assessments”. Nevertheless, when the Tribunal was “struck by the significant discrepancy between the parents’ and the school personnel’s assessment of Emily’s abilities” (p. 68), it chose to make its own the opinions of the Brant County Board staff⁵⁵ who were, by definition, uninformed. The Supreme Court followed the Tribunal without question.

(f) Having satisfied itself that undefined categories of “needs” were not being met in the regular classroom (and carefully avoided any reference to those responsible for meeting them), the Tribunal makes the illogical and unexplained leap to saying that the most important of these “needs” from the point of view of education - the “intellectual and academic needs” - *cannot* be met in the regular class (p. 60). This statement is false and is further evidence of Tribunal partiality.

If the Brant County Board had had the competence in meeting Emily’s “needs” in the regular classroom that it admitted it did not have⁵⁶, or if it had tried the simple, known steps that any competent board ought to have known about and tried⁵⁷, or if it had made any serious attempt to acquire the competencies needed⁵⁸ — the board knew that 50 kilometres away the Wellington County Separate Board had been successfully including pupils like Emily into regular classes for

⁵⁵ Such as the Superintendent who saw Emily only once and only for half an hour (when she was watching a video) but had strong convictions about how and what to teach her.

⁵⁶ “She [Ms Ireland, the Superintendent] indicates that the Board had never, before Emily, 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” (p. 43).

⁵⁷ According to the Superintendent, “the Board never discussed with the Eatons the principle of maintaining a regular class enrolment for Emily with the possibility of extensive withdrawal for compelling reasons” (Tribunal decision, p.43), though such an approach would have resolved many problems. In particular, this - not the segregated classroom - would have been the “setting where there will be maximum opportunity for [the very individualized, highly specialized, extremely intense, one-on-one] instruction” which the Tribunal wrongly thought would be appropriate to meet Emily’s “communication needs” (p.61).

⁵⁸ “Mr. Cronkwright [the principal at Emily’s school; the principal’s attitudes are known to be key in making “integration” work] says that he never taught for a school board which had an inclusive policy, but that he has taught exceptional pupils in regular classes. [...] Mr. Cronkwright acknowledges that he did not consult with personnel of a school board having an inclusive education policy regarding Emily’s I.P.P.” (p.40). [Ms Lottridge] “did not consult a psychologist or other special education consultants, nor did she visit a school board having an inclusionary policy” (p.45).

years⁵⁹ — it *could* have “met Emily's needs” in the regular classroom. It just could not be bothered to do this.

(g) The Tribunal chose not to mention the evidence of the Brant County Board staff that they were incompetent to provide “appropriate special education programs and services” to Emily Eaton in the regular classroom, and that they chose to remain incompetent for the three years Emily was in the regular class. The Tribunal also chose not to examine whether there was greater competence in the segregated class, and if so, why that competence could not be made available in the regular class.

If the Tribunal had been acting rationally (even within its own segregationist ideology), it would have examined what “special education programs and services” Emily required and then whether the Brant County Board had made serious attempts to ensure that its staff were competent to provide them in the regular classroom. It would have found that the answer to the second question was “no”. It could then have found that the appropriate “placement” for Emily was the regular classroom, adding the rider that this might be reconsidered when the Brant County Board could show that its staff were competent to provide Emily with the “special education programs and services” she required in the regular classroom, and that serious efforts on the part of competent staff were not helping Emily learn. Or it could have examined whether the staff in the segregated classroom were more competent to provide the “special education programs and services” Emily required — and her program and service requirements would not change just because the place in which she received them changed. Then it could have examined whether a classroom of pupils of all ages who spoke little or not at all, used wheelchairs and had little in common except the label “multi-handicapped”, was a more appropriate place for Emily to receive the “special education programs and services” she required than a classroom full of her age peers who spoke and acted in ways considered to be more or less “normal”.

But it did none of this. The generalized inadequacy of the Tribunal's decision stems from the fact that it did not approach its mandate rationally.

(h) The Tribunal was excessively influenced by tainted evidence. According to the evidence of Brant County Board staff, they conspired to deceive Emily's parents⁶⁰. In context, this is the equivalent of an accountant keeping two sets of books with intent to deceive. If an accountant admitted to an administrative tribunal that she/he was keeping two sets of books it is unlikely that her/his evidence would be accepted without reservation. However, while the Tribunal decision does not make clear the extent to which the Brant County Board's “second record” was used by that Board's staff while giving evidence, the Tribunal did accept the evidence of the deceivers without question and relied heavily on it when framing its decision⁶¹.

⁵⁹ So had the Hamilton-Wentworth Separate School Board, which is even closer.

⁶⁰ Emily's teacher “explains that the principal advised her and the educational assistant to record positive things about Emily in the communication book, and to deal with negative issues through the principal. Such issues are recorded in an observation book” (p.44. See also the evidence from the educational assistant, p. 53-54. An attempt was made during the Tribunal hearings to lay responsibility for this deceit on the Eatons; see p. 25). This meant that Mrs. Eaton “did not know about the second record kept by the educational assistant nor the extent of Emily's crying, vocalizing, and sleeping at school until the Tribunal hearings” (p.21).

⁶¹ See, for example, the Tribunal's discussion of “the parents' and the school personnel's assessment of Emily's abilities” on page 68. On page 69 it is the deceivers' version which is believed and the conclusion drawn on this basis in the last sentence in that section (beginning: “Taking these discrepancies...”) is of great importance.

And when criticizing Emily's parents for being "intensely involved, but from a distance" (and assigning motives to their actions *ex nihilo*) (p. 69), the Tribunal decision does not explain how the Eatons could have worked closely with school staff who were systematically and over time conspiring to deceive them.

(i) After the Tribunal hearings and before completing the decision, the chairman reviewed the "literature" (and made comments about it in which impartiality is not the most evident characteristic) but he did not bother to inform himself by travelling 50 kms to the Wellington County Separate School Board⁶² to see how pupils like Emily can be fully and successfully included in regular classes.

The success of the Wellington County Separate School Board over time in including all students successfully in the same classrooms (they do not need to be called "regular" because there are no "other" or "special" segregated classrooms) is well known nationally and internationally; people frequently travel great distances to visit that board and it is very hospitable to visitors⁶³. The Brant County Board and the Tribunal chairman could not have been unaware of the fact that the Wellington County Separate School Board has a proven record of success where the Brant County Board and the Tribunal chairman failed. It has expertise which the Brant County Board and the chairman of the Tribunal lack and which is highly relevant to the matter under review. Is there not a moral, if not a legal, obligation on the part of the Tribunal to take advantage of that freely and easily available expertise in order to ensure that its decision is based on as much expertise as it can be?

The Tribunal and its chairman preferred to close their eyes and ears. One of the expert witnesses called by the Eatons, Dr. Harry 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" (p. 32).

The Tribunal's treatment of Dr. Silverman (and Dr. Bunch and Dr. Sapon-Shevin) and his evidence, and the flimsy and irrational arguments used to try to dismiss them (p. 72) do not support a claim that the Tribunal was impartial. This treatment contrasts with that given to the

⁶² Or the Hamilton-Wentworth Separate School Board, which is even closer. The Brant County Separate School Board succeeded in "integrating" Emily but I do not know whether it has a record of success previous to this.

⁶³ As I know from personal experience. In 1980 I had a modest role in getting funding for a group of parents, trustees and administrators from the largest school board in New Brunswick to visit this board. Subsequently administrators and trustees from this board travelled to New Brunswick to address a symposium on inclusive education. This was a turning point in the move towards inclusive education throughout New Brunswick, where the Wellington County Separate Board's 'model' was adapted throughout the anglophone school system (the francophone school system in New Brunswick followed a different route towards the same goal). The Wellington Separate Board said its decision to include all children was taken on faith-based ideological grounds - its view of children as all being equal in the sight of God. The few inclusive school boards in Ontario are all Separate (i.e. Roman Catholic) boards because inclusion is an ideology which rejects the ideology of segregation. I once sat in the principal's office in a high school in an Ontario Separate board which was not inclusive and listened while the principal explained why he had closed down the segregated class for the "developmentally disabled" in his school (without telling the school board!). He pointed to his school's faith- and inclusion-based "mission statement" and said he and his staff had felt that it should apply to all 2450 students, not to only 2444. The Supreme Court was faced with a clash of ideologies, not a clash of educational theories, and it chose the ideology of exclusion.

evidence of the Brant County Board staff, even though they admitted their incompetence and even when their evidence was nonsense or tainted. The Tribunal did not seek to make a competent and impartial appraisal of all available evidence; it showed hostility to a competing ideology which rejects the segregation for which the Tribunal stood, and hostility towards educators who knew how to succeed where the Tribunal chairman had personally failed.

AN ALTERNATIVE TO THE IDEOLOGY OF EXCLUSION

As explained below⁶⁴, current Ontario education law, regulation and policy and much Ontario education practice with respect to pupils identified as having a developmental disability are based on the limited, temporary and conditional “integration” of the few who manage to prove that they can “profit” from “integration”, and the permanent exclusion and segregation of the majority. This is what the Supreme Court ratified in its *Eaton* decision.

School systems can decide that all children will receive appropriate education programs and services together in the same classrooms. Though this choice of what is called “inclusion” has given birth to inclusive educational theories and practices, it remains an ideological choice, since it is based on beliefs about the value of pupils from non-typical cultures and ethnic backgrounds and pupils considered “exceptional”, and about their place in a school system. “Inclusion” evolved and was eventually codified in the United States to deal with the educational marginalization of children from non-typical cultures and ethnic backgrounds. Only later did advocates for children with developmental and other disabilities see “inclusion” as an answer also to the systematic marginalization of these children.

As noted above, the “integration” approach assumes - in language, policy and practice - that certain children are to be segregated and excluded, on the basis of disability and perceived “difference”, from the settings in which children considered “normal” learn. This “integration” approach concerns itself with two questions: how much exclusion there is to be, and which differences or disabilities are to lead to exclusion. “Inclusion” assumes that all children are different but all are of equal value and belong together; it concerns itself with ways to make this work for the benefit of all pupils. Though they lead to very different approaches to education and school organization, the assumptions underlying “integration” and “inclusion” are clearly ideological.

A clash of ideologies is not an “ongoing pedagogical debate” (27, 31) and it is not useful to consider it as such. Rational argument is of limited value when dealing with ideologically defined positions, especially when these posture as something else. The research on both sides is ideologically determined — in fact it is hard to conceptualize research in this area which would not be. This may account for the fact that research results are inconclusive. Regardless of theory, there is now plenty of **practice** which **proves** that pupils with developmental disabilities, including pupils with more complex disabilities like Emily Eaton, can receive adequate and appropriate education in regular classes, i.e. that inclusive education works.

“Inclusion” can be defined in a variety of ways⁶⁵ but essentially it views ALL pupils as having “special needs” which have to be met and the regular classroom as the primary environment in

⁶⁴ See the section on A contextual review of relevant legislation.

⁶⁵ Here is my working definition. “With inclusive schooling — from kindergarten to grade 12 — ALL the children of school age from a school's normal catchment area attend regular classes in the same school, including those who may, for example, have a visual impairment or a developmental disability, or be from living environments which make them “at risk”, or a culture in which English is a third language. The school is structured and organized so that ALL students work at challenging and useful academic learning tasks at their level which interest them, in an age-appropriate school environment which fosters learning, creativity and cooperation. Teachers have the training and the technological and human support they need to create and maintain such a positive learning environment and to direct ALL students' learning, using a variety of group and individualized approaches appropriate to the students and the situation. ALL students may leave the regular classroom from time to time for specific reasons and for time-limited periods but ALL ‘belong’ in the regular classroom. Throughout the day, including “recess” periods and extra-curricular activities, pro-social behaviour is systematically encouraged and anti-social behaviour equally systematically discouraged. Students understand and accept all kinds of diversity and learn to work creatively both individually and in

which this will happen. All children may leave the regular classroom for specific instructional and other purposes but they all “belong” together in the same class and classroom. Such practice pre-empts the empty debate on “placement” which led to the Supreme Court's having to render a decision in the *Eaton* case, focussing attention instead on what is educationally important: how the school and the Board can support the classroom teacher(s) to organize the curriculum, the classroom, and the techniques and practices used in it so that ALL students learn to their fullest capacity during as much of the school day as possible.

There are school systems in Canada in which some or all schools are inclusive in this sense. “Inclusion” is stated educational policy in New Brunswick. While the quality and extent of its implementation varies, “inclusion” has been proven to work in New Brunswick (and in certain Roman Catholic Separate school boards in Ontario, as well as in other jurisdictions) for all students and over time.⁶⁶

Ontario government policy - as formulated in its position paper *Ontario Secondary Schools 1998*⁶⁷ - still sees “inclusion” as a concept to be restricted to children from non-typical cultures and ethnic backgrounds. During the 1997-98 school year, two of the largest universities in Ontario - the University of Toronto and York University - were collaborating with the (then) largest school board in Ontario - the Peel Board of Education - on a project to foster “inclusion” in some schools. However, those involved in this research project were interested only in the “inclusion” of students from diverse ethnic and cultural backgrounds; students with developmental and other disabilities were excluded from it.

The highest level of the Ontario government and its largest universities are sending a clear message to all concerned — students (both those considered to have disabilities and those not considered to have disabilities), school personnel, parents and the community at large: acceptance, accommodation and inclusion for those from different ethnic and cultural backgrounds, and rejection and exclusion for those with certain disabilities. It is not likely that such a message will help “to fine-tune society so that its structures and assumptions do not result in the relegation and banishment of disabled persons from participation” (67). It might be argued that both the government policy and the university research project are inconsistent with at least the spirit of the *Charter*.

The Brant County Board chose not to ensure that its staff acquired the knowledge of inclusion and inclusive educational practices that exists in Canada (and even in some parts of Ontario) and that would have enabled its staff to provide “appropriate special education programs and services” to Emily Eaton and children like her in an inclusive environment in a regular classroom. It was these ideological choices by the Brant County Board which led to the provision of inappropriate educational services to Emily Eaton in the regular classroom, not Emily's “deficits” and not the “placement”.

groups. Successes are shared across the whole school and the numerous problems inherent in any school environment are solved together”.

⁶⁶ The pupils in the most inclusive school district in New Brunswick consistently score among the highest in the province on province-wide standardized tests, which some consider an effective way to compare quality of education. The reason is that inclusive attitudes and practices improve education for all pupils.

⁶⁷ Page 41 of this document contains a moving description of inclusive education under the heading ‘Anti-discrimination education’. However, several references in the document to the exclusion of ‘exceptional’ students - for example, in sections 3.1, 3.4.1, 4, 8, 10 - make it clear that discrimination against these students will continue.

Given the benefits of inclusive education to all students, it is not clear why the Supreme Court's decision seems to revolve around the question of whether segregation or "integration" is "superior" (31, quoting the Court of Appeal, and 75), especially since it is the definition of "superior" which is the crux of the problem, along with how to decide when superiority has been demonstrated.

The educational service model of successive Ontario governments since 1980 (see below) is known as the "range of options" or "cascade" model. Ideologically based and ultimately rooted in eugenics, it is designed to manage the exclusion which it assumes. The whole procedure which was the subject of the Supreme Court's decision in this case - up to and including the Tribunal - is simply the management tool chosen. The Supreme Court's decision has confirmed the legitimacy of this tool and the exclusionary policy and practices which underlie it.

This is in spite of the fact that "inclusion" is more obviously consistent with the spirit and letter of the *Charter* than the exclusionary model which was Ontario's ideological choice in 1980 and remains Ontario's choice today. Would it not have been appropriate for the Supreme Court to have looked outside Brant County Board practice to see what alternatives work for pupils like Emily Eaton (and all other pupils)? Or was the Supreme Court's misplaced belief in the advantages of segregation (69) so strong that it, like the Tribunal, would have rejected the alternative even if it had known about it?

A CONTEXTUAL REVIEW OF RELEVANT LEGISLATION

Segregated educational settings - originally called "auxiliary classes" - for those who were then called "the feeble-minded" and are now called "children with developmental disabilities" were established in Ontario in 1913 as a public health measure, following organized pressure from eugenicists.⁶⁸ Dr. Helen MacMurchy, the person most responsible for their establishment and for the spread of the idea that social problems such as "feeble-mindedness" "were in fact medical issues that only physicians could competently deal with", believed that the education of the "feeble-minded" in public schools was "time, strength and money wasted", and that "80 per cent of feeble-mindedness could be eliminated within a generation by segregation, but the ultimate weapon in this battle was sterilization of the feeble-minded".⁶⁹ "[M]edical examination and mental testing were aimed more at the labelling and segregating of the handicapped than at providing for their special needs".⁷⁰ Many of the problems of current "Special Education" practice with respect to children with developmental disabilities can be traced to its medical roots in eugenics.

A concurrent reading of Kurt Danziger, *Constructing the Subject: historical origins of psychological research* (Cambridge University Press 1990); Stephen Jay Gould, *The Mismeasure of Man* (New York, Norton, 1981); and McLaren's book already cited (along with some of the books and articles referenced in them), shows what happened when Binet's methods of trying to define the intellectual needs of children recognized as "slow" were brought to North America in 1906. Two groups - psychologists and school administrators - saw how these methods could be used to enhance their own credibility, importance and influence. They began to use Binet's methods in ways he had not envisaged - to classify and control school populations by grouping them in unnatural groups⁷¹ according to their ability to do certain tests. By naming these tests "intelligence tests" they were able to claim that they were testing with precision the vague and undefined human quality that people call "intelligence". The validity of this operation, and those by which the concepts of "intelligence quotient"⁷² and "mental age" were evolved, is evident only to those who abandon scientific method.⁷³

All this fed on and fed the positivistic view of science and life then in its heyday, and what was then considered the "science" of eugenics.

⁶⁸ cf. Angus McLaren, *Our Own Master Race: Eugenics in Canada, 1885-1945* (McClelland and Stewart 1990), p.41. Pages 30-45, deal with the career of Dr. Helen MacMurchy.

⁶⁹ McLaren, p.44, 37, 42.

⁷⁰ McLaren, p.37. Many parents of students with developmental disabilities would suggest that little has changed, except that "medical examination" has been replaced by various kinds of professional "assessments".

⁷¹ "Groups defined by certain levels of performance on such instruments are obviously the product of the psychologist's intervention and are not 'natural' groups based on some pre-existing classification." Danziger, p.86.

⁷² "IQ" scores are supposed to be accurate and consistent and not to vary significantly (until old age). However, my son's "IQ" score, on the basis of tests administered by highly qualified professionals, went down from 83 to below 50 in less than a year. We had been told this would happen. He did not change; the test did.

⁷³ "For a discipline [psychology] that took 'scientific' to imply reference to some universal truth beyond individuality, history, and local meaning, the establishment of claims to being scientific frequently depended on appropriate manipulation of the identity of the sources to which data were attributed. With few exceptions, claims to universality were not grounded empirically but were established by fiat. The role of the experimental report was, among other things, to create the illusion of empiricism." Danziger, p. 100. Little has changed.

The “blame the victim” reaction to the failure of the first wave of institutionalization⁷⁴ in the 19th century was another important contextual factor. Unlike its 20th century successor, this institutionalization was a product of noble intentions. The theory had been that congregating people with developmental and other disabilities for their own safety and giving them the expert education, instruction and training that it was thought they had not had access to in the community, would lead to their becoming “normal”; science would “fix” them.

In the dying years of the 19th century, it had become evident that most of the people (including children) in institutions could not be “fixed” and would never be “normal”. In other words, the assumption (not founded on science) underlying current law and practice for “exceptional pupils” in Ontario — that congregation by diagnosis⁷⁵ is useful — was disproved over a century ago. The irrational belief of Brant County Board staff that Emily Eaton's “communication needs” would be better met in a segregated class, accepted by the Tribunal and quoted by the Supreme Court (73), is a throwback to this disproven assumption and an indication of its longevity.

A hundred years ago those in institutions were considered responsible for the professionals' failure to “fix” them and there was a negative reaction against them, particularly on the part of the professionals. “Blaming the victim” is still common when professionals fail to accomplish their goals in “treating” persons with developmental disabilities or mental health problems (and certain other kinds of disability). There is much evidence of it in the the attitudes of Brant County Board staff who appeared before the Tribunal and in what they said. It is in fact the substance of the Brant County Board's appeal. They had failed Emily and they wanted her out of sight and out of mind in the segregated class.

If professionals wanted to blame their victims, eugenicists felt a need to “preserve the purity of the white race” and its “gene pool”. “Intelligence tests” were the ideal tool to “measure” the “deficiencies” of “defectives”.⁷⁶ These “defectives” or “degenerates” - i.e. children like my son and Emily Eaton - could then be excluded from contact with “normal” children so that the risk of “contaminating the gene pool” could be minimized.

This was the general context in which segregated classes were established in Ontario. It also drove the second wave of institutionalization which reached its peak in Canada in the late 1950s, nearly forty years after serious scientists recognized that there was no scientific basis for eugenics.

Since then, parents and friends of children with developmental disabilities have been struggling to replace this ideology of exclusion with an ideology of inclusion. So far, they have had limited success and their hopes that the *Charter* would support their efforts were dashed by the Supreme Court's *Eaton* decision.

After eugenics engendered segregation and institutionalization, segregation and institutionalization engendered “Special Education”. “Special Education” today still owes much to its origins in institutions (institutions for the deaf and the blind as well as those for children with developmental disabilities and mental health problems). When in the late 1950s the first wave of

⁷⁴ This was one of the first great failures of positivism, though it was not perceived as such at the time.

⁷⁵ At last count Ontario had eleven categories of “exceptional pupils”, all based on diagnosis, and was considering adding more as some pupils cannot be made to fall into existing categories.

⁷⁶ See the writings of, for example, Goddard and Kuhlmann in the standard university texts on the history of psychology.

deinstitutionalization began,⁷⁷ young and adult people in institutions needed to be taught how to live normally. So “life skills” programs and curricula were developed⁷⁸

True to its birth in eugenics and its upbringing in institutions, segregated “Special Education” for students with developmental and other disabilities focuses primarily and narrowly on their deficits and on educators’ definitions of their “needs”. This focus is clear in the Special Education Tribunal decision and in the evidence from Brant County Board staff quoted in it.

Though more children with disabilities were staying out of institutions by the late 1950s, eugenics-based legislation still kept them out of the regular schools. Protests and pressure from parents and some dissident professionals led provincial governments to legislate partial funding for segregated classes and schools for some children with developmental disabilities. These classes excluded many children with developmental disabilities and used inappropriate curricula; in fact they had wrong with them all that is wrong with current segregated classes for these children. Nevertheless, in the absence of any alternative, these classes and schools became a complex system in some provinces, particularly Ontario.

Over time parents across Canada became increasingly dissatisfied with the exclusion of these children (and others) from the regular school system, with the stigma and greatly reduced chances for a decent life which resulted from this exclusion, and with the poor quality of the programming in the segregated classes.

It was evident before 1980 that there were no real answers to the questions that were being raised with increasing urgency and frequency and, in light of the inadequate responses, with increasing anger: “What is so special about Special Education? It is neither “special” nor “education””; “What educationally appropriate activities which can be carried out in a segregated classroom cannot be carried out at least as well in a regular classroom?”; “Why is my child not being educated in a regular classroom with the other children from his/her neighbourhood?” “If resources can be found to fund and operate segregated classes, why cannot the same resources be used to enable the regular system to provide appropriate education programs and services to students with disabilities so that segregated classes are not necessary?”⁷⁹

Twenty years later these questions are still being asked — but not answered — in Ontario. So are some additional questions: “Since some schools and boards in Ontario and in other jurisdictions can and do provide inclusive education - appropriate educational services to ALL students in regular classrooms - why do not all the other schools and boards, who have the same funding and the same kinds of students and personnel, also provide inclusive education?” “Given that non-discriminatory inclusive education is now proven to be possible and desirable, why is it not implemented as government policy and supported by the Courts?”

These are the questions Emily Eaton’s parents asked, the questions to which the Brant County Board never gave adequate answers, the questions the Ontario Special Education Tribunal should have asked but did not, the questions the Ontario Court of Appeal was vainly looking for answers to, the questions the Supreme Court unfortunately avoided asking; the questions to which the segregationists still have no adequate answers; but the only questions that really matter.

⁷⁷ Driven as much by governments’ desire to control rapidly-rising costs by externalizing them back to families and communities as by any change in ideology.

⁷⁸ See above (p. 28-30) for a discussion of the curriculum in the “special class” into which the Brant County Board wanted to “place” Emily.

⁷⁹ I know this because my wife and I were asking these questions - in slightly different terms - in New Brunswick at that time.

The 1980 *Education Amendment Act* in Ontario (referred to in paragraph 59 of the Supreme Court decision) changed the focus of responsibility for the provision of “special education programs and services” to children with developmental disabilities from the private or non-profit sector to the public sector, but it did not change the conceptual framework within which these services are to be provided. That is why, under the 1980 legislation, the right of an exceptional pupil “to be part of the mainstream of education” is conditional on this being “profitable” to him/her⁸⁰, just as under the 1974 legislation⁸¹ a student was granted “status as a resident pupil” in the regular school system only if the student was able to “profit” from instruction there. The thrust of the 1980 amendments was that the Province would take responsibility for the “TMR⁸²” classes and schools. The intent was not to “integrate” students in these classes into the “mainstream of education”. Indeed, there was implicit recognition in the structures established under Regulation 554/81 and the language used in it that these students did not belong in regular classes.

So when the government took over the administration of the segregated “TMR” school system, little changed for children with developmental disabilities. Professionals still routinely decided that few of these students were “educable”; hence, that it would not be “profitable” for them to be part of the “mainstream of education”; hence, that they should be placed in separate schools and classes from which they could not escape. In other words, the 1984 policy statement quoted by the Supreme Court in its decision (59) is in fact a statement of a policy of systematic exclusion and segregation for most students with developmental disabilities. When that Court chose to make the presumed ability to “profit from the advantages that integration provides” a condition to be met before a pupil can leave a segregated class (69), it gave its approval to the exclusionary and discriminatory intent of the 1974 legislation which remained in the 1980 legislation and the 1984 policy statement.

It would be another decade after the 1980 amendments before a new regulation eliminated most references to “TMR schools” and “TMR classes” in Ontario legislation. As noted above, at the time of the Supreme Court’s decision, section 3 (4) of Regulation 305 (the regulation which is the subject of that decision) still contained one reference to “a trainable retarded pupil”.

The idea that somebody could decide ahead of time “the extent to which it is profitable” for a child to be part of the “mainstream of education” is an example of “the attribution of untrue characteristics based on stereotypical attitudes” (67) which is rooted in the ideologically-based pseudo-science of the eugenics period. So is the pretence that children with developmental disabilities can be divided into categories of “Educable Mentally Retarded” (EMR) - to be given an education of generally poor quality in the regular system - and “Trainable Mentally Retarded” (TMR) - to be excluded from the regular system - primarily on the basis of scores on “intelligence” tests. To define and group children by IQ scores and pretend that they have so much in common that they belong in classes together is to resort to the same tactics as the eugenicists used and to deny the individuality and humanity of the children. Unfortunately for children with developmental disabilities⁸³ it continues to be “profitable” to those with a vested interest in “Special Education” to keep up the pretence.

⁸⁰ As noted in paragraph 59 of the Supreme Court decision.

⁸¹ Quoted in paragraph 57 of the Supreme Court’s decision.

⁸² “TMR” stands for “Trainable Mentally Retarded” and refers to the diagnostic category of pupils for whom these classes and schools were intended. See below for a discussion of the term.

⁸³ My son was the victim of such legal exclusion in New Brunswick until the Charter allowed a group of us with children in the segregated system to initiate a *Charter* challenge in 1986, to which the government of the day responded by changing the law before the 60-day notice period was up. The fact that our children were legally stated to be uneducable and only “trainable”, like animals, was a major cause of the challenge.

The anti-scientific TMR/EMR concepts and terminology are still in common use in Ontario schools today. Many people in education in Ontario understand the current legislation and practice, especially following the Supreme Court's *Eaton* decision, to support the view that "TMR pupils" do not belong in regular classes.⁸⁴

As noted above, as applied to students with developmental disabilities the statements in the Supreme Court's decision (68) about "the change in attitude influenced by the Williston Report and other developments" are incompatible with lived reality.

Of much greater relevance to the 1980 Ontario *Education Amendment Act* than the Williston report (58) was the 1975 U.S. Public Law 94-142. This U.S. law guaranteed the right of all U.S. children to a state-funded appropriate education and it significantly expanded the process of "mainstreaming" students with developmental and other disabilities who had previously been excluded. School boards were given three years to develop plans and programs consistent with the legislation and federal funding from 1978 onwards was contingent on such plans. Professional development geared towards appropriate pedagogical implementation of the law was required as part of the plans. It would have been impossible then to legislate or implement inclusive education systems which educated all children in regular classrooms. The knowledge of how to do this was not widely available; parents were not ready for such an idea; school systems could not even conceptualize it, let alone figure out how to re-train teachers and other personnel to make it happen; universities were too committed to Special Education by ideology and habit to be willing or able to teach teachers how to include all children. (The universities and school systems in Ontario in 2001 are still in similar positions.)

Probably the greatest importance of this U.S. law is that it mandated "education" - rather than "instruction and training" - for *all* children, and that it mandated that children with disabilities be educated in the least restrictive environment, i.e. with non-handicapped peers, to the extent possible. School boards were required to show that the regular class, with supplementary aids and services, was not adequate before a student could be segregated.

Old habits die hard and U.S. teacher-training institutions continued to produce teachers taught that there was, and had to be, a fundamental difference between the education offered to "normal" students and the "Special Education" offered to those with developmental and other disabilities, or to those considered "gifted". These factors (and others, especially the ease with which professional incompetence, unwillingness and inadequacy came to be accepted as reasons why regular class "placement" was inappropriate⁸⁵) meant that initial hopes for great progress were progressively disappointed and the legislation did not live up to its promise. Revisions introduced into the most recent reenactment of that law (1997) are intended to further restrict "Special Education"'s ability to segregate pupils. Anecdotal evidence from several sources indicates that they have had limited effect so far.

This is the context in which Ontario passed the legislation which was current when the Supreme Court made its *Eaton* decision. In at least three respects the Ontario legislation was a step

⁸⁴ The Brant County Board's approach to Emily Eaton is consistent with this understanding of existing law and the 1984 policy statement. The class in which Emily Eaton was first placed was referred to in evidence to the Tribunal as "a T.M.R. class" (Tribunal decision, p. 14). While this was during evidence from Emily's mother, she would not have used the term unless it was in common usage around her. The Tribunal understood it and made no comment about its use.

⁸⁵ As was the case in Ontario twenty years later with Emily Eaton.

backwards from U.S. Public Law 94-142. That law required that parents of students with disabilities physically sign their agreement with their child's Individual Education Plan (IEP) - i.e. the goals and objectives of the child's education program and the means of attaining them; in Ontario at the time of the Supreme Court's decision there was no requirement that parents even had to be consulted - their child's IEP was produced and implemented by the school, whether the parent agreed or not. And there was no appeal mechanism available to parents who disagreed with what the school decided their child's IEP was to be.⁸⁶

Secondly, there was no mention in the Ontario legislation of "least restrictive environment" or any similar concept.

Thirdly, and relatedly, the Ontario legislation set up a cumbersome procedure⁸⁷ for "identification" and "placement". Consistent with the intent of the legislation, which was to take over the administration of the "TMR classes and schools" but not to include their pupils in the regular school system, this procedure favoured segregation over "integration"⁸⁸ for these pupils. Hence the 75+% of pupils with developmental disabilities who are in segregated classes 16 years later. IPRCs were not permitted to discuss programs⁸⁹ which should be at the heart of any discussion of appropriate education.

The similarity between the Identification, Placement and Review Committee (IPRC) process, enshrined in the 1980 Ontario legislation and still in place, and the practices of the eugenicists of 1913 is striking. Eugenics was an ideology and practice of identification (by "intelligence tests"), labelling ("imbecile", "idiot", "moron"), and exclusion. Under the IPRC process, identification is typically done on the basis of "intelligence tests" and other psychological tests; "placement" is typically done on the basis of the results of these tests (though other factors are sometimes mentioned); and review may well lead to a more segregated or restrictive "placement" for a student with a developmental disability but rarely to a more "integrated" one.

The IPRC process was apparently intended by the drafters of the 1980 legislation to be a protection for children with disabilities and their families. As far as students with developmental disabilities are concerned, it has long since ceased to be that, if it ever was. There is no due process requirement and there is evidence that some IPRCs reach decisions in private, in collusion with schools, before they even meet with parents. An IPRC typically supports whatever the school suggests, especially if the school recommends segregation and the parent wants "integration", though this statement is based on the lived experience of parents, rather than on

⁸⁶ There is a requirement under sections 6 and 7 of Ontario Regulation 181/98, which replaced Regulation 305 on September 1st, 1998, for consultation "with the parent and, where the pupil is 16 years of age or older, the pupil" but there is no requirement that either parent or pupil agree with the IEP and no appeal mechanism if they do not.

⁸⁷ See above note 5.

⁸⁸ The changes introduced under Regulation 181/98, which was intended to ensure consistency with the Supreme Court's *Eaton* decision, were implemented at the same time as significant changes in the funding for "special education programs and services" caused chaos. Consequently it is impossible to determine whether they brought about positive change, though available anecdotal evidence says no. Under Regulation 181/98 (section 17(2)), if (and only if) "the committee is satisfied that placement in a regular class would meet the pupil's needs and is consistent with parental preferences, the committee shall decide in favour of placement in a regular class." There are no conditions attached to "placement" in what is called "a special education class"; i.e. a segregated class.

⁸⁹ Under section 16 of Ontario Regulation 181/98, an IPRC may "discuss" or "make recommendations regarding special education programs and special education services" but it "shall not make decisions about special education services or special education programs".

concrete figures.⁹⁰ Not infrequently an IPRC will try to intimidate parents; I heard one parent tell how she found herself facing 22 grim-faced professionals when she went to her child's IPRC meeting. 15 of these admitted that they had never seen her child. Some parents report that they feel that their child has been victimized by an IPRC and a school because the parent dared to ask for a regular class "placement" when the school wanted a segregated one. While a few IPRCs are welcoming even when the parent wants a regular class "placement" (for a younger child), it is common - perhaps the norm - for parents of a child with a developmental disability to be given a hard time by an IPRC if they want a regular class "placement" for their child, especially if the child is of secondary age; it is rare for parents of a child with a developmental disability to be faced with anything other than swift agreement if they want a segregated "placement" for their child.

The coming into force of the *Charter's* section 15 in 1985 changed nothing in law, policy or practice as they apply to "exceptional" pupils in Ontario. There was not even an attempt to adapt to "accommodation" language.

The Ontario *Education Act* as it relates to pupils with developmental (and certain other) disabilities continues to be inherently exclusionary and it is unlikely that in the real world it could ever be implemented in a non-discriminatory manner. Certainly it is not now and was not at the time of the Supreme Court's *Eaton* decision.

⁹⁰ The Peel Board of Education keeps excellent statistics, most of which it is happy to provide to the public. However, it was unable to provide statistics on the number of times an IPRC had overruled a school's suggestions for a student's "placement" in a segregated setting when a parent had asked for a placement in a regular class.

END NOTE

Read simply as text, i.e. as if it were a piece of literature, the Supreme Court's *Eaton* decision reveals two underlying factors: (a) an *animus* against the Ontario Court of Appeal, and (b) a belief that this was essentially a replay of the *Eve* case.

(a) The Supreme Court's determination to attack every finding of the Court of Appeal — that the Tribunal never answered the question as it framed it (33); that the “distinction” imposed by the legislation constituted a “burden” (34); that “scrutiny of the larger social, historical and political context was mandated” (34); that “the *Charter* required that segregated placement be used only as a last resort” (41); even its defence of Emily's parents against the Tribunal's attacks — led it down strange and improbable paths. Some of the inaccuracies that resulted have been analyzed above.

(b) There is a fundamental difference between *Eve* and *Eaton*. The belief that sterilization is the solution to the perceived “problem” of burgeoning sexuality in women with developmental disabilities, and the belief that segregated classes are the solution to the perceived “problem” of providing appropriate education to certain pupils with developmental disabilities, are both persistent relics of the eugenics era. In *Eve* the Supreme Court rightly rejected one such relic, finding against a misguided parent and for the State which intervened to protect her daughter. In *Eaton* that Court upheld another such relic, finding in favour of the eugenics-based ideology on which the State's case was built, and against the parents who tried to protect their daughter and promote an education system more consistent with what the Supreme Court itself stated to be “the purpose of s. 15(1) of the *Charter*” (66).

In *Eve*, professionals acted to defend Eve's interests against her misguided parent. There is no indication that in *Eaton* the professionals were promoting Emily Eaton's best interests or that her parents were misguided. There are indications that Emily was victimized and that her parents were trying to intervene on her behalf against a System which was stacked against them, which was rooted in an abhorrent ideology and which was prepared to expend vast amounts of taxpayers money to defend its right to do what it found convenient, regardless of the best interests of its pupils. It is sad that the Supreme Court sided with the oppressors against the victim, punishing the victim for the failures of the professionals and rewarding the professionals for their failures by assigning costs against the parents.

Perhaps if the Supreme Court had recognized that there are preferable alternatives to segregation for Emily Eaton and others like her - as it recognized that there were preferable alternatives to sterilization for “Eve” - the outcome might have been different.

APPENDIX

THE ONTARIO SPECIAL EDUCATION TRIBUNAL DECISION: an analysis of the evidence quoted in it and of the Tribunal's response to this evidence

The Tribunal's approach to the evidence presented to it is intriguing.

Evidence from the Brant County Board witnesses indicated that the staff had no experience in integrating students like Emily.⁹¹ The Superintendent had felt from the start - years before she met Emily - that Emily belonged in a segregated class.⁹² She was concerned about the financial implications of 'integration' both generally⁹³ and as regards Emily.⁹⁴ The relevance of the question of cost to her presentation of the Brant County Board's "philosophy" (p.41) is not clear but her assertion that if all the students from special education classes were integrated "the costs would escalate out of sight" is interesting from two points of view. In the first place it is false. If it were expanded to something like: "If all the students from special education classes were integrated using the Brant County Board's current inefficient and wasteful "integration" model, costs would escalate out of sight" it might well be true; but "integration" does not have to be done that way and inclusion certainly would not be.

Secondly, there is a clear implication here that cost, not student need or student best interest, is the reason why some Brant County Board students are "placed" in "special education" - i.e. segregated - classes. Since this would appear to be unconstitutional, it is odd that neither the Tribunal nor any of the courts appealed to picked it up. It is also unfortunate that nobody asked how much money the Brant County Board expected to save by "placing" Emily in a segregated class. The Brant County Board clearly found Emily's presence in the regular classroom inconvenient and contrary to its segregationist "philosophy"; but was cost also a reason why it wanted her out of there?

The Superintendent had "met Emily only once" during the almost four years between Emily's first I.P.R.C. and the Tribunal hearings, when she was "present for about a half hour while [the educational assistant] and Emily were watching a video" (p.42), i.e. not taking part in the regular classroom activity and apparently not in the regular classroom. This single meeting took place at least two years after Emily first started classes with the Brant County Board. This lack of knowledge did not prevent the Superintendent from having strong views; she "felt that the priority was to develop a communication system" (p.42) and she felt able to decide which special classes would be "suitable for Emily" and which of these she "prefers" for this student she had met once in nearly four years. Committed to the "continuum of services" (p. 41) model (i.e. the "cascade" model), she and the Board "never discussed with the Eatons" an alternative approach which might have satisfied both parties (p. 43).

⁹¹ "She indicates that the Board had never, before Emily, 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" (p. 43).

⁹² "Regarding Emily's placement in kindergarten at Maple Avenue School she explains, '...I felt...Emily's...needs would best be met at Jane Laycock School' " (p. 41).

⁹³ "If all the students from special education classes were integrated, Ms Ireland asserts, 'The costs would escalate out of sight' " (p. 41).

⁹⁴ A "modified school day [...] would reduce the need for a full-time educational assistant" (p.42).

In matters of “integration” and inclusion it is common knowledge that the school principal, as model, is the key. If the principal is committed, “integration” or inclusion is likely to work; if the principal is not committed, it is highly unlikely that either will work. According to the evidence, the behaviour modelled by the principal of Maple Avenue School was quite negative. It was he who advised the teacher and the educational assistant to deceive the Eatons by keeping from them “negative issues” which were nevertheless recorded in an “observation book” and produced at the Tribunal (p. 44, 53-54 and note 55 above). After Emily had bitten him, the teacher, the educational assistant, and another student, he had concerns about Hepatitis B - not, apparently, because he feared that Emily might catch it from those she had bitten but that she might infect them (p. 39). He had never taught for a school board which had an inclusionary policy (though he had taught exceptional pupils in regular classes) and did not consult with personnel of a school board having an inclusive education policy (p.40). His expressed “concerns about [Emily’s] fatigue in a full-time program and about her potential success with the gradually increasing independence required of students as they move beyond kindergarten” (p.39) indicate that he is unlikely to have been able to provide much useful support to the teachers trying to “integrate” Emily. “He acknowledges a consensus among school staff that Emily’s needs would be better met in a special education class” where “`they would be able to use the expertise, support and materials they have’ “ (p. 41) but does not find it necessary to explain why such “expertise, support and materials” could not be provided to Emily in the regular class. He is concerned about Emily’s decreasing level of happiness - the only thing he or his staff feel able to assess (p. 40-41).

The evidence indicates that the teachers were unprepared for the job of “integrating” Emily and got inadequate support and direction from a school system which was in new territory it did not want to be in. Although, according to the evidence, neither of them spent any time teaching her one-on-one,⁹⁵ they should not be held fully responsible for the inadequacies of their responses to Emily which are brought out in the evidence.

There is inconsistency between what the teachers say is the role of the teacher assistants and what the evidence shows the assistants do, but that is typical. The evidence indicates that the teacher assistants tried hard and got inadequate support and direction. Inconsistencies between their testimony on minor matters and that of others may have seemed important to the Tribunal but are not really relevant.

Part of the evidence of the Brant County Board’s psychologist⁹⁶ is simply wrong⁹⁷ and indicates a lack of understanding and knowledge of what can take place in a competently organized inclusive classroom. It is also absurd to suggest that the Emily described by school personnel as hardly

⁹⁵ “I don’t sit down and specifically work with Emily without Diane [the educational assistant] being present” (p.44). “She indicates that she and the educational assistant have not tried changing roles, the teacher working one-on-one with Emily and the educational assistant working with the rest of the class” (p.45). “She further testifies she spent no one-on-one time with Emily” (p.47). This would obviously be a major factor in the isolation of Emily in the regular classroom that the Tribunal described with such rhetorical flourish and that it ascribed solely to consequences of the ‘integrated placement’ (p.66).

⁹⁶ “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’ “ (p.52).

⁹⁷ In addition to the theory and other people’s practice, I know this from personal experience with my own son. He understood when he was in a segregated class that he was there because he was a reject and he performed much better when he was - finally - able to get into regular classes. It did not matter to him that he was doing grade 1 math when the other students were doing grade 12 math; he was ‘competing’ in his own way and still remembers the day he got 100% on his math test.

conscious of her surroundings needed to be “placed” in a segregated class so that she would not feel uncompetitive with the students in the regular class who had little contact with her.

In general, witnesses for the Brant County Board did not feel it necessary to have any knowledge of inclusive education, though that is what the Eatons wanted.⁹⁸ They did not feel it necessary to have knowledge of what they were talking about before expressing an opinion.⁹⁹ None of them had any experience or expertise in doing what they were trying to do (“integrate” a “multihandicapped” student like Emily) and - according to the evidence - none of them made a serious attempt to acquire such expertise. So none of them was in a position to offer informed opinion on the reasons for the success or failure of what they were doing, or what they should be doing, or possible alternatives. Though their “continuum of services” model is based on supposed accuracy of assessment, and though they recognized that they could not “assess” Emily, this did not stop them from making assumptions about what the results of an assessment would have been if they had known how to make one, and making recommendations on the basis of these assumptions.¹⁰⁰ Not only did the Tribunal follow them in this, it presumed in itself a capacity to do - apparently on the basis of “extensive empirical evidence” (none of which it found it necessary to quote) presented to the Tribunal - what the Brant County Board staff insisted they had not been able to do during the years Emily had attended school: assess Emily's intellectual ability. Not surprisingly, this assessment was very negative.¹⁰¹ Such assertions are more consistent with a Tribunal which is searching for justifications for a decision already reached than with a Tribunal which is objectively examining the facts.

In the end, it was on the testimony of these witnesses - who admitted they were uninformed but whose ideology it shared - that the Tribunal based its decision. Their testimony is treated as objective, rather than as evidence for one party in an adversarial procedure. The results of their failures and inadequacies and of their inability to identify or meet Emily's needs over time are recognized with considerable exaggeration and rhetorical flourish in the Tribunal's decision, but all are ascribed to the “placement”; the appropriateness and quality of the “special education programs and services” provided in that “placement” and the knowledge and competence of the Board personnel are never questioned. In the endless and empty debate in the testimony over

⁹⁸ “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. [...] Mr. Cronkwright acknowledges that he did not consult with personnel of a school board having an inclusive education policy regarding Emily's I.P.P.” (p.40). [Ms Lottridge] “did not consult a psychologist or other special education consultants, nor did she visit a school board having an inclusionary policy” (p.45).

⁹⁹ “Ms Lottridge states that on the basis of her teaching experience she imagines a special class would be a better setting for Emily. She acknowledges that she has not taught a special class and has not observed a special class of physically challenged students” (p.45).

¹⁰⁰ “[He] states that school personnel are unable to assess Emily academically. He expresses the opinion that a special class placement would best meet Emily's needs.” (p.40) “Mr Cronkwright repeatedly points out the inability of school personnel to assess Emily's receptive language, comprehension, academic development, and rationale for various behaviours” (p. 40-41). “Ms Ireland believes Emily to be developmentally delayed, but she acknowledges that she doesn't know for sure because Emily can't communicate.” (p.42) “Ms Lottridge acknowledges her inability to assess Emily academically. [...] she imagines a special class would be a better setting for Emily.” (p.45). “The nature of the disabilities [of the students in the classroom into which the Brant County Board wanted to ‘place’ Emily] in the classroom involves an intellectual and physical component.” (p.49). The member of the Brant County Board staff (of those who testified before the Tribunal) most familiar with students with profound developmental disabilities - the teacher of the class of ‘multihandicapped’ students into which that Board wanted to ‘place’ Emily - declined to express an opinion as to her intellectual abilities or potential (p.50).

¹⁰¹ “Despite the contention of the appellants that Emily's intellectual ability is undetermined and unspecified, it is unrealistic in our opinion - and, we believe, a disservice to Emily - to discount the extensive empirical evidence that points to a profound handicap” (p.59).

Emily's ability to communicate consistently the Tribunal agreed with the testimony of the Board witnesses - though the only ones who had spent enough time with Emily to have a valid opinion were not qualified to make such an assessment - over that of the parents who had lived with her every day for years. Like the Board witnesses, the Tribunal had a tendency to blame Emily and her parents for the Board's inadequacies. This may be because the Tribunal did not understand that these were inadequacies or it may be because the Tribunal chairman had himself failed in similar circumstances¹⁰². There is nothing in the Tribunal decision to suggest that it understood what was required to "integrate" Emily successfully or that it was competent to undertake the task assigned to it.

The Tribunal's treatment of the witnesses for Emily's parents - with whose ideology it was clearly at odds - was very different. It went to unusual lengths and used rather strange manoeuvres to try to discredit them, in several cases attacking them personally.

Witnesses who were accepted as experts during the hearings (p. 5, 29, 31) become "individuals presented as experts in the matter of classroom placement" in the decision (p.58) when the Tribunal seeks ways to discount their evidence. This evidence was not found "significant in the specific matter of Emily's placement" (p.72), essentially because "[i]n our opinion, all three witnesses are committed to a philosophy of full inclusion" (p.58). As these witnesses have such philosophical beliefs, they are said to "manifest an entirely subjective view of class placement" (p.58), an interesting *non sequitur*. (The philosophical beliefs of the Brant County Board witnesses were never an issue.)

In fact, these expert witnesses **knew from experience** that Emily did not need to be segregated and that her needs could be met in a regular class if the Brant County Board staff had the knowledge and willingness to do this. They were aware of the advantages of inclusion, and the disadvantages of segregation. Knowing that segregation was not necessary for the provision of "appropriate special education programs and services" they would obviously be in favour of inclusion for Emily and other children like her. But the Tribunal preferred the lack of knowledge of the Brant County Board staff to the knowledge of the expert witnesses.

One of the expert witnesses "observed in Emily's classroom for approximately two and one-half hours" (p.71) and the Tribunal gave this as one reason why his testimony was not considered "significant". The Brant County Board Superintendent had seen Emily for only "about half an hour" when Emily was watching a video; the psychologist had "visited the class to observe Emily eight times for a total of eight and a half hours" over two years (p.50-51). Their evidence was considered so significant that its influence can be seen in the "basis for decision".

The evidence from the Policy Associate of the (U.S.) United Cerebral Policy Association, who himself has cerebral palsy and is "non-verbal" in that he communicates by means of sophisticated technology, was full of explanations from his lived experience of the harm done to children by "placement" in segregated settings and of the advantages for a child who needed to learn a communication system of being "mainstreamed" (p.34-35). Using unsubstantiated hypotheses, the Tribunal found ways that satisfied itself to turn this lived experience into an argument for segregation (p. 61).

The Tribunal sought "inconsistency and contradiction" in Emily's parents' testimony that it does not seem to have sought in the testimony of the Brant County Board witnesses, and claimed it found them (p. 67). Neither its motives nor its logic are clear and there is a certain irony in this

¹⁰² "The Tribunal is familiar with the concept of "parallel curriculum" and has immediate, hands-on experience with its implementation." (p.59). The next two sentences show that he failed.

Tribunal searching for inconsistencies in others. Though the Eatons had struggled for three years to keep Emily in a regular class and had agreed to go through the immensely draining process of appeal to a Tribunal to this end, it is as if the Tribunal was still not convinced that they were serious.

It is worth examining the strength of the Tribunal's arguments - which would be more accurately termed "accusations" - as to the "inconsistency and contradiction" in Emily's parents' testimony. They are:

- (i) that "Emily is not enrolled in any community activities in the neighbourhood (Burford) area". That a nine-year-old child with significant disabilities was not enrolled in community activities in an area the Eatons refer to as "country" is hardly surprising; to my recollection, none of my children were involved in structured community activities at age nine though they lived in a city, but nobody would ever have tried to argue from that fact that we were not committed to full inclusion in the community for our son with a disability. The Tribunal might have noted that the video of Emily's birthday party which was discussed at length during the hearings showed her with non-disabled children and adults - not with the so-called "multihandicapped" children the Brant County Board thought she belonged with.

- (ii) that Emily's "three brothers do not attend the neighbourhood school" (p. 67). As the parent of three children, the middle one of whom has a disability, I can think of reasons, based on personal experience, why the other children might not go to the same school as Emily, especially given the circumstances. If the Tribunal wanted an explanation and was not knowledgeable enough to understand for itself, it might have asked the Eatons;

- (iii) that "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 here' " (p. 67). Living in a safe side street to which many parents from other parts of the city bring their children on Hallowe'en, I can well understand why the Eatons go to a `nice lengthy street' in town to `trick or treat' instead of driving around the country, having to load and unload Emily at each stop. Taking Emily to a place where she will mingle with more non-disabled children doing the same things as she than could be found where she lived, might appear to an impartial observer to be a sign of commitment to inclusion, rather than a sign of "inconsistency and contradiction";

- (iv) that the Eatons cannot prove that the improvements in Emily's physical development¹⁰³ - and specifically her improved ability to walk - were the result of "modelling" in the regular class (p. 67). But such proof is obviously impossible, as it is impossible to prove that improvements in Emily's physical development were not the result of modelling. The Tribunal uses as further ammunition the fact that "it is clear [...] that [Emily] learns best with repeated, one-on-one, hand-over-hand instruction" (p. 68). However, this is in a discussion of Emily's learning to walk and her choice of clothing styles; one wonders how a child learns to walk and to choose clothing with "hand-over-hand instruction". In truth we only have hypotheses about how people learn, not certainty; in the case of children like Emily, when we do not know whether or what she may be learning, hypotheses about how she learns best are tentative indeed. How can the Tribunal be so sure?

- (v) "the significant discrepancy between the parents' and the school personnel's assessment of Emily's abilities" (p. 68). This is indeed striking but it is not clear how it can be evidence of

¹⁰³ Recognized by Brant County Board witnesses: "[S]he affirms that Emily showed improvement in physical development throughout the year" (p. 37). "Emily is described as having made physical progress in the grade 2-3 classroom" (p. 44).

“inconsistency and contradiction” on the part of Emily's parents. There is inconsistency but it is between the evidence of school personnel who state repeatedly that they cannot assess Emily's abilities¹⁰⁴ and her parents who claim that they can. Moreover, the Tribunal misrepresents the evidence; although Mrs. Eaton did say that Emily could identify colours (p. 20), so did the “special services at home worker” (p. 34). When discussing this question, the Tribunal writes: “Whereas the parents testify, for example, that Emily can identify a range of colours...” (p. 68); the “special services at home worker” - who might reasonably be considered to have a more objective viewpoint than Emily's parents - and her testimony have disappeared;

- (vi) the “rather limited in-class, on-site involvement” of Emily's parents in the school (p. 68). But anybody who knows the typical response of schools to parents of children with significant disabilities who demand an integrated setting for their child against the wishes of the school would understand why there is “no evidence or testimony that either parent volunteered or participated on a regular basis in Emily's kindergarten, Grade 1 and Grade 2 classes” (p. 68). Schools can get very antagonistic and accuse the parents of spying, etc. In one case in my city in New Brunswick a teacher and her union threatened to seek a court order to keep a (non-confrontational) parent away from her child's school (A visiting professional later reported to the school board that the school was abusing the child). At Emily's school the principal had told his staff to deceive Emily's parents on a continuous basis.¹⁰⁵ Is the Tribunal naive or disingenuous in saying that “parent volunteering and on-site participation is a long accepted practice in elementary education, especially in cases of unique needs like Emily's” (p. 68) and in using the parents' lack of regular observational visits to the school as a basis for writing: “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’” (p. 69)¹⁰⁶ ?

There is nothing in the decision to suggest that the Tribunal asked the Eatons during their testimony to explain the things the Tribunal finds here to be “discrepancies, contradictions and inconsistencies” (p. 69). The Eatons may or may not have been able to explain them to the Tribunal's satisfaction; but the credibility of a Tribunal decision is somewhat strained when it relies in part on the fact that the Tribunal did not get answers it liked to questions it did not ask.

The Tribunal's summation of this section is difficult to follow. It is a stretch that some may find excessive from a superficial discussion of mainly trivial matters the Tribunal omitted to ask the Eatons to explain, to a conclusion that “the parents' request that Emily be placed in a regular classroom, full time, is not based on a reasoned, empathetic assessment of what she needs and what she can do, outside the family home” (p.69). That there is an attempt here to discredit the parents and their testimony is clear; it is not clear that the attempt is successful.

Even if the Tribunal's findings about Emily's parents were correct, it is not clear what relevance they would have. As the next section indicates, current provincial policy - “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”¹⁰⁷ - invokes “parental choice”, with no mention of parental “philosophy” or “reasoned,

¹⁰⁴ See note 100 above.

¹⁰⁵ See note 60 above.

¹⁰⁶ Seven lines earlier it wrote: “It is apparent that the parents were intensely involved, but from a distance.” Such contradictions do not strengthen belief in the Tribunal's impartiality.

¹⁰⁷ Page 69, quoting “the Minister's statement in the Ontario legislature on 28 May 1991”. A succession of Ministers from all three political parties which governed Ontario during the decade preceding the Supreme Court's *Eaton* decision have made similar statements. They were just propaganda; none of the Ministers

empathetic assessments". Perhaps the Tribunal's decision would have been more convincing if its section on "The Wishes of The Parents" (p. 66) had concentrated on the stated subject instead of launching an attack on the parents which was continued in the *Obiter Dictum* (p. 74)¹⁰⁸.

The Tribunal itself decided that "the Tribunal itself has expertise in the literature on placement" (p.70). After having reviewed this literature, it rightly found it "seriously flawed" (p.70), citing as one of the problems "confounding place with what happens pedagogically and socially *in the place*" (p.70). But it had itself adopted the segregationist view of "placement", and had itself consistently muddied the water by "confounding place with what happens pedagogically and socially *in the place*" -- this is the explanation for the fundamental inadequacy of its approach and of many of its arguments and findings. Moreover, the implication of the examples it gives (p.70-71) is that only the literature on "integrated" "placement" is seriously flawed, whereas in fact the literature promoting segregated "placement" is equally seriously flawed. If the Tribunal had the "expertise in the literature on placement" that it said it had, why was it not already aware of the literature it reviewed and of the flaws in all such literature?

A claim that the Tribunal was partial, irrational and incompetent could find support in the pages of its decision devoted to the "Basis for Decision" (p. 58-74), especially in the differential treatment of evidence and testimony from witnesses for the parents and witnesses for the Brant County Board. A claim that the Tribunal was impartial, rational and competent would be more difficult to substantiate. The Tribunal reached deep and squeezed hard to try to make the evidence support its decision to affirm the determination of the Brant County Board's IPRC of 24 February 1992.

END

took any significant action to make law, policy or practice consistent with these statements.

¹⁰⁸ Much could be said about this *Obiter Dictum*; the Court of Appeal's comments are a good start.

ABOUT THE AUTHOR

My wife and I have three adult children, the second of whom — John — has Down's syndrome. Professionals consider him to have a developmental disability but we are not sure that he has. At age 32 he owns his own house, which he paid for mainly with money he earned in competitive employment. He lives there with one Moroccan and two Chinese graduate students to whom he rents rooms. He does his own shopping, makes his own meals, cleans and takes care of his house. He can recognize bills and can figure out the amount that needs to be paid and when. He can recognize some words and has spent much time and effort since leaving school in improving his abilities in writing (copying) and simple arithmetic and in developing his still quite limited reading ability. When he receives a letter or a bill he does not recognize he asks us to explain it to him. He has been in competitive employment ever since he left school, except for a few months on U.I. after the company he was working for was taken over and most of the employees were laid off. He has been working part-time for the same employer for eleven years now and has received two productivity raises. At his workplace his limitations are accommodated without question and he is well liked and respected. He has never received any funding from government related to his disability and since he left school he has been able to keep away from any service providers connected with disability. He is one of the few people we know who is happy to pay his tax bills. He understands that this is part of being a citizen, of "belonging". He takes his responsibilities as a voter and a property owner with due seriousness for the same reason. Around where we live (my wife and I live up the road in the same townhouse development) he is remembered as the most conscientious paper-boy our area has had. His closest friend is a former school friend who also has a developmental disability. Otherwise John chooses not to spend much time with people with disabilities, though he enjoys meeting his friends from the segregated class once a year. His active social and recreational life is with people not considered to have disabilities. He is a full citizen who contributes much to his community and in many ways. He has proved wrong every professional "assessment" ever made about him.

He was born at the American Hospital in Paris (France) in 1968 while my wife and I were on study leave. When the diagnosis was confirmed, the attending specialist told my wife to put him in an institution and forget him, and to have another child as soon as possible. When we returned to Canada ten months later, her gynecologist told her: "Well, Mrs. Jory, some people have a household pet and you have a mongoloid child." So early on we experienced the eugenics-based prejudice, ignorance and negative stereotyping typical of the medical profession. Young parents of children with Down's syndrome say that little has changed thirty years on.

When we returned from France with John, we were told at Halifax airport that we could stay but that he would have to go back where he came from. Prior to our leave, we had been in Canada a few weeks less than five years and under existing law we had not been able to apply for citizenship. Hence we were still landed immigrants and John was *persona non grata* because he would be a drain on the social security system. So we experienced early on the eugenics-based prejudice, ignorance and negative stereotyping of Canadian immigration law.

After I wrote to an M.P. on the parliamentary standing committee on citizenship and immigration in 1969, he intervened with the then-Minister and my wife and I were advised to apply for Canadian citizenship immediately. After this process ran its course we applied for citizenship for John, which was granted. I sometimes wonder what might have happened if we had not both been university professors at a time when Canada was short of university professors.

About twenty years later when the subject was in the news again, I obtained a copy of the relevant sections of the manual used by immigration officials. They were still based on eugenics-based prejudice, ignorance and negative stereotyping, rather than on facts. They still are. My 1992 letter of protest to the then-Minister of Immigration went unanswered.

On our return to Saint John in 1969 we soon discovered that we knew more about Down's syndrome than the Head of Pediatrics at the largest hospital in New Brunswick (because we had spent time with the research team in Paris which in 1958 had discovered the "trisomy" that causes Down's syndrome). Luckily John was physically strong and needed no more medical attention than his brother and sister.

We had the usual problems with day-cares for John: "We would be happy to take him but the other parents would object". Eventually we found an "alternative school" which accepted and accommodated him.

When John approached school age my wife had to take him to the Mental Health Clinic (!) where an embarrassed clinician did what the law (the *Schools Act*, s.45(3)) then demanded and declared him "mentally defective to the extent that he is unlikely to benefit from attendance at school". He was sent off to receive "instruction and training" in the Auxiliary Class system.

At that time, as a pilot project, the local School Board took over administration of the Auxiliary Classes from the local branch of what was then called the Canadian Association for the Mentally Retarded (CAMR), of which my wife was a board member. The School Board became a "sponsoring society", which meant that the Auxiliary Classes were still not part of the school system and the School Board adjourned its meetings as a School Board before opening new meetings on the Auxiliary Classes. But the elementary level Auxiliary Classes were "placed" in the middle floor of the newest elementary school in the district, with a sympathetic Principal and teachers who were dedicated and relatively well qualified. The system was well administered and the local CAMR branch no longer had to fund-raise to replace light bulbs.

As the School Board was administering the Auxiliary Classes, one Thursday, just after classes started, John was given an "assessment" by a very experienced and well qualified psychologist from the school board's evaluation section. Three days later the psychologist happened to see John again in a public play area where he was playing with lots of "normal" children. The psychologist watched closely for over an hour then told my wife he would have to throw out the "assessment" of John he had written three days earlier and write another, because he could now see that John was much more capable than he had seemed to be in the psychologist's office. So we experienced the inherent unreliability of psychological "assessments" and the extent to which they are influenced by external factors.

Everybody involved in John's Auxiliary Class system did their best. In 1979 we decided that this best was not good enough. In 1978-79 we had been on leave in France again and John had been fully included in regular classrooms in France throughout the year. This was unlawful because children like him were supposed to be in centres run by health professionals. However, courageous school principals - one near Perpignan and one in Paris - accommodated John and he had a good year of learning (there are many stories worth telling). John was the only pupil with a developmental disability those schools had ever had and they learned much about how to be inclusive - and that they could be. But we also learned from this experience that even totally unprepared schools could be inclusive if the will was there. I became chairman of the CAMR-Saint John Education committee and we prepared a brief asking for the "integration" of our children (after staff from what was then called the National Institute on Mental Retardation helped us understand and internalize new concepts). Soon afterwards I became chairman of the CAMR-New Brunswick education committee and as such played a role in the succession of moves towards "integration", as vice-chairman of a Ministerial Advisory committee and as advocate.

In 1981 a group of parents, administrators and trustees from our school district travelled to Ontario to visit the Wellington County and Hamilton-Wentworth Separate School Boards to see how they did "integration". Then administrators, trustees and parents from the Wellington County Separate Board were invited to New Brunswick and made presentations at a symposium (along

with people from Labrador City and P.E.I.) which made everybody — including open-minded teachers — realize that “integration” was both possible and desirable.

In 1982 then-Premier Hatfield announced publicly that his government intended to bring our children into the regular school system and recognized that the New Brunswick *Schools Act* would be unconstitutional when the *Charter* came into force. At the same time John was part of the first Auxiliary Class to be “placed” in a high school and with gentle (and sometimes not-so-gentle) encouragement from my wife and me, the high school staff “integrated” him increasingly, as well as we all knew how. Also around this time, the school board for the Woodstock (N.B.) district embarked on its own process to “integrate” all its “exceptional” pupils into regular classes.

The government did not change the *Schools Act* in 1985 when the *Charter* came into force and we were tired of waiting. So my wife and I, with two other pairs of parents, launched a challenge to it under the *Charter* early in 1986. The government changed the legislation before the end of the sixty-day notice period. We were not satisfied with the amendments originally proposed and said so. Nobody in the Department of Education knows what happened then and neither do we (I was organizing the lobbying) but somebody met the Premier and somebody crafted a superbly-worded amendment. The legislators were kept waiting for 40 minutes while the amendment was translated and printed, then it was passed unanimously by the M.L.A.s from all three parties then represented in the Legislature. This wording was the most progressive in the world at the time and the Department of Education welcomed it and gave it as expansive an interpretation as possible. (The teachers' unions did not.) It has been adopted by national legislatures in other countries but the province of Quebec refused to adopt it in its most recent (1997?) review of education legislation and adopted instead wording which constitutes a presumption in favour of segregation.

Since 1986, usually on behalf of the New Brunswick Association for Community Living (NBACL/ANBIC) (CAMR changed its name to this in 1986 to avoid labelling those on whose behalf it works), I have continued to offer critical encouragement to successive Ministers of Education, to work with senior staff in the Department of Education on implementing “integration” and then inclusion, to write and/or present briefs on inclusion to legislature committees of various kinds, to advise parents and accompany them to meetings with school and district officials, and generally to do what volunteer advocates do.

Since 1992 I have been chairman of NBACL/ANBIC's Social Policy committee, which has thought through and developed a social policy framework for persons with intellectual disabilities in New Brunswick; completed position papers on all the different policy areas; outlined (in collaboration with senior government officials under the leadership of the Executive Council Office) the responsibilities of individuals, families, the community and government in the partnership required to make good things happen; persuaded the other community organizations representing persons with disabilities to agree to the principles; received positive responses and promises of substantive action for the changes we want from the new Premier and the relevant Ministers; and begun to implement the bits that the provincial government does not have responsibility for. In all this it is clear that inclusive education is the key. Without it, nothing else will work properly because the wrong attitudes will have been developed. The tragedy of the *Eaton* decision is that it destroys hope for inclusive education for the foreseeable future in provinces which do not already have it, and with that the hope for a decent policy framework for persons with intellectual disabilities that will work.

During my term as president of NBACL/ANBIC we encouraged a group of individuals with intellectual disabilities in different parts of New Brunswick to undertake (through their parents) a *Charter* challenge to the policy of the then-government with respect to adults. This had proceeded through the Discovery process when the government changed and the new one made promises of significant policy change. The challenge is in abeyance until the substance - as opposed to the promise - of the changes is enacted.

I was also chairman (after two years as a member) of the New Brunswick Mental Health Commission regional board for the largest region in the province for the final two years (1994-96) of the Commission's existence. In that capacity I learned much about managing fundamental system change at a time of serious government retrenchment (external evaluations show that New Brunswick succeeded in its radical restructuring of the mental health sector where other provinces - in particular Ontario - did not); helping professional staff to learn to think differently and act differently from the way they had been trained and to make significant attitude adjustments; and dealing with one group of senior professionals who used their very vulnerable patients without scruple in an attempt to hold on to their power and prerogatives. So I have some idea what the Brant County Board and others like it need to go through

When I retired early in 1995 from a reasonably successful career as professor of French language, literature and linguistics at a small Canadian university, someone who knew me invited me to come to Ontario one week a month as a consultant on inclusive education. As I had two children in Ontario then and the fees more than covered my expenses, I agreed. The Peel County Board of Education and the Dufferin-Peel Separate School Board - with whom I worked - had between them one-and-a-half times the total pupil population of New Brunswick. Working with parents, schools, trustees and administrators at all levels, and alongside other consultants who were there before me, I quickly learned how the Ontario school system works with respect to children with developmental disabilities. We were making good progress towards an inclusive pilot project with the Peel County Board when the government started restructuring the school system and all such initiatives were put on hold. The consulting also ended but I remained a consultant/member of the Ontario Coalition for Inclusive Education, which I had joined in its infancy. In that capacity during the past two years I have met with the Deputy Minister of the Ontario Ministry of Education and Training; a representative of the College of Teachers; representatives of university Faculties of Education; representatives of the teachers' union federations; and officials of the provincial Auditor's office who were carrying out an audit of special education spending. The theme was inclusive education, how to make it happen, and why it would be better for all concerned, both educationally and financially, than the crazy system now operating. Time will tell whether these meetings have any effect (the other activities of the Coalition - helping Faculties of Education and parents - are having positive effects).

I had a chapter in the Institut Roehrer Institute's 1992 book *Changing Canadian Schools / Réformer les Ecoles canadiennes* which has been used as a text in university education courses. I was one of the authors of *Towards Inclusion; an Advocacy Guidebook about Quality Education for Children with Disabilities in Ontario* (Brampton Caledon Community Living, 1997), and editor of the French and English versions of both *Building Bridges; a Parent Guide on Transition from School to Work, Adult Life and Community Participation for Youth with Intellectual Disabilities* (NBACL/ANBIC, 1997) and *Achieving Inclusion: a Parent Guide to Inclusive Education in New Brunswick* (NBACL/ANBIC, 2000), both of which were published with the financial support of the New Brunswick Department of Education. I gave a paper at the 9th World Congress (1992) of the International Society for the Scientific Study of Intellectual Disability (IASSID) in Queensland (Australia) and another (with a colleague) at the 10th World Congress (1996) in Helsinki (Finland); I plan to offer another at the 12th World Congress (2004) in Montpellier (France). I am a member of two IASSID Special Interest Research Groups, one on Mental Health and Intellectual Disability and the other on Ethics and Intellectual Disability.

Currently I devote much time and thought to the field of Community Inclusion. Since communities are either inclusive or they are not (i.e. they cannot be "inclusive" only of people with one kind of disability), this involves reaching outside the disability field into the realm of community development, and forming alliances and coalitions with individuals and groups in communities who pursue the same goals.