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September 9, 2022

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1 ADJUDICATOR:

2 Q. Good morning, everyone. We're now onto our  
3 ninth day of this portion of the Inquiry. I  
4 see that we have our next witness, Kimberly  
5 Lawlor.

6 MS. KIMBERLY LAWLOR, SWORN, CROSS-EXAMINATION BY MR.

7 KYLE REES

8 REPORTER:

9 Q. For the record, state your name please.

10 A. Kim Lawlor.

11 Q. Thank you. Kim Lawlor has been sworn.

12 ADJUDICATOR:

13 Q. So, I understand this morning Mr. Rees is  
14 going to have a series of questions for you,  
15 Ms. Lawlor, and Mr. Penney may have some  
16 questions in follow-up. I may have some  
17 questions as we go along for clarification  
18 or I may have some at the end as well. But  
19 for the time being, I will turn things over  
20 to Mr. Rees to begin his examination.

21 MR. PENNEY:

22 Q. I just had one thing just at the outset.  
23 You'll see that Ms. Lawlor is wearing a  
24 mask. She informed us yesterday that she  
25 had some cold symptoms. She's had two

1 negative rapid tests since then. She's  
2 wearing a mask now. You know, I'm sort of  
3 in your hands or whatever people, if people  
4 feel comfortable with whether she takes her  
5 mask off during her testimony. She's quite  
6 a distance from people.

7 MR. REES:

8 Q. No requirement to take the mask off. I'm  
9 not going to be alleging that Ms. Lawlor is  
10 being untruthful and need to read her facial  
11 expressions or anything like that. Whatever  
12 works for Ms. Lawlor is fine by us.

13 ADJUDICATOR:

14 Q. Ms. Lawlor, if you're comfortable taking  
15 your mask off, you're certainly permitted to  
16 do that. If you'd like to keep it on,  
17 that's up to yourself as well.

18 A. I'll keep it on for now, okay.

19 MR. REES:

20 Q. Okay, Ms. Lawlor, my name is Kyle Rees. I'm  
21 the lawyer for Todd and Kim Churchill, who  
22 are sat here with me. I think you would  
23 have met them a couple of times over the  
24 last few years. As indicated, I'm going to  
25 be asking some questions to you. We've got

1 a couple of hours budgeted. I don't think  
2 I'm quite going to use two hours, but I'll  
3 certainly be longer than an hour. So, if  
4 you need a break, you know, it's totally  
5 acceptable to ask for a break. In fact, I  
6 think probably after an hour, maybe we will  
7 take one. I also apologize for - I know we  
8 sort of had you on standby for another day  
9 last week and we ended up having to move  
10 you. I mean, those things happen. We try  
11 to predict how long witnesses are going to  
12 be and we don't always know.

13 A. Sure.

14 Q. So, thank you for not only making yourself  
15 available today, but for having made  
16 yourself available last week and working  
17 with our rescheduling needs.

18 I'll be referring you to some documents  
19 and you can see there's several documents  
20 piled around you. For now, I know you have  
21 your affidavit in front of you and I have  
22 that as well, so thank you. I may also be  
23 referring you to some of the other documents  
24 that are there. When we do, you know, we'll  
25 just take our time to find the right volume

1           and things takes a little while, you know,  
2           that's totally fine.

3                        When I'm done asking you questions, Mr.  
4           Penney and the Adjudicator might have  
5           questions as well. And if at any point, you  
6           know, you can't hear the question I'm asking  
7           or the question that I'm asking is unclear  
8           in its intent, let me know. I won't be  
9           offended.

10          A.    Okay.

11          Q.    You haven't watched any of the proceedings  
12                that have been streaming online, have you?  
13                You haven't seen any of them?

14          A.    No.

15          Q.    And you haven't spoken to any other  
16                witnesses about their testimony here today?

17          A.    No.

18          Q.    So, you're coming into this fresh?

19          A.    Yes.

20          Q.    Okay. You, I understand, are - hold a  
21                degree in speech language pathology, right?

22          A.    Yes.

23          Q.    So, speech language pathology, my  
24                understanding, you know, is primarily  
25                focused on exactly what the title says,

1 speech language. So, you wouldn't have any  
2 specific background in American Sign  
3 Language or the education of the deaf, would  
4 you?

5 A. No, that's correct.

6 Q. Okay. Your role in this story I think is at  
7 a couple of different points in time. I  
8 understand that you held the position since  
9 2014 that you currently occupy. You're  
10 still in that role?

11 A. Yes.

12 Q. So, your involvement, I guess, in Carter  
13 Churchill's education happens in the  
14 preschool time, with the assignment of deaf  
15 itinerant teachers and the services that get  
16 provided therein, and then also during the  
17 course of things like satellite classroom  
18 proposals and you report to Bonnie Woodland?  
19 Is that right?

20 A. Yes, at the time. I don't recall that I was  
21 involved until Carter came to school. I'm  
22 not recalling the preschool year. Might  
23 have been the - maybe it was the kinder  
24 start coming in.

25 Q. Yeah, that's right. That's actually the

1 first thing I'm going to ask you about.  
2 There was a meeting in I believe it was  
3 2012. Now, you see you're saying that you  
4 started your role in September 2014, but I  
5 have you attending a meeting in 2012. What  
6 were you doing in 2012?

7 A. Yeah, in 2012, I believe then I was - I was  
8 with the District as itinerant for student  
9 support services in 2012. Is it the  
10 meeting, the one at the Janeway Audiology?

11 Q. This is - yeah, this is one where you would  
12 have met with Darlene Fewer Jackson in  
13 October of 2012 and you guys would have been  
14 informed that there was, you know, a bunch  
15 of preschoolers coming onto the caseload  
16 with cochlear implants. Why don't I refer  
17 you to the affidavit of Kim Churchill? I  
18 don't remember, did we leave one up there?  
19 I think we did. Over to your far right-hand  
20 side, furthest away from you, I think  
21 there's a bound document that says affidavit  
22 of Kim Churchill on the front.

23 A. Yeah.

24 Q. In that affidavit of Kim Churchill, if you  
25 turn to Tab 3. So, this is the meeting I'm

1 talking about, the one that happens October  
2 5<sup>th</sup>, 2012.

3 A. Okay, yes.

4 Q. So, you're present there as an itinerant.  
5 Is that your role?

6 A. Yes.

7 Q. And it indicates you are present there?

8 A. Yes.

9 Q. And Val Crummell is taking these notes. Val  
10 Crummell has provided an affidavit in these  
11 proceedings. And these notes indicate that  
12 there are nine - and it's on the next page  
13 actually, or it's double-sided, so the back  
14 one. Item number 11 says Darlene Fewer  
15 Jackson indicated nine new preschoolers with  
16 cochlear implants that year. So, Carter  
17 Churchill was one of those nine.

18 A. Okay.

19 Q. What would have been the purpose in advising  
20 itinerant teachers of the deaf and hard of  
21 hearing like yourself that there were nine  
22 new preschoolers with cochlear implants?  
23 Why would you have needed to have known?

24 A. If there was some change in caseload  
25 information, we were usually informed of



1           that. So, the fact that there was nine, I'm  
2           thinking was a change or a difference in the  
3           number, I guess, that we were typically  
4           seeing coming into school at a period in  
5           time.

6           Q. Right. I mean, as far as I can tell, and I  
7           think, you know, the existence of the  
8           satellite classroom now probably shows that  
9           that was the case. There was a surge of  
10          students in that year with cochlear implants  
11          who would require those services.

12          A. Yes.

13          Q. In those same meeting minutes, I notice, and  
14          this is on the first page, that says Kim,  
15          which I assume is you, "Kim attended meeting  
16          with DOE" which I think is Department of  
17          Education "and Audiology. Seemed to be lack  
18          of coordination of service." What were you  
19          talking about there?

20          A. So, the coordination of services between  
21          health and education was an ongoing topic of  
22          discussion. So, that's what was referred  
23          to.

24          Q. Right. So, what you're talking about there  
25          is that, you know, some students with

1 cochlear implants, and particularly those  
2 who were, you know, going what we've  
3 referred to as the AVT route, would  
4 frequently be serviced by the Janeway in  
5 that regard and certainly their cochlear  
6 implants were being serviced by the Janeway.

7 A. Yeah.

8 Q. But students who were not succeeding or not  
9 experience the same degree of success  
10 through AVT were accessing DHH services for  
11 learning ASL and other things, right?

12 A. Yes.

13 Q. And students were falling through the  
14 cracks. There was a bit of  
15 miscommunication, lack of coordination  
16 between, you know, the Department of  
17 Education, the School District which  
18 provided these services, and the Janeway?

19 A. I don't know that I would say they were  
20 falling through the cracks. I would say  
21 that there was definitely a lack of  
22 coordination, I guess, oversight at all  
23 services that were available.

24 Q. I mean, how were parents - do you recall how  
25 parents were informed that DHH service

1           existed for their pre-kindergarten students?

2           A.    Janeway Audiology would report to us that  
3           the parents were offered that support at I  
4           believe 18 months and then the year prior to  
5           school entry, so usually at age four.  
6           That's what was reported to us, what I  
7           recall.

8           Q.    Kim Churchill had said in her affidavit,  
9           which had been presented earlier, that no  
10          one informed her of DHH services that were  
11          available and she found out about them  
12          through just a chance conversation that  
13          she'd had with another parent who she bumped  
14          into at the Janeway.  So, were you aware -  
15          in the role that you were playing at that  
16          time as a DHH teacher, were you aware if  
17          there was any process of informing, you  
18          know, parents of children with cochlear  
19          implants that there was, you know, DHH ASL  
20          programming available?

21          A.    Well, at the time, I think you just said me,  
22          as a DHH teacher, me as an itinerant.  So,  
23          no, all I was aware of is what Janeway would  
24          report to us; that they were informing -  
25          Janeway Audiology was informing parents.

1           So, no, I'm not aware of any other avenue  
2           other than that they were informing parents.

3           Q.   I read the report of a Dr. McDougall, who's  
4           going to testify later on this afternoon,  
5           the expert that the District has retained,  
6           and he indicates in his report, and I assume  
7           he's going to tell me as much as on the  
8           stand, that on his review of the documents,  
9           there appeared to be more resources  
10          available and more support available for  
11          parents who chose to go the AVT route versus  
12          the ASL route. Do you have any knowledge of  
13          the difference in resourcing and support  
14          provided?

15          A.   No.

16          Q.   Do you know anything about the decision to  
17          remove itinerant support from Carter  
18          Churchill in 2013 in favour of AVT support  
19          for Carter Churchill at that time?

20          A.   Not specific to Carter. I do know that  
21          there were conversations about what support  
22          would be provided to children. There was  
23          meetings with Audiology, Janeway Audiology.  
24          I don't remember specific to Carter's case,  
25          no.

1 Q. Okay. Well, some of the other cases that  
2 you had or where you were present for these  
3 meetings, it was the case during these  
4 meetings that itinerant support was being -  
5 I guess people were being discouraged from  
6 using itinerant support for ASL and were  
7 being encouraged to use the AVT services,  
8 right?

9 A. I was not present at any of the actual  
10 meetings with parents and families, but in a  
11 general conversation, I wouldn't use the  
12 word "discouraged". I would say that there  
13 was, I guess, discussions about how to  
14 provide support to young children and those  
15 who had cochlear implants, there was a focus  
16 on AVT support. I do recall that there was  
17 an option to have individual discussions  
18 about individual children, but generally  
19 speaking, it was a discussion about children  
20 with cochlear implants would have AVT  
21 support.

22 Q. Right. There was - I mean, there was a  
23 belief, and I think you can speak to this as  
24 being someone who is in this industry at the  
25 time, I mean, there was a belief and maybe

1 even a hope that the increase in  
2 availability of cochlear implants, you know,  
3 would make more children eligible for the  
4 AVT route as opposed to the ASL route.

5 A. Yeah, I mean, again I'm not an AVT or an  
6 audiologist but certainly in the  
7 conversations I was in, yes, that was the, I  
8 guess, expectation maybe; if a child had a  
9 cochlear implant that there was going to try  
10 to focus on listening and spoken language,  
11 understanding that each individual child may  
12 need different services. But in the  
13 beginning, that's my understanding; that  
14 that was what would be a focus.

15 Q. Right. I mean, you indicated in your  
16 affidavit, and I'm quoting from it here, you  
17 said "there was always an option, however,  
18 to have discussions around individual  
19 student programming and whether any  
20 additional supports would be appropriate  
21 which could still include an option for DHH  
22 itinerant support." So, that's what you  
23 just indicated to me here now, right? There  
24 was always the option to your knowledge -

25 A. Yes.

1 Q. - of DHH itinerant support?

2 A. Yes.

3 Q. That DHH itinerant support though was spread  
4 kind of thin because those DHH teachers were  
5 also responsible for -- in addition to  
6 preschool children like Carter at that time,  
7 were also responsible for servicing school  
8 age children, weren't they?

9 A. They were, yes, responsible for preschool  
10 and school age.

11 Q. Right. Whereas previously, and we've heard  
12 evidence to this already, you know, when the  
13 School for the Deaf was open, the School for  
14 the Deaf would provide services, DHH  
15 services or the equivalent, to preschool  
16 students and their families and it was upon  
17 the closure of the School for the Deaf that  
18 all of a sudden the DHH itinerants who were  
19 serving the school age population were now  
20 serving the preschool population too, right?

21 A. I don't have all the information of the  
22 School for the Deaf, but -

23 Q. Because that's before your time?

24 A. Well, yeah.

25 Q. You weren't at the School for the Deaf?

1 A. No.

2 Q. I'm going to put a quote to you from Darlene  
3 Fewer Jackson in a report that she prepared  
4 in 2011. I don't think to take you to the  
5 report because the quote's only a sentence  
6 long. You probably wouldn't have been aware  
7 of the report. To my knowledge, the report  
8 wasn't given to DHH teachers. But, I'm  
9 asking whether you agree with the statement  
10 that was in her report that she wrote in  
11 2011. She said "there's no systemic process  
12 in place to offer early language acquisition  
13 skills at the preschool level to both the  
14 child and the family." So, that sort of,  
15 you know, confusion - another witness  
16 described it as nebulous access to services  
17 between the Janeway and DHH teachers through  
18 the District. Telling me, you know, the  
19 lines were blurred. Responsibility was  
20 unclear.

21 A. I would say oversight of all services was -  
22 yeah, that was the challenge, the oversight  
23 of all services.

24 Q. Do you know if that got any better?

25 A. Since?



1 Q. Well, I mean that was a problem she was  
2 identifying in 2011. You're telling me, you  
3 know, it was present in some capacity in  
4 2013, 2012-2013. Do you know during any of  
5 your time or even your time now, whether  
6 that problem has been addressed, that lack  
7 of clarity around responsibility?

8 A. I think there's some improvement since  
9 there's a director of deaf and hard of  
10 hearing at NLESD.

11 Q. Okay. And that's the position that was  
12 formed in 2019?

13 A. Yes.

14 Q. Okay. So, the problem that was identified  
15 in 2011 and at least you have experience  
16 with in 2012 or 2013, I think you said,  
17 persists till 2019?

18 A. I would say that there's been some  
19 improvement since 2019.

20 Q. Okay. Like what?

21 A. Well, there's someone identified to provide  
22 oversight at the District level for -

23 Q. That's what happens in 2019?

24 A. Yes.

25 Q. Yeah. Anything before 2019?

1           A.    There was always individuals assigned that,  
2                    you know, to support students who are deaf  
3                    and hard of hearing, but to have that as a  
4                    focus of your job, I guess is an  
5                    improvement.

6           Q.    Have there been any - to your knowledge, any  
7                    Provincial guidelines - I mean, I get that  
8                    we have someone in the Department now sort  
9                    of stickhandling the problem, but have there  
10                  been any guidelines developed to actually  
11                  clearly demarcate where that responsibility  
12                  lies?

13          A.    So, say - you're referring to the director  
14                  at the District?

15          Q.    Yeah.

16          A.    Since that person's there, are there any -  
17                  say it again.

18          Q.    Are there any - you know, since that person  
19                  has come in there, has that person or anyone  
20                  else, developed like any written guidelines?  
21                  Like my concern is like what if the position  
22                  that was Darlene Fewer Jackson, is now Alma  
23                  McNiven, I mean, what if that person, that  
24                  position ceases to exist or that person  
25                  stops taking an interest in this particular

1 area? Is there any written guidelines at  
2 the Department/District that helps solve  
3 that problem?

4 A. Well, I'm not currently involved with deaf  
5 and hard of hearing education, so I don't  
6 know if there are - nothing that's been  
7 shared with me as a program specialist.

8 Q. Okay, I understand. So, you're telling me  
9 that, you know, this was a problem that  
10 existed while you were in the role where you  
11 would have known about such a problem?

12 A. Um-hm.

13 Q. And are you telling me that you believe this  
14 problem gets solved in 2019 upon the  
15 creation of the deaf and hard of hearing  
16 director position or you know that the  
17 problem got solved upon the creation of that  
18 position?

19 A. The problem of oversight of coordination of  
20 services?

21 Q. Yeah.

22 A. No, I don't think that it's completely  
23 solved.

24 Q. And you have no knowledge whether there's  
25 policy in place to address that issue? To

1           your knowledge, there is no policy?

2           A.    To my knowledge, no, there isn't a policy.

3           Q.    You would have attended things like ISSP  
4           meetings, right?

5           A.    Yes.

6           Q.    What would have been your role - and  
7           specifically ISSP meetings for Carter  
8           Churchill?

9           A.    Yes.

10          Q.    What would have been your purpose in  
11          attending those meetings?

12          A.    So, as program specialist, if we attend ISSP  
13          meetings, it's usually to answer questions  
14          if the school team is not able to answer  
15          them. Typically that would be my role, if  
16          I'm there. I'm not a support person to the  
17          child.

18          Q.    So, you're there to provide information?

19          A.    Yes.

20          Q.    You can't decide, if you're at an ISSP  
21          meeting, you know, let's say in the kinder  
22          start year for Carter Churchill, 2015-2016,  
23          you wouldn't have been in a position to make  
24          a decision on the resources that should be  
25          allocated to Carter?

1 A. No.

2 Q. You're there to provide your advice and  
3 opinion if called upon?

4 A. Yes.

5 Q. Who would make decisions at an ISSP meeting  
6 or following an ISSP meeting about the  
7 amount of resources that would be available  
8 to Carter Churchill, you know, let's say in  
9 the pre-kindergarten year or the  
10 kindergarten year?

11 A. In my experience, decisions around  
12 resourcing are made at the executive level.

13 Q. So, would that have been Bonnie Woodland?

14 A. No, I would have shared information with the  
15 director of student services, so Bonnie  
16 Woodland at the time. But then, that  
17 information would then be shared with say an  
18 assistant director, so the executive level.

19 Q. I just want to make sure I understand the  
20 reporting structure here.

21 A. Um-hm.

22 Q. So, you know, let's say during the 2016-2017  
23 years when Carter is just starting school,  
24 DHH teachers would report to you and you  
25 would report to Bonnie?

1 A. No, they reported to Bonnie Woodland as  
2 well.

3 Q. Okay. What role, if any, did you have  
4 regarding DHH teachers then?

5 A. So, collaboratively with the director of  
6 student services, we would meet with them.  
7 So, my role, you know, was to assist with  
8 meeting with the teachers of the deaf,  
9 teachers of the blind, speech language  
10 pathologists, educational psychologists.  
11 So, we shared that responsibility of meeting  
12 with them regularly. You know, sometimes  
13 someone had a question, they would ask me.  
14 There were things I could answer for them,  
15 but if it came to say leave, if they wanted  
16 leave for any purpose or, you know,  
17 resources that would have to go to the  
18 director of student services. If she wasn't  
19 able to respond to that, then it would go to  
20 the assistant director.

21 Q. I see. So, your role, you know, vis-à-vis  
22 Bonnie Woodland was more to work  
23 collaboratively with her. She was, I think,  
24 your superior?

25 A. Yes.

1 Q. And she would have responsibility for  
2 reporting further up the chain, not you, but  
3 you would work with Bonnie Woodland in that  
4 role and sometimes that would see you, you  
5 know, sometimes attending meetings on her  
6 behalf for something and informing her  
7 later, but decision making authority about  
8 what to do with issues that come out of a  
9 meeting or with proposals that come out of  
10 the meeting, like we're going to talk about  
11 in a minute, that would all rest with Bonnie  
12 Woodland?

13 A. And the executive.

14 Q. And the people that she would then pass the  
15 message along to, I understand.

16 A. Yes.

17 Q. Okay. That helps clarify things because  
18 we've already, as I've indicated to you,  
19 we've already heard from Ms. Woodland and I  
20 think originally you were scheduled to speak  
21 before her, but we'll now hear it from you  
22 and I'm going to ask you to confirm a few  
23 things that Ms. Woodland told us. I'm going  
24 to show you the first document. So, over to  
25 your left-hand side, there's a pile of

1 documents with coloured tabs. One of them  
2 says Volume 1 on the front.

3 A. Yeah.

4 Q. Yeah, get that one. We're going to look at  
5 Tab S as in sierra. This is a letter that  
6 says "to whom it may concern" and I'd  
7 indicate that it would have gone to, you  
8 know, Bonnie Woodland and to you and you  
9 would have worked on it together.

10 A. Yes.

11 Q. It's a letter that just broadly has DHH  
12 itinerant teachers indicating that their  
13 caseload volumes are too high for them to be  
14 able to meet need, and this is something  
15 called a caseload analysis. I'm not  
16 familiar with that. Can you tell me what a  
17 caseload analysis is?

18 A. Well, in this case, it's just a listing of  
19 the itinerant teachers and the students by  
20 numbers, the students that they're working  
21 with.

22 Q. On the third page of this document, there's  
23 a chart that has suggested service plan for  
24 itinerant services for students with hearing  
25 loss and there's this chart. I think you're



1 looking at it, yeah. There's a chart that  
2 talks about how frequently students with  
3 various levels of need ought to be meeting  
4 with an itinerant teacher. And I understand  
5 that meeting with an itinerant teacher tends  
6 to be 45 minutes to an hour. Is that about  
7 right?

8 A. I don't know.

9 Q. Okay. You don't know how long -

10 A. Currently or how long at that time?

11 Q. Well, let's say at that time for 2016.

12 A. I don't recall how long. I mean, yes, I  
13 would say that typically if it was in high  
14 school, I would hear the teachers say they  
15 met with them for that period. A younger  
16 child may have been less time -

17 Q. Might have been less.

18 A. - depending on the child's ability to  
19 attend.

20 Q. Okay. So, it's - like a meeting, and the  
21 reason I'm asking about this, going to ask  
22 about this chart, you know, it says three  
23 times weekly. My question is, you know,  
24 when it says three times, how long is that,  
25 is a time? Is it - it's under an hour is

1           what you're telling me?

2           A.    I would think typically it would be under an  
3           hour.

4           Q.    Yeah, and I think we've heard 45 minutes has  
5           been generally what's been discussed here,  
6           okay. So, like here's a - like let's just  
7           look at one that would require say three  
8           times weekly under this chart. It says, so  
9           a student should get three - services three  
10          times a week. "If a student needs three  
11          sessions weekly, one or more of the  
12          following criteria must be verified:  
13          vocabulary and other language scores are at  
14          least two years behind or less than typical  
15          peers; academic concerns; kindergarten  
16          students with school readiness issues."

17          A.    Um-hm.

18          Q.    And then it can scale all the way up, you  
19          know. Four to five times a week would be a  
20          student who has vocabulary and other  
21          language scores more than two to three years  
22          behind their typical peers, significant  
23          academic issues, student could be ESL,  
24          English has a second language with no spoken  
25          skills, or a newly implanted student.

1           Implanted, cochlear implant, is that what we  
2           mean there?

3           A.    Yes.

4           Q.    Do you know what kind of service Carter  
5           Churchill was getting in kindergarten, what  
6           frequency?

7           A.    No, I don't know.

8           Q.    Wouldn't you have had the schedules of the  
9           itinerants who were - I mean, sorry, are you  
10          telling me you wouldn't have known or you  
11          just on the top of your head don't know now?

12          A.    Oh, off the top of my head, I don't know. I  
13          sometimes had their schedules. I couldn't  
14          say with certainty that I had that schedule,  
15          but I don't know right now.

16          Q.    Okay. I just want to read you the paragraph  
17          then that starts on the page we've been  
18          looking at and goes into the next page. It  
19          says "itinerant teachers' weekly capacity  
20          for direct service with students is 25 hours  
21          per week. Once travel from school to  
22          school" - because they got to go around -  
23          "is included, plus direct and indirect  
24          intervention hours, as well as time for  
25          consult service, technology maintenance,

1           troubleshooting, caseloads become excessive  
2           and difficult to successfully manage” and  
3           flip over to the next page.

4                        “As discussed in previous meetings”,  
5           this isn’t the first time this has come up,  
6           “the DHH itinerant teachers’ caseloads, as  
7           shown through detailed caseload analysis,  
8           are no longer able to meet the needs of the  
9           students in the Eastern region due to  
10          increasing number of new students who  
11          require intensive DHH itinerant support  
12          students, ESL students and profoundly deaf  
13          cochlear implant students.” Carter  
14          Churchill would have been one of those.

15                      “Many of these new students have  
16          profound hearing loss and extremely low  
17          language levels which impact their ability  
18          to access the curriculum. An additional  
19          unit is required to fulfil the recommended  
20          guidelines for service, as outlined in the  
21          service delivery model” and they cite the  
22          service delivery model.

23                      What do you or, I suppose, what does  
24          Bonnie Woodland do to address the concerns  
25          in that letter?

- 1           A.    So, I don't recall the exact details of what  
2                    was done based on this letter, but I can say  
3                    I do recall that there were conversations  
4                    about the content, you know, the concerns  
5                    around the amount of service for some  
6                    children.
- 7           Q.    Was Carter Churchill one of those?
- 8           A.    I don't remember.
- 9           Q.    Okay.
- 10          A.    I think that we talked about all of the  
11                   children. So then, I can only tell you what  
12                   I think would have happened. I don't know  
13                   if, with certainty, I wasn't there, if  
14                   Bonnie spoke to the assistant director, but  
15                   that would be the path to discussing  
16                   resources.
- 17          Q.    And so you might not be aware of what was  
18                   requested to occur, because they may have  
19                   been discussions between Bonnie Woodland and  
20                   other folks on the executive level, but what  
21                   was the result? Was there any outcome that  
22                   sought to address these needs and in  
23                   particular, to provide students with  
24                   services similar to what we see in the chart  
25                   that was attached to this letter?

1           A.    At that time, I don't think an additional  
2                    unit was provided for the next school year,  
3                    if I recall correctly.

4           Q.    Yeah.

5           A.    So, we would continue to try to problem  
6                    solve with the teachers while that process  
7                    was working its way through. We would  
8                    continue to work with the teachers.

9           Q.    And how do you problem solve a lack of  
10                   resources without requesting more resources?

11          A.    Looking at how the current resources are  
12                   being used, all of the supports available in  
13                   a school.

14          Q.    Okay. Did it work? Did students like  
15                   Carter and the others get the required  
16                   amount of service, according to this chart?

17          A.    This chart, no, I don't think they got  
18                   according to this chart. In my  
19                   recollection, this chart, this was an old  
20                   chart that was removed from - this is a  
21                   Department of Education chart, as far as I  
22                   recall, that was removed from their website.  
23                   No, at that time, I don't think that the  
24                   children had that four to five times weekly,  
25                   but this chart, I'm not certain was even on

1           their website at this time.

2           Q.   What's the significance of that? I mean,  
3           are you telling me that there was a decrease  
4           in the expectation in services that ought to  
5           be provided to deaf children or that the  
6           chart was removed because it was wrong or it  
7           wasn't to be followed anymore?

8           A.   I don't know why it was removed. I wasn't -

9           Q.   I mean you were the one who mentioned it was  
10          removed. So, like what's the significance  
11          of it being removed?

12          A.   Well, if it's removed, we wouldn't - we take  
13          our - follow policy and direction from  
14          Department of Education. So, if it wasn't  
15          there, I wouldn't refer to it. That's why I  
16          said that it - and I'm not certain if it was  
17          removed at this time, but I remember there  
18          was a time when it was referenced and it was  
19          removed. So, if it was removed, I wouldn't  
20          reference it because the Department of  
21          Education is who we take direction from.

22          Q.   When it was removed at some point, whether  
23          it was now or - at this point in time or  
24          another, was it replaced with something  
25          else?

1 A. Not that I recall.

2 Q. So, hold on. You had, at some point, and I  
3 would suggest at this point in time, you had  
4 guidance that - from the Department of  
5 Education that indicated a standard of  
6 service, based on need, that ought to be  
7 provided to students by DHH teachers, and  
8 Carter's one of these students.

9 A. Um-hm.

10 Q. And then, you guys have a meeting where the  
11 DHH teachers in the Avalon region say "we  
12 can't - we're not meeting this. You know,  
13 we're not coming close." Severe language  
14 delays, all kinds of problems. And then,  
15 the solution is not to - from the Department  
16 is not to give additional resources, but to  
17 delete the chart and not replace it with  
18 anything else?

19 A. Well, again, I'm not sure when the chart was  
20 deleted.

21 Q. I mean, did you ever feel like the reason  
22 the chart got removed is because it was just  
23 making the Department look bad that you said  
24 "we actually don't have the resources to  
25 meet this, so let's take the chart down



1                   because we're not able to comply with it  
2                   anyway"? Was that your suspicion?  
3           A.    No. I wasn't suspicious of it really.  
4           Q.    Okay.  
5           A.    I don't know why they took it down.  
6           Q.    Needless to say, you know, chart or no  
7                   chart, the expectations in this chart, you  
8                   know, whether they're binding or not binding  
9                   or what, are not able to be met, are they?  
10          A.    At this time, no.  
11          Q.    Yeah, and -  
12          A.    At that time, point in time, no.  
13          Q.    Okay. And in fact, it probably wouldn't  
14                   surprise you to hear, because I know you  
15                   would have had some ability to access the  
16                   log schedules and things like that, I mean,  
17                   during Carter's kindergarten year, which is  
18                   2016 to 2017, Tina Halleran is Carter's DHH  
19                   itinerant and depending on your take on the  
20                   evidence, he gets somewhere between 32 and  
21                   56 hours of DHH support, right? You  
22                   wouldn't know that off the top of your head?  
23          A.    No.  
24          Q.    Okay. Well, I put it to you that that's the  
25                   case, and just ask you to assume that that's

1 the case, and I'll just tell you the  
2 evidence shows that.

3 A. That it's what? Tell me again.

4 Q. That Carter gets - over the course of the  
5 2016-2017 school year, Carter gets somewhere  
6 between 32 and 56 hours of DHH support from  
7 Tina Halleran. If that's the case, and I  
8 appreciate that, you know, without reviewing  
9 hours and all that, you'd have no way of  
10 knowing, I mean that's not four to five  
11 times a week, is it?

12 A. No.

13 Q. I mean that works out to 1.5 hours a week, I  
14 think, if I'm doing my math - somewhere  
15 between one and two hours a week, right?

16 A. Um-hm.

17 Q. And the standard for someone who's supposed  
18 to get one and two hours a week, like it  
19 wouldn't be - I guess it would be twice, not  
20 even twice weekly, one to two hours - oh  
21 yes, it would be about twice weekly, which  
22 would be a student who: communicates well,  
23 but requires support; is transitioning in a  
24 school; speech, listening or spoken language  
25 concerns, as well as written language or

1 academic issues. I mean, Carter's far  
2 behind that, isn't he?

3 A. Currently or when he entered school?

4 Q. When he entered school.

5 A. Yes. There were challenges with  
6 communication, I recall, yes.

7 Q. I mean, currently as well, but I don't - we  
8 don't need to talk about that. I know that  
9 ASL is outside your scope of practice as a  
10 speech language pathologist. It's not what  
11 you do.

12 A. Um-hm.

13 Q. But you, in conjunction or in working with  
14 Bonnie Woodland, who would have ultimately  
15 had that authority, I mean, surely, you  
16 know, you would know that 32 to 56 hours in  
17 a year is not enough time to teach somebody  
18 how to speak ASL, how to speak a language?

19 A. Yes.

20 Q. The affidavits, and we've had affidavits  
21 sworn by several of the DHH teachers,  
22 Colleen Moyst, Val Crummell, Kelly Walsh,  
23 the theme that they have indicated is that  
24 they were all being told to sort of do the  
25 best they could with the resources they had,

1 and that would have been generally the  
2 reaction to a letter like the one we just  
3 looked at, "do the best you can with the  
4 resources that are there". Would that have  
5 been the advice given to them?

6 A. Yes, while the process of seeking resources  
7 unfolds, yes.

8 Q. Okay. Tell me about the process of seeking  
9 resources then. So, I think you've told me  
10 that, you know, during 2016-2017, there  
11 isn't any progress there.

12 A. Um-hm.

13 Q. Give me, by way of a general picture, how  
14 the process of seeking resources goes  
15 thereafter. Does it get better?

16 A. So, I believe in - with reference specific  
17 to Carter that in his grade one year, there  
18 was an increase in his time and with some  
19 other students. So, the process is, you  
20 know, again that the director of student  
21 services speaks to executive at the  
22 District. I would not usually be involved  
23 in those discussions, so I don't know  
24 exactly what happens.

25 Q. And maybe, you know, just in fairness for

1 organization purposes, I should keep our  
2 conversation focused and we'll do it year by  
3 year instead of me just asking you to tell  
4 me, you know, over six years what happens.  
5 So, you're right. 2016 to 2017, I mean, the  
6 resources are as we had just discussed, you  
7 know, one to two hours a week, what you've  
8 acknowledged as being insufficient to teach  
9 ASL, and teachers to do the best they could  
10 with the tools they had while additional  
11 resources are sought, and you had just  
12 indicated to me that in 2017 to '18, we had  
13 increased the access to those resources and  
14 gotten two hours a day for Carter Churchill,  
15 and I think it later on in the year  
16 increases to fulltime services for Carter  
17 Churchill. Do you know anything about why  
18 or how or who's involved in authorizing  
19 those increases in resources?

20 A. Well again, authorizing resources, in my  
21 understanding, is done through executive.

22 Q. I know, but I mean, surely they must have  
23 relied upon you or if not you, certainly  
24 Bonnie Woodland -

25 A. Oh yes, yes, information is shared. So,

1           yes, information is shared with executive  
2           and then the decisions are made at that  
3           level.

4           Q.    So, were you part of the discussions and  
5           identification of need discussions that  
6           would have led to the 2017-2018 increase in  
7           DHH support for Carter Churchill?

8           A.    Yes, I was in some meetings where the  
9           assistant director would have been in.

10          Q.    And the reason why that's important is  
11          because the assistant director would have  
12          had that authority?

13          A.    Yes.

14          Q.    And by authority, I guess what we really  
15          mean is allocating more resources to a  
16          school to presumably be used for a  
17          particular child and I understand the school  
18          followed that advice.  But those resources  
19          were being taken from somewhere else in the  
20          system, weren't they?

21          A.    I don't know.

22          Q.    You don't know?

23          A.    No.

24          Q.    Why was it argued, why was it justified,  
25          that Carter Churchill needed that increase

1 in hours during his grade one year?

2 A. It was mainly around the focus of his  
3 language development.

4 Q. It was identified that his language  
5 development was substantially behind?

6 A. Yes.

7 Q. Of course, that was already known in his  
8 2016 year and in fact, even prior to his  
9 2016 year, and such similar needs were being  
10 identified by the deaf and itinerant  
11 teachers. I mean, I put to you what really  
12 changes in the grade one year is that the  
13 Churchills file a Human Rights complaint in  
14 the summer of 2017, before the grade one  
15 year starts. To what degree did the Human  
16 Rights complaint come up in your discussions  
17 around increased resources for Carter  
18 Churchill?

19 A. I don't know. I don't know if at that time,  
20 if it came up. I think there was more of an  
21 emphasis on ASL learning.

22 Q. I mean, the DHH service, was Carter being  
23 taught, do you know, ASL by those DHH  
24 itinerants?

25 A. My understanding, in kindergarten it was

1 minimal, my recollection. No, I recall  
2 conversations that the teacher was modelling  
3 that. I couldn't say if she was teaching  
4 that.

5 Q. Modelling, but not teaching.

6 A. I couldn't confirm that she was teaching.

7 Q. I mean, it's - modelling ASL is one thing,  
8 but modelling ASL to a child who hasn't been  
9 taught much of ASL is a difficult way to  
10 access the curriculum, isn't it? Like how  
11 could Carter - I guess the question I'm  
12 asking you - sorry, I'm putting it poorly.  
13 Did you have any concerns that Carter, with  
14 his own low ASL proficiency at that time,  
15 because very few people were teaching him,  
16 wasn't able to access the curriculum, even  
17 if the curriculum was being, you know,  
18 modelled to him in ASL?

19 A. Yeah, that would be a concern.

20 Q. It was a concern, okay. I want to show you  
21 another document, still in Volume 1, the  
22 document you've been looking at, Tab T as in  
23 tango. You see these meeting minutes?

24 A. Yes.

25 Q. And it's a meeting called by Kim Lawlor,



1           that's you.

2           A.    Yeah.

3           Q.    And minutes are being taken by Lynnette

4           Coish.  Coish or Coish?

5           A.    Coish.

6           Q.    Okay.  This was a meeting where several

7           serious concerns were raised, and you know,

8           I know I'm asking you to cast back in your

9           memory.  So, I'll ask you instead to flip 1-

10          2-3, on the fourth page, I guess.  So,

11          you're turning over three pages.  There's a

12          heading that says "students who have CI and

13          low language".  Do you see that one?

14          A.    Yes.

15          Q.    Okay.  What's indicated in here in the

16          discussion minutes of the meeting that

17          you're chairing says "some very young

18          children with cochlear implants receive lots

19          of support at school, but have very low

20          language comprehension skills.  There is

21          significant concerns that their programming

22          is not what they need.  It would be helpful

23          if local students with cochlear

24          implant/hearing impairment to get together

25          and communicate and learn.  Can we bring

1           these students together once a week? It  
2           would be helpful for the children to see  
3           others with cochlear implants.”

4                     And they talk about strategies to be  
5           used by school teachers and they say  
6           “teachers are concerned that this is a human  
7           rights concern. Reverse integration is used  
8           in some other provinces. Is it possible for  
9           some of our students to go to APSEA for  
10          short-term assessments?” And they go on.

11                    And “Bonnie and Kim met with the NL  
12          Association for the Deaf. General  
13          conversation regarding students and other  
14          organizations. DHH itinerants feel that  
15          some students with hearing impairments need  
16          additional service from a trained teacher  
17          for the deaf to access the curriculum.”

18                    And the action item indicated down  
19          below says “Kim will discuss these concerns  
20          with Bonnie and provide an update at the  
21          next meeting.” Do you discuss these  
22          concerns with Bonnie Woodland?

23          A.    Yes. I do not recall the exact  
24          conversation, but I would say to you that I  
25          regularly met with Bonnie to update her on

1 meetings with deaf and hard of hearing,  
2 blind and visual itinerants, speech language  
3 pathologists or educational psychologists.

4 Q. Okay. So, Bonnie Woodland would have been  
5 well apprised by you of the concerns that  
6 were raised at that meeting?

7 A. Yes.

8 Q. This is a meeting that occurs in December of  
9 2016. Carter's in kindergarten at that  
10 time. You discuss it with Bonnie. Do you  
11 discuss solutions with Bonnie?

12 A. I don't recall.

13 Q. You don't remember?

14 A. No.

15 Q. Do you remember if anything was done arising  
16 out of this December 2016 meeting to address  
17 these concerns?

18 A. No, I don't recall.

19 Q. What did you make of their concern that it  
20 was a human rights issue?

21 A. I don't recall.

22 Q. Have you - would that have been an alarming  
23 or surprising or unusual thing to see  
24 raised? Like how frequently are DHH  
25 teachers coming to you saying "I think we

1           have a human rights issue"? Like is this  
2           the only time you can remember?

3           A.    I don't know if it's the only time, but no,  
4           it's certainly not something that is a  
5           regular conversation.

6           Q.    Right. Did it concern you? I mean, did it  
7           give you an increased level of concern that,  
8           you know, this isn't just "well, maybe we're  
9           not according to policy. These kids need  
10          more"; that they'd go so far as to say this  
11          could be - "we're concerned this could be a  
12          human rights issue"?

13          A.    I don't recall if it elevated my level of  
14          concern. We're always concerned - I'm  
15          always concerned when a child is not - when  
16          a teacher presents a concern that a child is  
17          not receiving what they need.

18          Q.    Tell me about the specific suggestion that  
19          was raised in these minutes about, you know,  
20          "can we get these children together once a  
21          week?" I mean, to put it in context, right,  
22          deaf students, Carter in particular, are the  
23          only students in their school who are deaf.  
24          They can't communicate with their classmates  
25          if they use ASL. You know, this is a

1 problem that Carter has, but there are also  
2 six or seven others who are having similar  
3 problems, and I think are identified. They  
4 suggest getting these children together once  
5 a week so that they can interface with each  
6 other. Do you do anything with that  
7 recommendation or does Bonnie Woodland do  
8 anything with that recommendation?

9 A. I don't - it was a - I don't recall when. I  
10 do recall that there was some activities  
11 planned. I think it may have been quite a  
12 while after this meeting.

13 Q. It was. It was three years later.

14 A. Um-hm.

15 Q. Yeah, three years later. They got together  
16 twice and we've heard - Tammy spoke about  
17 their gathering at the GEO Centre in 2019  
18 and how special an experience that was for  
19 them to be able to see other children with  
20 cochlear implants and communicating in sign  
21 for the first time. Why did it take so  
22 long, do you know?

23 A. I don't know.

24 Q. But it's not because you didn't bring it to  
25 Bonnie Woodland's attention? You would have

1 brought that concern forward?

2 A. Yes.

3 Q. Do you recall whether or not Ms. Woodland  
4 seemed receptive to these ideas or did you  
5 get the sense that your ideas were not  
6 gaining any traction?

7 A. No, I don't recall that. I recall that, you  
8 know, we talked about that. Why it took so  
9 long, I don't know.

10 Q. You mention in your affidavit at one point  
11 that there was a meeting with Elizabeth  
12 Churchill, Bernie Ottenheimer, Bonnie  
13 Woodland, you and Ian Wallace, who was legal  
14 counsel for the District. Do you recall - I  
15 mean, you probably wouldn't have met with  
16 legal counsel all too often.

17 A. No.

18 Q. That probably would have been sort of a rare  
19 thing. Do you recall meeting with - you  
20 know, these other people you would have  
21 probably met with fairly frequently or  
22 frequently enough, but Ian Wallace would  
23 have been a new introduction to the meeting.  
24 Do you recall why he was being brought into  
25 the meeting? I put to you it was because

- 1           there was a Human Rights complaint filed.
- 2           A.    I assume so.  I don't know why.  Yeah, I
- 3           would - I don't know - I certainly couldn't
- 4           recall if I had met him before that day.
- 5           Q.    To what degree did the Human Rights
- 6           complaint being filed in this case elevate
- 7           the priority or the concern or the attention
- 8           being paid within your office, and
- 9           specifically with you and Bonnie Woodland,
- 10          to issues that deaf children were facing?
- 11          A.    I don't know how to say how - to what
- 12          degree.  I guess we did have more
- 13          conversations about the challenges.
- 14          Q.    And you attribute at least some of the
- 15          reason for the increase in those
- 16          conversations to the Human Rights complaint?
- 17          A.    I mean, I don't know why, truthfully, but we
- 18          did have lots of conversations as we were
- 19          continuing to try to problem solve around
- 20          the challenges that were presented.
- 21          Q.    How often did the fact that a Human Rights
- 22          complaint was filed come up?
- 23          A.    I really don't know.  I was aware there was
- 24          a complaint.  I can tell you that, yeah.
- 25          Q.    You knew.  What did you understand during

1           that kindergarten year, 2016-2017, what did  
2           you understand Terrilynn Clarke was doing  
3           for Carter Churchill? Did you understand  
4           that she was interpreting curriculum for  
5           him? What did you understand she was doing  
6           for Carter when she was meeting with him?

7           A. She was the student assistant at the  
8           beginning of the year?

9           Q. Um-hm.

10          A. No, I didn't think she was interpreting  
11          curriculum. I thought that she was  
12          providing some bridge of communication.

13          Q. That's what I was going to ask.  
14          Communication bridge, that as the phrase you  
15          used, a communication bridge. How was  
16          Terrilynn Clarke, the student assistant,  
17          providing a communication bridge to Carter  
18          Churchill in that kindergarten year?

19          A. So, it was my understanding that if  
20          something was presented in the classroom and  
21          he wasn't - didn't understand that, that she  
22          was trying to explain that to him.

23          Q. Using ASL?

24          A. Yeah, that's my understanding.

25          Q. Right, because I mean that was how Carter



1           communicated, right. Were you aware of  
2           Terrilynn Clarke's level of ASL skills at  
3           that time?

4           Q. No. Have you become aware of her level of  
5           ASL skills since?

6           A. No.

7           Q. Would it surprise you then, I anticipate it  
8           would, to hear that she was eventually ASL  
9           proficiency tested and she scored very  
10          poorly? She couldn't even fingerspell her  
11          own name when tested. Is that a surprise to  
12          you?

13          A. Yeah, I wasn't aware of her proficiency.

14          Q. Do you still think she was a communication  
15          bridge?

16          A. Not with ASL.

17          Q. Was she a communication bridge in a  
18          different language?

19          A. I don't know if she would have used any  
20          pictures or any spoken language. I don't  
21          know.

22          Q. I mean, in your affidavit -- and I'm asking  
23          you maybe if you'd like to change the  
24          evidence in your affidavit. In your  
25          affidavit, you say that you thought the

1 student assistant, in this case Terrilyn,  
2 was helping Carter communicate with teachers  
3 and classmates.

4 A. Um-hm.

5 Q. Now that I'm telling you this information  
6 about the ASL proficiency testing, is that  
7 still your view that she was helping him  
8 communicate? Do you still think she was a  
9 help?

10 A. I don't know. I mean, without - that was my  
11 understanding at that time and from what I -  
12 up until this point that you told me that.  
13 So, I guess that yes, I do have a concern  
14 that if she was able to provide that.

15 Q. It might be a good time for the break there  
16 now actually. I see we're an hour in. Is  
17 ten minutes going to be enough for you?

18 A. Yes, yeah.

19 Q. Okay, ten minutes.

20 ADJUDICATOR:

21 Q. All right. We'll adjourn until ten after.

22 (OFF RECORD)

23 ADJUDICATOR:

24 Q. Mr. Rees, go ahead.

25 MR. REES:

1 Q. Yeah. Ms. Lawlor, the next document that I  
2 want to ask you about is the submission that  
3 the DHH itinerants made to the Premier's  
4 Task Force. So, in Volume 1, same document  
5 that you've been looking at, it's Tab Y as  
6 in Yankee. Now, they made this - you didn't  
7 write this submission to the Premier's Task  
8 Force. The deaf itinerants did. Are you  
9 familiar that - I mean, you might not  
10 remember the document word for word, but  
11 that it had been sent? I know you and  
12 Bonnie Woodland were both cc'ed on it.

13 A. Um-hm.

14 Q. You're nodding, so yes, you are familiar?

15 A. Yes, yes.

16 Q. Okay. I mean, this is a length of concern -  
17 and actually, the concerns that are  
18 identified in this, if the Adjudicator ever  
19 is interested, I mean, they're more or less  
20 copied and pasted from the 2011 Darlene  
21 Fewer Jackson report, you know, the gaps and  
22 recommendations and things like that. What  
23 I'm asking you about though, I mean, I know  
24 this was to the Premier's Task Force. It  
25 wasn't directed to you, please solve these

1           problems. But you were copied, presumably  
2           so that you -

3 MR. PENNEY:

4           Q. Sorry, was she copied? Just I can't see it  
5           on the document.

6 MR. REES:

7           Q. It's not on this, but the witness confirmed  
8           that she had been copied on it.

9           A. I don't know that I received a copy. I  
10          mean, I was aware that something had -

11 MR. PENNEY:

12          Q. (unintelligible).

13          A. - been submitted to that, but I wasn't -

14 MR. REES:

15          Q. Okay, to verify -

16          A. I don't know that I was copied on it.

17          Q. For the record then, let's verify. Look at  
18          Volume 6, Tab D as in delta. And it's a  
19          huge volume or huge ream of documents, but  
20          if you go to - I think it's one of the last  
21          pages. Hold on a moment. Yeah, here it is,  
22          I got it. It's going to take us a little  
23          bit of flipping, but I'll be able to  
24          identify it. Just looking for the copy line  
25          because it gets sent to the wrong address

1 first. Hold on. Okay. It's going to be  
2 hard to find this. So, if you go to the  
3 back of this Tab D and you'll -

4 ADJUDICATOR:

5 Q. I have page numbers at the top of my pages.

6 MR. REES:

7 Q. Oh, yeah, there are page numbers, but  
8 they're obliterated. So, it's actually page  
9 96. You won't be able to see the 96 very  
10 well because it's covered up by an email.  
11 You'll see 98 and if you go back two more  
12 pages, that's page 96. And it's a - tell me  
13 if you don't see it - an email. It's from  
14 Tina Halleran to the Premier's Task Force  
15 and it's copied to Bonnie Woodland and Kim  
16 Lawlor. Do you see that?

17 A. Yes.

18 Q. And the email says "please find attached our  
19 submission to the Premier's Task Force on  
20 Improving Educational Outcomes" and I'm  
21 telling you that the document that I was  
22 showing you first was that attachment. And  
23 what I'm asking you about was, you know,  
24 there are several serious concerns, they  
25 call them gaps, that are identified in this

1 document and that are being sent to the  
2 Premier's Task Force. Did you or Bonnie  
3 Woodland take any action arising out of the  
4 concerns that get identified to the  
5 Premier's Task Force or was it sort of just  
6 "we'll see what the Premier's Task Force  
7 does with it"?

8 A. Yes, I don't recall specific action.

9 Q. You don't recall taking any specific action  
10 arising out of those concerns?

11 A. No.

12 Q. Okay. Those concerns don't go away because  
13 two months later, in May of 2017, is when  
14 the itinerant teachers make the first  
15 satellite classroom proposal. Do you  
16 remember that first satellite classroom  
17 proposal being made?

18 A. Yes.

19 Q. Let's look at that document. It's in Volume  
20 1, which we had been looking at initially,  
21 and it's Tab Z as in Zulu, the very last  
22 one. And that's the document that's headed  
23 Proposal for Satellite Support Classrooms  
24 for Students who are Deaf and Hard of  
25 Hearing.

- 1 A. Um-hm.
- 2 Q. Some substantial needs identified on this  
3 one page, and we've asked Ms. Woodland  
4 already about, you know, the concerns with  
5 this proposal and what was done in the  
6 proposal. So, I guess, tell me about the  
7 meeting where this gets brought up. Does it  
8 get brought up in a meeting or is it sent by  
9 email, do you know?
- 10 A. Which meeting? I'm not sure what -
- 11 Q. What I'm asking you is how do you come to  
12 know about the 2017 satellite classroom  
13 proposal? Tell me everything you remember  
14 about that process.
- 15 A. Well, I believe that the teachers get - I  
16 don't - I mean is this they gave us this  
17 document? I don't remember exactly how it  
18 first came up, if they talked about it in a  
19 meeting or if they gave us this document,  
20 but either one, either they talked about it  
21 or gave - you know, I was aware of the  
22 document. And I'm not really sure what you  
23 want me to talk about.
- 24 Q. Okay. Well, let's start with why the  
25 proposal wasn't approved, because it isn't

1 approved.

2 A. Right.

3 Q. You know, and it - and I understand  
4 certainly you don't have authority to  
5 approve it and I even understand from  
6 speaking to Ms. Woodland that she didn't  
7 have authority to approve it. But, she  
8 acknowledged there was sort of an onus on  
9 her to bring it to her superiors, which she  
10 did.

11 A. Um-hm.

12 Q. But she indicates, I think the language is  
13 "we're not endorsing this" when she brings  
14 it further up the chain.

15 A. Um-hm.

16 Q. You know, it's accompanied "here's the  
17 proposal. We don't support it".

18 A. Um-hm.

19 Q. "We're not endorsing it, but here it is."  
20 So, my question for you is do you recall the  
21 reasoning on why this - you know, between  
22 you and Ms. Woodland, why this program was  
23 not endorsed?

24 A. No, I recall the meeting that you referenced  
25 earlier where Ian Wallace was in the



1 meeting. It was discussed at that time.  
2 But there was no approval or non-approval  
3 while I was present, but it was discussed at  
4 that time.

5 Q. And what was the discussion about? I mean,  
6 was the discussion favourable to the  
7 proposal or not?

8 A. I can't say while I was in the - I don't  
9 know what happened after, but while I was  
10 there, I don't recall it being favourable or  
11 not. I recall there being a lot of  
12 questions, like how will this work, what  
13 would this look like, how would the children  
14 be transported. There was questions like  
15 that, what model would we follow, are other  
16 provinces doing this, what does APSEA say.  
17 I recall those types of conversations. I  
18 don't recall it being a yes or no while I  
19 was there.

20 Q. Were you asked for your input, and if so,  
21 what input did you give?

22 A. We talked about - yeah, I do recall that we  
23 talked about - I used the language  
24 immersion, just because that was language  
25 that was used around French Immersion.

1           Yeah, so, no, I don't recall any strong  
2           opinions, other than here is the information  
3           that's been presented by our deaf and hard  
4           of hearing teachers.

5           Q.    Okay.  And I appreciate that, you know, you  
6           aren't the decision maker that gets to  
7           decide whether this classroom proposal goes  
8           any further than that meeting.  As you know,  
9           it doesn't go any further than that meeting.  
10          Do you ever get an explanation why?  Are you  
11          ever curious?  Do you follow up with, you  
12          know, Ms. Woodland or anyone else?

13          A.    I recall discussions about exploring what is  
14          happening in other provinces.  So, I don't  
15          recall an absolute no, it's not happening.  
16          I recall that we're going to explore.  
17          They're looking at again reaching out to  
18          APSEA.  That's what I recall as the next  
19          steps.  There were conversations with APSEA  
20          to see what's happening in Atlantic  
21          Provinces.

22          Q.    And did you find out what the results of  
23          those conversations were?

24          A.    We did have a meeting, I referenced it in my  
25          affidavit.  I'm not sure of the date of it.

1           There was a meeting where APSEA officials  
2           attended where we talked about how they're  
3           supporting students in Nova Scotia in  
4           particular.

5           Q.   And how did that have any bearing on the  
6           satellite classroom?

7           A.   Well, they were sharing what they're doing  
8           to support.  So, looking at other models.

9           Q.   Okay.  I mean, in addition to a model here  
10          that I - look, I agree with you, you neither  
11          had approval - authority to approve or  
12          disapprove of this model.  There are several  
13          serious concerns identified in this proposal  
14          that this proposal is designed to address.  
15          So, while it turns out that this proposal,  
16          you know, doesn't go anywhere for several  
17          years, do you, your department, you and Ms.  
18          Woodland, do anything to address the needs  
19          identified in that proposal?

20          A.   I don't recall the timeline.  I don't know  
21          if that came after students got an increase  
22          in their DHH teacher support, but that was  
23          one thing that we did to address concerns.

24          Q.   Okay.  Tell me about that increase in DHH  
25          teacher support and what kind of - I mean,

1 we know the increase Carter got. We talked  
2 about that already and the years in which  
3 that occurred and the limits to the ability  
4 to teach ASL in those periods and things.  
5 There was an increase in service for other  
6 deaf students as well, was there?

7 A. Yes.

8 Q. How many?

9 A. I don't recall.

10 Q. Can you tell me anything about the increase  
11 in service those other students got?

12 A. No, not without the specific - no, I don't  
13 recall the specifics. I think that some  
14 children received two hours per day of DHH  
15 itinerant support.

16 Q. So, in order to address, you know, five or  
17 so problems that are identified in this  
18 satellite classroom proposal, you know,  
19 there's a bump for some deaf children in the  
20 number of hours they get with a DHH  
21 itinerant teacher. One of the problems  
22 that's identified in here is that "students  
23 are not making significant gains and the  
24 language communication, academic and social  
25 gaps will continue to exist". Particularly

1           regarding the social gaps, was anything done  
2           to address social gaps that deaf students  
3           were experiencing?

4           A.    Specific to - I don't recall individual  
5           teachers of the deaf speaking about - there  
6           were some students - sorry, there were some  
7           teachers who did bring that concern forward,  
8           not all.  So, no, I don't know what  
9           specifically was done to address that.

10          Q.    The satellite classroom proposal we're  
11          looking at says, in the middle of the middle  
12          paragraph, pretty much the middle of the  
13          page, "these students are not making  
14          significant gains in and the  
15          language/communication/academic/social gaps  
16          are getting larger and will continue to do  
17          so".  And they'd also previously suggested,  
18          you know, getting these students together  
19          once a week, which I think you've indicated  
20          to me, you know, doesn't go anywhere till  
21          2019.

22          A.    Um-hm.

23          Q.    So, I'm asking you like what has been - what  
24          gets done as a result of this satellite  
25          classroom to address those issues, and I

1 think you're telling me the only thing that  
2 happens is you get two more hours - some  
3 students, including Carter, get two more  
4 hours of itinerant support per day.

5 A. Yes.

6 Q. These concerns weren't only being raised by  
7 the deaf itinerant teachers though, were  
8 they? I mean, the Churchills were raising  
9 them with you. They met with you only a few  
10 weeks later at Strawberry Marsh Road and  
11 raised very similar concerns, right? Do you  
12 recall a meeting with the Churchills at  
13 Strawberry March Road?

14 A. No, I don't, but I'm not saying it didn't  
15 happen. I just don't recall.

16 Q. Okay. Well, why don't I put it to you this  
17 way, you're familiar that the concerns that  
18 are being raised by these deaf itinerant  
19 teachers is fairly similar to the concerns  
20 that are raised by the Churchills -

21 A. Yes.

22 Q. - in their Human Rights complaint and that  
23 they would have been raising with you in  
24 person as well?

25 A. Yes.

- 1 Q. You indicate that there were sort of several  
2 points of discussion at the meeting about  
3 the satellite classroom around, you know,  
4 bussing and whether the kids would be able  
5 to travel and some other things. But I  
6 think you indicated your evidence was you  
7 aren't sure why the proposal wasn't  
8 advanced. No one told you. It just didn't,  
9 and you never found out the reason why?
- 10 A. Correct.
- 11 Q. I know you indicated that your department,  
12 you, Bonnie Woodland and others relied upon  
13 APSEA to find out what was going on, you  
14 know, in the Nova Scotia in particular, what  
15 kind of supports they were being offered.
- 16 A. Um-hm.
- 17 Q. Do you recall an APSEA report on Carter  
18 Churchill; that APSEA would have issued in  
19 relation to Carter Churchill in particular?
- 20 A. Yes.
- 21 Q. And do you recall APSEA indicating that  
22 language and communication skills should be  
23 a priority focus for Carter Churchill?
- 24 A. Yes.
- 25 Q. And do you recall APSEA indicating that

1 without any development of his language or  
2 his communication skills, Carter would have  
3 limited access to curriculum, his peers and  
4 his community?

5 A. Yes.

6 Q. What was done to address that?

7 A. Again, I don't recall the timeline, but  
8 after that, I believe after that was when  
9 there was an increase in his service.

10 Q. Right. An increase in DHH itinerant  
11 support, two hours a day?

12 A. I believe so, yeah. I'm not sure of the  
13 timeline of those, of that report and when  
14 the increase to two hours a day and then the  
15 further increase.

16 Q. Okay. How did those increases -

17 MR. PENNEY:

18 Q. Sorry, if we might just be clear, I think  
19 the report is November 7<sup>th</sup>, right?

20 MR. REES:

21 Q. Yeah, and I think the meeting -

22 MR. PENNEY:

23 Q. And then the increase to fulltime was late  
24 November?

25 MR. REES:



- 1 Q. That's right. I mean, the meeting happens  
2 November 20<sup>th</sup>, 2017. So that all works. I'm  
3 going to ask you then how those increased  
4 supports resolve some of the issues  
5 identified by APSEA. So, this increased  
6 support that we just discussed and we  
7 acknowledge occurred in November of 2017,  
8 how did that address Carter's language and  
9 communication skills? How was that part of  
10 resolving language and communication skills  
11 for Carter Churchill, increasing the DHH?
- 12 A. It was my understanding that the DHH teacher  
13 was focused on language development.
- 14 Q. Okay. So, you think the DHH teacher was  
15 teaching Carter ASL?
- 16 A. I don't know if she was teaching him ASL.
- 17 Q. Okay. If she wasn't teaching him ASL, do  
18 you think there was anything else that a DHH  
19 teacher would be doing to develop language  
20 and communication skills?
- 21 A. It was my understanding that she was using  
22 some sign, I believe she would say when we  
23 would ask her, to build his language. I  
24 don't know that she was teaching ASL.
- 25 Q. Right. So, you'd agree, I mean, Alma

1           McNiven said, you know, you can't teach ASL  
2           unless you're a deaf person, and you  
3           wouldn't disagree with that statement?

4           A.    No.

5           Q.    Right.  And the person who was spending  
6           their two hours a day with Carter was not a  
7           deaf person, were they?

8           A.    No.

9           Q.    What about addressing the concern that APSEA  
10          raised that Carter would have limited access  
11          to -- curriculum, I acknowledge that two  
12          extra hours of DHH helps with that -- but  
13          access to his peers and his community?  Did  
14          increasing Carter's DHH support to two hours  
15          a day with a hearing person -

16       MR. PENNEY:

17          Q.    You mean the increase was to all day, right.  
18          Shortly after that, the APSEA report, it was  
19          to all day.

20       MR. REES:

21          Q.    Look, two hours a day, all day, 24 hours a  
22          day, did increasing the amount of time that  
23          Carter spent with a hearing DHH teacher give  
24          him better access to his peers or his  
25          community?

1 A. I don't know.

2 Q. I'd suggest they didn't. You got any  
3 evidence contrary to that?

4 A. No.

5 Q. Okay. Your knowledge of the approval or  
6 lack thereof of satellite classrooms in 2018  
7 and spring 2019, because they get made again  
8 and again, do you have any knowledge of why  
9 the satellite classrooms were not approved  
10 at those times? And just for clarity, they  
11 get - it does start to get approved and  
12 advanced by Darlene Fewer Jackson in  
13 September 2019, but there are two  
14 intervening proposals in 2018 and spring  
15 2019 by the deaf itinerants. So, I'm asking  
16 you: do you recall any reasons why the  
17 satellite classrooms in those cases were  
18 rejected?

19 A. No.

20 Q. You recall that they were? That they were  
21 proposed and they were rejected, but you  
22 don't know why?

23 A. Yes.

24 Q. Were you asked for any input these times  
25 around? "Hey, have your thoughts changed on

1           this, Ms. Lawlor? Have you got any advice  
2           for us? We've come up with a new barrier to  
3           implementing satellite classroom, Ms.  
4           Lawlor. What's your opinion on it?" Do you  
5           recall anything with that?

6           A. No.

7           Q. Is the reason you don't recall many of the  
8           things I've asked you about because these  
9           things didn't occur or because just, you  
10          know, you just have no memory of it? I  
11          guess what I'm trying to get to the bottom  
12          of is, you know, when you tell me "look, I  
13          don't remember why the satellite classroom  
14          was rejected in 2017 and 2018 and 2019. I  
15          don't recall what the concerns were. I'm  
16          not sure why we didn't implement one thing  
17          or another of the concerns that APSEA  
18          identified", you know, is this - to put it  
19          bluntly, because it's above your pay grade  
20          because of the conversations that are  
21          happening at a higher level?

22          A. Yes, to a - yes, some of it, yeah. I  
23          wouldn't be involved in approving, but as  
24          well, we were continuing those discussions  
25          as I said with exploring, so the

1           conversations with APSEA, to look at what  
2           other - what's happening. So, what is being  
3           done in other jurisdictions. So, I recall  
4           that was ongoing, but I don't recall anybody  
5           saying "now, we're not doing the satellite  
6           classroom, but we're going to talk about  
7           this". We continued conversations.

8           Q. Those conversations with APSEA start - I  
9           mean, we've seen the document or I quoted to  
10          you from the document. You recall that it  
11          was from 2017. Do the discussions with  
12          APSEA take three years? Like you say you  
13          have discussions with APSEA. This first  
14          proposal happens in 2017.

15          A. No, I don't recall the first time we met.  
16          Again, there was a meeting where people from  
17          APSEA came and we met. I don't recall the  
18          date of that. It was after 2017, I think I  
19          can say with confidence. So, any other  
20          discussions about - and again, I was  
21          involved in discussions in the beginning  
22          where we talked about the concerns, how will  
23          the children get there, will families want  
24          to do this. We talked about those concerns.

25          Q. And other witnesses have told us that those

1 concerns weren't insurmountable barriers.

2 A. Were?

3 Q. Were not insurmountable barriers.

4 A. Were not, okay. So, I don't - again, I  
5 don't know. No one said to me "it's not  
6 approved because".

7 Q. What did APSEA say about the proposal, do  
8 you remember?

9 A. I recall that they weren't - didn't have a  
10 model like that and they shared some of the  
11 things they were doing. They had like  
12 language acquisition support workers. They  
13 shared some - they had some video footage  
14 that they shared with us, just showing us  
15 some students in classrooms in Nova Scotia.  
16 I think it was only Nova Scotia.

17 Q. But you didn't, at the time that APSEA told  
18 you about these things, during the first  
19 satellite classroom proposal and its  
20 rejection, which you say, you know, you were  
21 consulting with APSEA on, the only change  
22 that gets made is the increase in DHH time  
23 for Carter Churchill and some of the other  
24 children?

25 A. Yes.

1 Q. You don't implement any of the other  
2 creative ideas that APSEA says they're doing  
3 instead, you know, at that time. It takes  
4 years.

5 A. At that time. So, I think there was a time  
6 lapse between that first proposal and what  
7 I'm referencing, this APSEA meeting. But  
8 no, so nothing else -

9 Q. Do you know when that APSEA meeting  
10 happened? That would be important to know.

11 A. I don't know.

12 Q. You don't? Okay. Those are all the  
13 questions I have for you. Thanks.

14 A. Thank you.

15 ADJUDICATOR:

16 Q. Mr. Penney?

17 MR. PENNEY:

18 Q. No.

19 ADJUDICATOR:

20 Q. Ms. Lawlor, I don't have any follow-up  
21 questions for you. So, you are free to go.  
22 I know that you have not watched any of the  
23 proceedings to this point. You are welcome  
24 to stay or you can leave.

25 I believe we have another witness

1                   scheduled. Will you be starting that  
2                   witness this morning?

3 MR. PENNEY:

4           Q.    Yes.

5 ADJUDICATOR:

6           Q.    Shall we take a brief adjournment to get  
7                   documents prepared and whatnot for that  
8                   witness, get things organized? Five  
9                   minutes?

10 MR. PENNEY:

11          Q.    Sure.

12                                           (OFF RECORD)

13 ADJUDICATOR:

14          Q.    Okay. I see that we have our next scheduled  
15                   witness. I believe this is Dr. James  
16                   MacDougall. Is that correct?

17          A.    Correct.

18 DR. JAMES MACDOUGALL, SWORN, DIRECT EXAMINATION BY MR.

19 STEPHEN PENNEY

20 REPORTER:

21          Q.    And for the record, state your name please.

22          A.    My name is James MacDougall.

23          Q.    Thank you. Mr. MacDougall has been sworn.

24 ADJUDICATOR:

25          Q.    Okay. So, I understand that Mr. Penney is



1 going to have a series of questions for you.  
2 Mr. Rees may have a series of questions for  
3 you after that. I may have questions as  
4 we're going along seeking some clarification  
5 or I may have some questions at the end as  
6 well. But for the moment, Mr. Penney will  
7 begin his questions. Thank you.

8 MR. PENNEY:

9 Q. Thank you, Dr. MacDougall. You should have  
10 a package up there with your CV, your  
11 report, your rebuttal report and Dr.  
12 Snoddon's reports. Do you have that in  
13 front of you?

14 A. I do.

15 Q. Okay, thank you. First thing, I think we've  
16 agreed that he's qualified as an expert in  
17 deaf education, like we did with Dr.  
18 Snoddon. So, I think counsel have agreed to  
19 that?

20 MR. REES:

21 Q. We have. I think it's still a valuable  
22 exercise to go through the qualifications,  
23 but there's no objection to this  
24 qualifications.

25 MR. PENNEY:

- 1 Q. Okay, thank you. So, I just have a couple  
2 of questions for you on your background.  
3 First, can you tell me a little bit about  
4 your upbringing?
- 5 A. Yes. I was born on a farm outside of Ottawa  
6 to deaf parents and we lived on a farm for  
7 about five years and then I moved into  
8 Ottawa and there I went to school and  
9 eventually ended up going to Carleton  
10 University.
- 11 Q. What's your first language?
- 12 A. Apparently my first language, because my  
13 parents were deaf, was what was then called  
14 sign language.
- 15 Q. All right. So, you started at Carleton.  
16 So, tell me about your degrees.
- 17 A. Well, I have an Honours BA in psychology  
18 from Carleton University, a Master's degree  
19 in psychology from McGill and a PhD as well.
- 20 Q. Okay, thank you. And so, let's just talk  
21 about your sort of academic career. Are you  
22 still an active academic?
- 23 A. Yes. I formally retired, I believe, in 2008  
24 but I have a post-retirement appointment in  
25 the psychology department at McGill. I've

1           been a part-time professor there for many  
2           years.

3           Q.    Okay.  So, just tell me about your academic  
4           career.

5           A.    Well, I've been mainly teaching at McGill  
6           courses on deafness and disability.  Quite a  
7           few years ago, I taught a course that was  
8           half devoted to deaf and half devoted to  
9           physical disability.  In more recent years,  
10          I taught an undergraduate course and I'm now  
11          teaching, not this year but last year, this  
12          year I have off, 500 level course which is  
13          for senior undergraduates and it's open to  
14          graduate students.  It's called Applied  
15          Topics in Deafness.

16          Q.    What sort of research have you been doing  
17          over the years?  And I understand your  
18          career is lengthy.

19          A.    Well, my early interests were in, of course,  
20          deaf children.  I did my Master's degree on  
21          a study of learning in deaf children,  
22          looking at orally educated and sign educated  
23          deaf children in Montreal.  I later for the  
24          PhD moved into more fundamental research,  
25          looking at lower animals, the effect of

1           auditory deprivation on visual perception.  
2           Later on, when I was here at Memorial, I did  
3           research on literacy and short term memory  
4           actually at the Newfoundland School for the  
5           Deaf and these have been my interests. More  
6           recently, I'm interested in revitalization  
7           of sign languages, especially up north,  
8           Inuit sign language.

9           Q.    And do you currently have any research  
10          funding?

11          A.    Yes, I do. I have a grant from the Social  
12          Sciences Research and that's just coming to  
13          an end. It's for work we're doing on  
14          language revitalization and increasing our  
15          local research capacity in Nunavut. We have  
16          other grants from the Nunavut Government and  
17          Culture and Heritage and also, Culture and  
18          Heritage Canada. These are devoted to  
19          revitalization of Inuit sign language.

20          Q.    Thank you. And do you have a - are you a  
21          clinician? Are you a clinical psychologist?

22          A.    Yes. I've done, and continue to do, some  
23          clinical work. I don't have a large  
24          practice. I usually get involved in very  
25          specialized cases, usually with deaf people

1           who have non-standard sign languages or who  
2           have very special backgrounds. I've done  
3           quite a bit of work in the forensic system  
4           as well. When I started at Mackay Centre  
5           many years ago, I founded the psychology  
6           department there and did a lot of clinical  
7           work. But since that time, it's been  
8           limited to very specialized cases.

9           Q. You just mentioned the Mackay Centre.  
10          What's that?

11          A. The Mackay Centre is a centre for the deaf  
12          in Montreal. It's an amalgamation of what  
13          was then called the Mackay Institute, which  
14          is one of the oldest deaf schools in Canada,  
15          and it amalgamated with what was then called  
16          the School of Crippled Children, and became  
17          the Mackay Centre for Deaf and Disabled  
18          Children, and I, I think in the early '70s,  
19          worked as a psychologist and founded their  
20          research department there and later went on  
21          to be the executive director of the Centre.

22          Q. Thank you. Do you want to pull up your  
23          report?

24          A. Pardon me?

25          Q. Do you want to pull up your report?

1 A. Yeah.

2 Q. So, there's a couple of documents that I'll  
3 just get you to identify. At the top there,  
4 is that a current version of your curriculum  
5 vitae?

6 A. I believe it is, yeah. It may be about a  
7 year old.

8 Q. And then also there is a list of - at the  
9 back of the packages, there's a list of  
10 documents. Do you see that there?

11 A. Yes, I do.

12 Q. So, is that the documents that you reviewed  
13 in preparation of your report?

14 A. I haven't read it in detail, but a quick  
15 glance, it looks like it corresponds with  
16 the documents that I was given to review.

17 Q. Okay. And in preparation of your report,  
18 what other steps did you take?

19 A. What other steps?

20 Q. Yes.

21 A. Well, I did a lot of background research on  
22 literature related to the matter at hand,  
23 about language development and deaf people  
24 and so on.

25 Q. Did you do a site visit?

1           A.    Yes, I came to Newfoundland and I went on a  
2                    site visit with you to the current school  
3                    where Carter is attending, I believe.

4           Q.    Thank you.  And so, let's start to talk  
5                    about your report.  So, what was your - what  
6                    were you asked to do in preparing this  
7                    report?

8           A.    Well, I can just summarize.  The purpose of  
9                    the report was to assess the programs of  
10                   Newfoundland and Labrador English School  
11                   District and the effects and their efforts  
12                   to address Carter Churchill's  
13                   exceptionalities in light of any  
14                   requirements of the NLESD as a provider of  
15                   education, including those legislated  
16                   internal and policies addressing the  
17                   provision of education of students with  
18                   exceptionalities and leading research and  
19                   guidance pertaining to the education of  
20                   students with profound hearing loss.  So, I  
21                   was to look into the general situation that  
22                   was under consideration in the Human Rights  
23                   report.

24          Q.    Okay, thank you.  I'll get you to turn to  
25                   page eight of your report.

1 A. Yeah.

2 Q. And we'll sort of go through your report by  
3 headings. So, the first thing you talk  
4 about is the - your title of the heading is  
5 Communications Controversy. Do you want to  
6 explain that for the adjudicator?

7 A. Yes. I think it's a theme of my report that  
8 I view this whole situation basically in  
9 terms of the larger communication  
10 controversy that's been prevalent in  
11 deafness for at least 300 years, and some  
12 people say it goes back even farther to  
13 people like Aristotle and Plato who had two  
14 very different views about deafness.

15 So, in the field we have an unfortunate  
16 ongoing battle going on between  
17 professionals and others about the right way  
18 to educate deaf children, and this involves  
19 many things, but it revolves around the  
20 important aspect of the role of sign  
21 language in education and in communication  
22 and its connection to development of speech.  
23 So, there are those in the field that feel  
24 that it's important for deaf children to  
25 learn speech, to become "normal" as



1 possible, to use their hearing and speech  
2 and with the use of assistive devices and so  
3 on. It's proposed to be possible that that  
4 would be accomplished.

5 The fight for sign language has been  
6 going on for many years, at least 100 years  
7 in modern times, where deaf people  
8 themselves use sign language to communicate  
9 and in more recent years, have asserted  
10 their rights to sign language. There have  
11 been many linguistic studies done on sign  
12 language. So now, the disagreements seem to  
13 be about sign language. In English speaking  
14 world, North America and so on, it's called  
15 American Sign Language or ASL, in Quebec,  
16 langue des signes Quebecoise and so on.

17 And so, the battle is really what the  
18 role of sign languages is in the education  
19 of deaf children, and this has been going on  
20 for a long time and it's something that  
21 isn't resolved and it's something that I  
22 think it's an important context in the  
23 present case and I've made that point in my  
24 report.

25 Q. You describe it in page eight as "the

1 destructive oral manual controversy which  
2 persists to this day". So, can you just  
3 elaborate a little bit on that?

4 A. Yeah. The term oral manual is a bit of an  
5 outdated term, but it's still something that  
6 is used. It's now usually between various  
7 methods of introducing sign language versus  
8 what would be called audio verbal therapy.  
9 And so, these two approaches are, again as I  
10 said, in opposition to each other.

11 Q. And why do you call it destructive?

12 A. Well, I think it's destructive, especially  
13 for parents, and for the deaf community  
14 because, you know, when a child is diagnosed  
15 as deaf, usually at a hospital at the time  
16 of birth, it's a very tense time and you're  
17 told maybe at that time or shortly  
18 thereafter that your child is deaf and  
19 depending on where you are and what hospital  
20 you're at, one professional is going to say  
21 "well, look, with the right approach, with a  
22 lot of work, with hearing aids, with  
23 implants, your child is going to become  
24 normal or close to normal" and somebody else  
25 says "well, maybe that's not going to work

1 and maybe your child is going to learn sign  
2 language and you're going to have to learn  
3 sign language and your child is going to  
4 become part of this vital deaf community  
5 with a culture and a different way of  
6 being." So, these are very contradictory  
7 things, and so, parents and others are torn  
8 between these two things and it depends  
9 where you are, what you're actually going to  
10 do.

11 So, I think it's destructive in the  
12 sense that to have professionals in the  
13 field arguing with each other and for  
14 parents and others not to get a clear  
15 indication of what the programs are going to  
16 be is very, very difficult. But to be fair,  
17 these professionals are all highly  
18 qualified. They have different points of  
19 view. Obviously they come from a different  
20 value framework and in some sense, we have  
21 to think that these points of views are  
22 legitimate.

23 Q. When you talk, you may need to just make  
24 sure that you're close to the microphone, or  
25 if you're going to lean back, bring the

1 microphone a tiny bit closer to you.

2 A. Sure.

3 Q. The next topic you talk about is  
4 mainstreaming. Can you sort of explain your  
5 - what you talk about in your report to the  
6 adjudicator there?

7 A. Well, if we look at the history of deaf, of  
8 course in the early years, going back  
9 centuries, deaf people were considered "deaf  
10 and dumb", a term that's not used now  
11 thankfully very much, and they were not  
12 considered educable and this was due to, I  
13 think, a big misunderstanding about the  
14 connection between language and thinking,  
15 language and cognition, language and  
16 intelligence.

17 And going 17<sup>th</sup>-18<sup>th</sup> century, all of a  
18 sudden there were two movements. If we look  
19 at the western world and we're looking at  
20 Europe saying okay, one group are going to  
21 start signing and the other group are going  
22 to be able to be taught to speak. The  
23 result of that was the formation of deaf  
24 schools. One of the first ones was in  
25 Paris. People from North America went over

1 to France, brought back the idea of forming  
2 deaf schools here in North America, and I  
3 think maybe the first one was in  
4 Connecticut, the Hartford School, and very  
5 early on, there were places like Mackay  
6 Centre, the Belleville School, the Halifax  
7 School that were formed in Canada.

8 So, this was a great leap forward to  
9 say "hey, deaf kids can be educated" and  
10 they brought deaf children together in  
11 schools. The catch was they had to bring  
12 them away from their parents and their homes  
13 to the schools.

14 The oral movement didn't really favour  
15 that because the idea was "no, these  
16 children should be educated" in what was  
17 then called day schools or regular schools.  
18 "We don't want to bring deaf people  
19 together." People were thinking that they  
20 were forming a subgroup that was not a  
21 desirable thing.

22 So, you had two movements going. Some  
23 kids were going to day schools and being  
24 educated according to oral and not signing.  
25 Other kids were going to deaf schools. And

1 both of these things were reasonably  
2 successful. But, in fact, even under the  
3 oral method, some children did go to a  
4 special school. For example, the Clarke  
5 School for the Deaf in Massachusetts, the  
6 Central Institute for the Deaf in St. Louis  
7 are both schools where kids leave their  
8 homes and go to the school, even though they  
9 don't use sign language. So, then this  
10 controversy just went on and you could read  
11 hundreds of articles that day schools are  
12 better, special schools are better.

13 As time went on, in about 1880, as I've  
14 said in my report, there was this famous  
15 conference in Milan, Italy and people came  
16 from all over the world. From the deaf  
17 community point of view, it was a biased  
18 conference. But the decision was made  
19 oralism is going to triumph. And this  
20 affected everything.

21 So then, even in the schools where they  
22 were deaf schools and there was signing,  
23 they started to repress sign language. They  
24 started saying "no, sign language is wrong.  
25 We've all decided here that these children

1 should be educated from speech and hearing  
2 and so on." At the time, sign language was  
3 not really recognized by linguists and  
4 others as a legitimate language. Linguistic  
5 theory concentrated on speech as language.  
6 It took a long time for that to be  
7 overthrown.

8 So, in the '60s, as part of the civil  
9 rights movement in the United States, deaf  
10 people started to say "hey, we've got a  
11 language here". They attracted the attention  
12 of people like Professor Stokoe at Gallaudet  
13 University and others who started to do  
14 linguistic research and then the sign  
15 language started to be accepted as a  
16 language.

17 This had an impact on the schools for  
18 the deaf because here there were schools for  
19 the deaf, but they were oral. Over here  
20 were studies starting to say "hey, sign  
21 language is real. It's a language." Deaf  
22 people, some parents, others were pushing  
23 for it. So, then there started to be a push  
24 to introduce sign languages in those schools  
25 for the deaf. That movement didn't really

1 get going until the '70s, and to be fair,  
2 I'll disclose I was part of that movement  
3 travelling all over doing that.

4 Then the other trend was in special  
5 education, education of blind children,  
6 children with physical disabilities,  
7 children with behaviour issues, with mental  
8 health issues, and there was this  
9 deinstitutionalization movement. We can't  
10 just put people out in these institutions,  
11 separate them from their parents. We have  
12 to put them in mainline schools and  
13 mainstream schools. So, this mainstreaming  
14 movement really started to move in the field  
15 of disabilities.

16 That influenced the deaf situation, but  
17 there was a little bit of a catch because  
18 deafness is a unique phenomena. Yes, it fit  
19 in the disability framework but because of  
20 the language business about sign language  
21 and because of this debate, it was going to  
22 be a very special case.

23 So, the bottom line is that as the  
24 movement in special ed continued, pressure  
25 to close any freestanding school for - any



1 freestanding school for special kids hit the  
2 deaf field. So, they started to close all  
3 over the country. Relevant here is the  
4 Amherst School and then eventually the  
5 Newfoundland School. There are still some  
6 schools for the deaf open.

7 So, this controversy hasn't been  
8 solved. There are still freestanding  
9 schools for the deaf in Canada. Some of  
10 them have been closed and that debate has  
11 not been solved.

12 Q. Just in your experience at the Mackay  
13 Centre, what kind of a school was that?  
14 Where did that fit in the -

15 A. Well, when I arrived at Mackay Centre, I  
16 left Newfoundland, I went to Rochester, to  
17 the National Technical Institute for the  
18 Deaf and I became heavily involved in the  
19 movement to push what was then called total  
20 communication. So, I ended up travelling  
21 all over North America going to schools and  
22 so on and a lot of the schools wanted to  
23 move away from pure oralism and start to  
24 introduce some version of sign language.

25 When I got to Mackay Centre, it was

1            basically - the school for the deaf was  
2            basically an oral school, except that they  
3            followed this method which was called the  
4            Rochester method, which involved - it came  
5            from the Rochester School for the Deaf,  
6            involved speaking and fingerspelling at the  
7            same time. And they thought well, this  
8            would be a good way to have some version of  
9            sign language or signing going along with  
10           speech. I got there and was asked to look  
11           at what was going on and of course, because  
12           of my background and what had happened in my  
13           work in the United States, we converted to  
14           the so-called total communication approach  
15           where both signing and oral means were going  
16           to be done and that method still exists at  
17           the Mackay Centre.

18           Q.    If I look on page nine, you say "some  
19           provinces, and this includes Newfoundland,  
20           appear to have taken the opportunity to  
21           subscribe to the oral approach". Can you  
22           explain that?

23           A.    Well, you know, given what I've said about  
24           the background, about closing schools for  
25           the deaf, a lot of that was being pushed by

1 people who subscribe to the oral philosophy  
2 and so, I think a lot of the people that  
3 subscribe to that were very happy that  
4 schools for the deaf were being closed and  
5 children were being mainstreamed, and  
6 there's a lot of good reasons for children  
7 to stay in their own school. Who wants to  
8 send their child to a school outside their  
9 city and so on?

10 So, what happened was that the schools  
11 started to close. So, Amherst closed and  
12 there was, you know, demonstrations on the  
13 street. The deaf community, even though  
14 Amherst was a leading oral school -- I mean  
15 the sign for Amherst is the sign for oral.  
16 I mean that was a leading school in Canada  
17 for oralism. But, the mainstreaming  
18 movement from special ed, a very legitimate  
19 movement for many people and so on, ended up  
20 closing that school. It was inevitable then  
21 that Newfoundland that was part of so-called  
22 APSEA, the Atlantic Provinces Special  
23 Education Authority, was going to follow  
24 suit, and indeed they did.

25 I think because it was part of the oral

1 philosophy to not have special schools, it  
2 was - it sort of followed that well, that  
3 philosophy was going to win. Especially  
4 with the introduction of the cochlear  
5 implant, advanced digital hearing aids, we  
6 stood a chance of making deaf children  
7 "almost normal". So, I think that the  
8 movement then on that spectrum went over  
9 towards the oral side, away from the signing  
10 side.

11 At the same time, linguistic studies,  
12 deaf people asserting themselves,  
13 legislation being passed, Human Rights  
14 legislation saying "hey, sign language is a  
15 language. It should be used - it could be  
16 used." So, these two opposing forces were  
17 at play when the schools closed. But I  
18 think what triumphed, especially just from  
19 what I'm reading and presuming, was a  
20 movement relatively to the oral approach, so  
21 the default method is that and I'll speak  
22 more about that later.

23 Q. The next topic you talk about are early  
24 intervention programs, if you could talk a  
25 little bit about?

1           A.    Yeah.  So, everybody in the field pretty  
2                    well agrees that early intervention, that is  
3                    determining if a child is losing hearing at  
4                    the earliest possible date is a good thing.  
5                    Actually, that is a little bit controversial  
6                    because some people argue that a parent  
7                    knowing too early that their deaf child is  
8                    deaf can have kind of a traumatic effect and  
9                    if you're not going to really explain  
10                  deafness and give all of the options and so  
11                  on at that time and just leave them hanging,  
12                  that that may be not such a great thing.  
13                  But generally speaking, the idea - and so  
14                  there's a big movement in Canada, every  
15                  province, including Newfoundland, all the  
16                  way across, early intervention, early  
17                  intervention.  And this hearing test became  
18                  more sophisticated so that you could do that  
19                  with very young babies.

20                        So, you got early intervention and of  
21                        course, this made the people who promoted  
22                        the oral method very happy because they  
23                        wanted to get in and do their programs  
24                        early, get the hearing aids on and  
25                        eventually cochlear implants started at two

1 or three years and are now down to within  
2 one year, and everybody knows that the  
3 sooner you start intervention with language,  
4 the better it's going to be. The people who  
5 promoted signing said absolutely, we want to  
6 get in with the signing early too because we  
7 want sign language to go. So, early  
8 invention was agreed by everybody, but it  
9 became dominated by the oral approach, as  
10 far as I can see. There are programs here  
11 and there that have signing in them in some  
12 way or other, but the spectrum moved towards  
13 that in terms of early intervention.

14 ADJUDICATOR:

15 Q. Are you speaking specifically in the  
16 Newfoundland case or are you speaking  
17 broadly?

18 A. Generally. Broadly.

19 MR. PENNEY:

20 Q. On pages 10 to 12, you talk about language  
21 development, and so I have a few questions  
22 about that. So, you sort of go through  
23 different models. We've heard a lot about  
24 this, but I think it might be helpful for  
25 you to explain some of them.

1           A.    Language development. Well, that's a  
2                    complex topic. Language is probably the  
3                    most advanced and complicated thing that  
4                    human beings and children do. It's just an  
5                    amazing capacity that we have and in terms  
6                    of theory, it was thought in the early days  
7                    by linguists and so on, by about the turn of  
8                    the century, going into the 1950s, that  
9                    language was learned the way mathematics is  
10                   learned, the way carpentry is learned. It's  
11                   a skill. It followed the principles of  
12                   learning, of reinforcement, of punishment,  
13                   of practice, and you would hear a word and  
14                   you would associate it with a picture or a  
15                   deed and then you would build it up and  
16                   language learned this way. Along comes a  
17                   famous linguist philosopher, Noam Chomsky,  
18                   and I think in 1956, and absolutely destroys  
19                   that way of thinking.

20                   And now, we know, although there are  
21                   some people who don't completely accept this  
22                   and have evidence to the contrary, that  
23                   language is a genetically based inborn  
24                   capacity in all human beings. Every human  
25                   being has this. The way it's an inborn

1 capacity, if everything is intact in your  
2 body to crawl or walk and so on. But, you  
3 have to have environmental input. It feeds  
4 it.

5 So, your capacity for language is  
6 inborn. You do not learn that. Your senses  
7 go out there and extract from the  
8 environment. If you're raised in China,  
9 you're going to hear the sounds of China and  
10 you're going to narrow down your language to  
11 that. If it's French, if it's English. So,  
12 that I think is an important thing to know  
13 about language; that it is acquired. It  
14 does involve input from the environment.

15 Now, what does this mean for the deaf  
16 child? So, of course, normally, if I can  
17 use that term, you have your hearing, you're  
18 born. We all know that babies babble for  
19 six months. Doesn't depend on hearing,  
20 nothing. It's an inborn capacity. After  
21 that time or during that time, it starts to  
22 narrow down to the sounds that you're  
23 hearing coming in. So, you're babbling  
24 these sounds out. You're hearing stuff  
25 coming in and it's driving you towards those



1 sounds. If you have a total hearing loss,  
2 of course, the babbling, been studied,  
3 starts to go down, down, down because that  
4 sensory information is not coming in.

5 So, without any help, whether it's a  
6 cochlear implant or a hearing aid, a deaf  
7 child, the child with limited hearing, is  
8 not going to be able to speak and they're  
9 not going to be able to understand language,  
10 except that we start to show that well,  
11 maybe they can lip read and so on. I'll go  
12 into that in maybe more detail.

13 Sign language, well, we have deaf  
14 people who have deaf children, both parents  
15 are deaf, two or three children deaf, they  
16 learn sign language naturally. They're  
17 fluent. They all communicate with each  
18 other. We've studied these children. They  
19 do well. They flourish and away we go. So,  
20 we know that sign language can be learned  
21 and acquired, I should say in the same way  
22 that speech can, if it is done in the early  
23 years and there's sensory input and you're  
24 in a normal community.

25 So, those are the - so, those are kind

1 of the facts of the situation. So, how do  
2 we translate that, you're asking me, in to  
3 models for educating deaf children? Well,  
4 it turns out to be tricky and if anybody  
5 tells you that they have the answer to that,  
6 I advise you to look carefully at what  
7 they're saying. We don't have the answer.  
8 This is a developing thing. People have  
9 different views. We have different  
10 evidence. We know certain facts. Yes, if  
11 you're deaf and you're exposed to a signing  
12 environment, you will acquire language in  
13 the same way as speech.

14 But, if you want the deaf child to  
15 learn speech and hearing and you want them  
16 to learn ASL, well now, that becomes a  
17 little trickier. All of a sudden, what do  
18 we look at? Well, the rise of bilingualism  
19 research, English, French. I'm in Quebec  
20 right now. I have the pleasure of working  
21 with some pioneers at McGill in bilingualism  
22 showing that well, you know, when it comes  
23 to English and French, actually if you start  
24 early, you can get almost native capacity in  
25 both languages. We have some prominent

1 politicians that can speak both languages  
2 almost perfectly. So, bilingualism becomes  
3 an interesting thing. Say, well, can we do  
4 that with signing and speaking? Well,  
5 there's a little bit of a difference.  
6 English and French, both accepted languages,  
7 historic language and so on. Sign language  
8 only recently being accepted. There's still  
9 some stigma there. There's a problem with  
10 people that don't want sign language to be  
11 used.

12 So, you can't really compare the  
13 bilingualism, but a model evolves saying we  
14 want a bilingualism, bicultural approach.  
15 Child's going to learn to speak, going to  
16 learn to hear to the best of their ability,  
17 but they're going to sign as well. Actually  
18 that may be a bit of a misnomer. That would  
19 be called the bilingual bimodal approach.  
20 The bicultural approach originally was for  
21 signing and later on reading and writing.  
22 There was no real emphasis on speaking.

23 More recently, there's now the  
24 bilingual bimodal approach which says  
25 signing and speaking without talking so much

1           about literacy. So, that was one model and  
2           a lot of people have tried to adopt that  
3           model. The specifics of exactly how you do  
4           that are very complicated. How do you do  
5           that when two hearing parents, you know, a  
6           month later or six months later or a year  
7           later, said "you know what, we're going to  
8           do a bilingual approach here. So, you're  
9           going to learn sign language and be able to  
10          read sign like a deaf person and we're going  
11          to have other people coming with you that  
12          can sign" and at the same time, your child  
13          has cochlear implants, but we want him to  
14          speak. So, you've got to speak clearly.  
15          You've got to listen. So, how exactly do  
16          you do that?

17                 One approach was, well, when the total  
18          communication movement turned into something  
19          that it was never set up to be, we're going  
20          to sign and we're going to talk at the same  
21          time, and so that'll satisfy the whole  
22          thing. The only problem is that ASL has a  
23          very different syntax and sequence. So,  
24          coding English with sign language was not  
25          something that most deaf people wanted to

1 hear about because they felt that was  
2 destroying their language and it wasn't the  
3 - and studies were done saying even though  
4 that common sense, a good thing to do, it  
5 may be not. There are still some people  
6 that do that. There are still situations  
7 where pedagogically that may make a lot of  
8 sense. Again, there's no one answer to  
9 this. So, that's bilingual bicultural,  
10 bilingual bimodal.

11 The so-called total communication  
12 approach, that was supposed to say look,  
13 this isn't about language. This is about  
14 communication. People need to communicate.  
15 You don't just communicate by language. You  
16 communicate by gesture. You communicate by  
17 action. You communicate by pictures. You  
18 communicate in every way. And we're going  
19 to stop saying you can only communicate this  
20 way or that way with a deaf child. You  
21 can't do this. You can't do that. It's  
22 going to be everything. Didn't work out  
23 that way because the school said okay, we're  
24 going to start signing but we're going to do  
25 signed English, manually coded English, and

1 so the deaf people that were supporting that  
2 for so many years, started to pull back and  
3 so this word "total communication" it sounds  
4 great. Let's use total communication. But  
5 what did it actually mean? Now it means -  
6 what it usually means now is oh, we're going  
7 to move away from the strictly oral program.  
8 After that, it doesn't seem to mean very  
9 much.

10 So, those are - there are other  
11 approaches. There's cued speech. Some  
12 people said well, we're going to do speech  
13 and we're going to do some signing to show  
14 the speech. There are many variations and  
15 models, but I think the ones I've talked  
16 about are the main ones.

17 Q. The next topic you talk about is  
18 psychosocial development. That's at page 12  
19 of your report, Dr. MacDougall. I wonder if  
20 you can talk about your findings in that  
21 regard.

22 A. Well, that's something that's certainly  
23 close to my heart. One of the things in  
24 talking to my parents and talking to older  
25 deaf people and so on is they say "well, you

1 know, you teachers and you people in school  
2 and you psychologists, you're all concerned  
3 about my language and you're all concerned  
4 about my communication and you keep telling  
5 me that I need more help and you keep  
6 sending me - pulling me out of class and  
7 sending me to therapy and okay, I'd like to  
8 improve my communication, but I'm just a  
9 kid. I want to play. I want to be like  
10 everybody else".

11 And so whether it's the signing  
12 approach or the oral approach or something  
13 in between, it's important to think these  
14 things only make sense if we look at the  
15 whole child, at their wellbeing, at their  
16 identity, at their sense of self, who they  
17 are, that they feel good, that they have  
18 friends, that they can communicate with each  
19 other.

20 So that there's a general feeling, I  
21 think if you talk to deaf community and if  
22 you look at the literature that there's been  
23 - and it sounds funny because there's an  
24 overemphasis on language and communication.  
25 In other words, it's part of the so-called

1 medical model. There's something wrong.  
2 Let's fix it. So, let's fix the hearing.  
3 Let's fix the language. Let's do this. And  
4 of course that makes some sense.

5 But a lot of the deaf community and the  
6 deaf people say "well, you know, I don't  
7 want to be in that model. Yeah, I want to  
8 maybe wear a hearing aid. I want to do  
9 this. I want to do that. But, I'm  
10 different. I see the world differently. I  
11 have a different way of being. So, I don't  
12 want the whole interaction by either my  
13 parents or by schools to be just focused on  
14 what I can't do. I want to focus on who I  
15 am, what I can do, all the good things in  
16 life." So, that's briefly what I mean by  
17 that.

18 Q. As you go down on page 12, onto page 13, you  
19 talk about deaf children with additional  
20 conditions. Can you talk about that a  
21 little bit?

22 A. Well, that's a very important thing. Back  
23 in the '80s, I did a study called the McGill  
24 Study of Deaf Children in Canada, and it was  
25 funded by the Department of Health,



1 Canadian, and by the Donner Canadian  
2 Foundation. We extended it up north and  
3 into Labrador and northern regions.

4 The study showed and confirmed what we  
5 already knew from other literature in North  
6 America and around the world that up to one-  
7 third of deaf children have an additional  
8 disabling condition, could be deaf  
9 blindness, could be deaf with a learning  
10 disability, could be deaf, yes, with  
11 cerebral palsy, yes, with mental health  
12 issues, with behavioural issues and so on.

13 And so that fact, one-third, one-third  
14 have additional issues. It was something  
15 that was in many ways overlooked by the big  
16 battle between the signing and the oral.  
17 That taking into account that many deaf  
18 children have additional issues that need to  
19 be taken into account. So, even if you're  
20 going to do speech or the - I mean,  
21 originally the doctors didn't want to do  
22 cochlear implant for anybody that had an  
23 additional condition. They said it wouldn't  
24 work. There was, I think, a big lawsuit in  
25 the United States said that's discrimination

1 and they won. So, now kids, deaf kids have  
2 additional conditions, as far as I know,  
3 they don't exclude them. They give cochlear  
4 implant, give hearing aids and so on.

5 But then it really becomes complicated  
6 because you have an additional condition and  
7 you're brought to a psychologist or you're  
8 brought to a teacher and they want  
9 assessments. Most of these assessments have  
10 not been standardized on kids with all kinds  
11 of subtle differences in vision and learning  
12 and brain function and motor function. So,  
13 what you're starting to get is the  
14 application of a kind of a normalization way  
15 of assessing applied to kids who are deaf,  
16 have all of that with loss of hearing, plus  
17 these other conditions. Again, if somebody  
18 says "we know exactly how to deal with  
19 that", it's just not true. We're working on  
20 it. There are research studies on it. We  
21 all have to work together.

22 So, taking into - that into account is  
23 very important, and to go back to your early  
24 question about the destructive nature of  
25 this controversy, it's particularly

1 destructive for people that have deaf  
2 children or deaf children who have  
3 additional conditions because in some ways  
4 they're not really part of the argument.  
5 Everybody's arguing about the other kids.  
6 Now, I may be stretching that a bit, but I  
7 think that it's a very important point.

8 Q. I actually jumped ahead. I had a couple  
9 more questions about page 12, and  
10 particularly under the topic of language  
11 development. First question is: you touch  
12 on the point incidental learning. Can you  
13 talk a little bit about that?

14 A. Yeah. Well, I think I touched on that, and  
15 that's that we know that language is not  
16 learned per se, it's acquired. Of course,  
17 learning is involved in it and when we talk  
18 about incidental learning, that's the  
19 learning that happens when you're watching  
20 TV, when you're out playing with your  
21 friends, when you're going to a party, just  
22 life, all of life. I mean, you don't learn  
23 language in school. You don't acquire  
24 language in school. School's just one part  
25 of your life and there they're going to, you

1 know, take special measures. If you have a  
2 speech problem, they'll try to correct that.  
3 If you're limited in vocabulary, they'll try  
4 to correct that. But they're not going to  
5 teach you language.

6 Now, I should say that that applies to  
7 first language. Second language learning is  
8 a whole different thing. I mean, people  
9 learn language when they're 20 years old, 30  
10 years old, 40 years old, and they use the  
11 term learning because it's not being  
12 acquired in the ordinary way. So, these are  
13 the complications that are involved as far  
14 as incidental learning. We know that you  
15 can't just teach language. You can't just  
16 focus on that. You acquire language. You  
17 acquire language by being in what we know as  
18 a natural environment and I think that's  
19 extremely important.

20 Q. And the other thing you touch on, which  
21 follows on that on page 12, is literacy.  
22 Can you talk a little bit about your  
23 findings there?

24 A. Well, I mean, that has been one of my main  
25 interests and I think if I look at the field

1 of deafness and so on, there may be disputes  
2 between signing and oral and so on, but what  
3 we all agree is that we have not been able  
4 to conquer, to overcome, to understand  
5 exactly why the average high school leaving  
6 level for deaf people is somewhere between  
7 age grade three to five. Now, to be fair,  
8 those are measures coming from English,  
9 which is often a second language from deaf  
10 and so on. But this becomes the main  
11 concern in the field that we're all trying  
12 to address.

13 You won't be surprised to hear that the  
14 people that promote sign language say the  
15 reason for the problem in literacy is early  
16 deprivation of sign language. Child hasn't  
17 been able to acquire language. How can you  
18 expect them to learn literacy? On the other  
19 side, the oral, say well literacy is based  
20 on five or six years of hearing and  
21 speaking. The letters of the alphabet are  
22 ABC. These are visual things that connect  
23 to auditory things and words are words that  
24 you hear and speak. So, we've got to get  
25 the implant. We've got to get sound in

1           there. We've got to get speech in there.  
2           And if we increase that, literacy will go  
3           up.

4                     The research studies, very  
5           controversial, yes, if you increase hearing  
6           and speech seems to have an effect on  
7           literacy. If you increase early language  
8           exposure for deaf signing, it increases  
9           literacy. But no one thing, in spite of the  
10          claims of the people, does the whole job. I  
11          can show you hundreds of studies arguing  
12          about this and it's something that we need  
13          to - we need to solve it because it's so  
14          important. I would say it's one of the main  
15          issues, unresolved issues in the field.

16          Q.    Okay. So, let's just move ahead a little  
17          bit. On page 13 and 14, you talk about  
18          professional training and certification in  
19          education and allied health. So, can you  
20          elaborate on this topic?

21          A.    Well again, this is fairly controversial.  
22          You can imagine that the whole business of  
23          who was going to be qualified to teach is  
24          connected to the great debate between  
25          signing and oral and so on. So, teacher

1 training for most people was jurisdictions  
2 now except that teachers involved with deaf  
3 should have teacher training and so on and  
4 so they have - we don't have as many  
5 programs in Canada as we need, that's for  
6 sure, but the early programs in Canada, I  
7 think it's fair to say, they followed. So,  
8 if oral approach was predominant, the  
9 teacher training was oral. As sign language  
10 started to be pushed by the deaf community,  
11 by professionals and so on, there was a push  
12 to those programs to start introducing some  
13 training for teachers around sign language.

14 I had a personal experience with this  
15 at McGill University. One of the leading  
16 oralists in the world, Dr. Daniel Ling, was  
17 at McGill when I was there in the early days  
18 and I was director of Mackay, and he was the  
19 director of the school for communication  
20 disorders at McGill, a very well-known  
21 department, and he proposed to run a teacher  
22 training program out of the Faculty of  
23 Medicine where the communication disorders  
24 were housed and it was going to be  
25 completely oral. So, I and members of the

1 deaf community and others went to McGill,  
2 had public arguments about this, mounted  
3 quite a campaign saying "look, fine, we're  
4 going to teach speech. We're going to have  
5 hearing aids". This was before cochlear  
6 implants. "But the teachers have got to  
7 know something about sign language. At  
8 least there's got to be something in there."  
9 But he refused and eventually that program  
10 did not go through. The Quebec Government  
11 finally went against it. So, that just  
12 gives you some sense of the teacher training  
13 programs.

14 Well, they're just reflections - well,  
15 it's two things. They affect what goes on,  
16 but what goes on in terms of the big battle  
17 affects what happens there. So, now,  
18 because of the pressure from sign language,  
19 most of the programs, as far as I know, have  
20 some deference to - well, you've got to  
21 learn about deaf. You've got to learn  
22 something about sign language. Some of them  
23 say you have to have sign skill at this  
24 level. Some say you have to be tested.  
25 Some say you don't. So, this varies



1           depending on the program.

2           If I look at the other side, on the  
3           oral, this is the so-called AVT, the  
4           auditory verbal therapy, they mainly have  
5           certificates given by the Alexander Graham  
6           Bell Association and Alexander Graham Bell,  
7           as you know, was a huge advocate of oralism,  
8           is not well regarded by the signing deaf  
9           community because he advocated the closing  
10          of schools for the deaf and so on. But,  
11          that is a legitimate organization and  
12          represents highly qualified professionals.  
13          They take special certification in AVT  
14          therapy and they become highly skilled in  
15          that.

16          So, it's kind of not really that  
17          balance. So, if you're in the oral thing,  
18          you're dealing with therapists that are  
19          certified, at least by one organization. On  
20          the signing side, it's not that clear about  
21          certification, about levels of skill and so  
22          on, which I'm sure we'll get into.

23          Q. As we move on through pages 15 to 21 of your  
24          report, you talk about a review of Carter's  
25          programs. So, let's just walk through that

1 and we'll go sort of, you know, by a few  
2 paragraphs at a time. So, in the first  
3 paragraph, you talk about your overall  
4 impressions. Can you outline that for the  
5 Adjudicator?

6 A. Yeah. If I'm looking at the actual  
7 frontline program and all the people  
8 involved, the impression that I get, reading  
9 the reports that I've been given, is that  
10 these people are highly engaged. They're  
11 highly motivated to provide the best  
12 programs for Carter. I see - we'll get to  
13 the gaps and so on, which I've recognized,  
14 but in a very short period of time, there  
15 was an attempt to get outside evaluations  
16 from speech therapists, from OT, from  
17 physio, from psychologists, educational  
18 psychologists, others and so on. So, it  
19 seemed like a lot of people were certainly  
20 concerned with Carter, including, of course,  
21 Mr. and Mrs. Churchill who were very strong  
22 advocates and involved at every turn.

23 So, my overall impression is that,  
24 again, Churchills, Mr. and Mrs. Churchill  
25 very strong appropriate advocates for their

1 child, but within the, you know, the  
2 teachers and the system itself, the people  
3 that were involved, I think were highly  
4 dedicated and that's my overall impression.

5 Q. And then in paragraphs two and three, you  
6 talk about some of the early years and  
7 moving onwards.

8 A. Well, I think that part of the problem was  
9 we're in transition period from - and this  
10 has been a problem in the field of deafness  
11 that's had a terrible effect of changing  
12 jurisdictions from health to education, back  
13 to health, back to education, who has the  
14 jurisdiction, and this is something that  
15 happened here, as far as I know. There was  
16 some switching going on. Right at that  
17 crucial age where you're going from the  
18 health programs to kindergarten, all of a  
19 sudden you're changing jurisdictions, you're  
20 changing people and so on. But, within a  
21 very short period of time, meetings were  
22 held, programs were discussed, decisions  
23 were taken to get outside help, about what  
24 to do to meet the challenges involved here  
25 and so on.

1           So again, it seems to me that quite a  
2           few people were involved in this. I don't  
3           see any attempt to not deal with the  
4           problems. How it was actually implemented  
5           is another question.

6           Q.   So, you've already touched on this, but in  
7           paragraphs four and eight, you talk a little  
8           bit more about some of these meetings and  
9           some of these, you know, findings and  
10          consensus, consensuses what were reached.  
11          Can you walk us through that?

12          A.   Yeah. If I read over the various reports  
13          that were taken by professionals here, by  
14          the teachers, they all deal with specific  
15          elements. The one thing that jumps out is  
16          that everybody liked Carter. They said he  
17          was a likeable child. He was gregarious.  
18          He was participating and so on.

19                So, you know, it seems like there was a  
20                lot going on to deal in a holistic way with  
21                Carter's general welfare and there are many  
22                detailed reports, both from here and  
23                certainly from APSEA, a large range of  
24                people looking at, you know, everything from  
25                intellectual, cognitive, specific language

1 elements and so on. So, there certainly was  
2 an attempt to try to understand the  
3 situation, to try to find information that  
4 would help with the programming and so on.  
5 I don't think there was any lack there at  
6 all.

7 Q. And then in paragraphs 9 to 13, you talk a  
8 little bit about the time leading up to  
9 kindergarten and what transpired. So, just  
10 talk a little bit about that for me, please.

11 A. Yeah. Well, it seems there were clear gaps  
12 there in terms of the programming,  
13 especially in terms of the language, how  
14 qualified was the teacher, the need for  
15 student assistants. All of those things  
16 were certainly, and I think I've  
17 acknowledged in my report, not ideal, but  
18 they were certainly being discussed and  
19 dealt with and acknowledged. But for sure,  
20 they were less than ideal. And what we can  
21 see that kind of reinforces that they were  
22 acknowledged is things did begin to change.

23 Now, I'm pretty sure that a lot of that  
24 was driven by the strong advocacy of Mr. and  
25 Mrs. Churchill, but it was also, as far as I

1 know, advocacy from teachers, from others in  
2 the program, from the people from the  
3 Janeway and so on. So, there was - change  
4 was happening. The issues, and I think I'll  
5 get to that, in my view, were more  
6 structural and systemic than they were with  
7 the actual people giving the program. They  
8 were operating in a very unclear system.

9 Q. In paragraphs 14 to 17, you talk about sort  
10 of the extent of ASL support and ASL  
11 standards. Can you outline sort of your  
12 conclusions there?

13 A. Yeah. This is again a complicated question.  
14 I mean, obviously if you're going to be  
15 saying that you want your child to mainly  
16 learn ASL or acquire ASL shall we say,  
17 acquire and learn about ASL and so on, your  
18 natural feeling is that well, I want that  
19 child to be next to people who know how to  
20 sign and people who are qualified in this  
21 and people who have high level of  
22 functioning and so on and so forth. I mean  
23 that makes a lot of common sense.

24 The only thing is that you have to  
25 balance that with well, we know that

1 language is acquired and it's going to be  
2 acquired by having peers, by what happens at  
3 the home, by what happens at school, by what  
4 happens in the yard and so on. Yes, the  
5 signing skill level of a teacher and so on  
6 is going to be important, but there's no  
7 real studies to say well, if you have this  
8 high level that that's going to help a  
9 kindergarten child or child that's three  
10 years old learn more than if you have a  
11 slightly lower level. There's a range there  
12 that we don't really know.

13 But what we do know, and I think this  
14 was included in what Mr. and Mrs. Churchill  
15 wanted, was an environment, was a signing  
16 environment. So, yes, the particular skill  
17 level and so on, I think is important, but  
18 it's certainly not the only factor, and  
19 there are many difficulties with  
20 establishing what that is, what elements are  
21 important for a child at five or six or  
22 seven years old, as opposed to a child that  
23 would be 15 or 16 or so on. So, it's going  
24 to be different. So, that's a complicated  
25 business, I think.

1 Q. Paragraphs 18 to 20, you talk about the  
2 policies of the NLESD, the School District.  
3 Do you want to outline your findings there?

4 A. Well, I was given the documents and I think  
5 that - I mean, if you look at the general  
6 policies and so on, they're all very  
7 enlightened. We give a quality education  
8 here, all kinds of stipulations about having  
9 meetings involving professionals and so on.  
10 I won't review everything. So, I think  
11 those are very enlightened documents.

12 When you start to look at  
13 exceptionalities, it gets a little more  
14 vague. It lists various exceptionalities  
15 that should be dealt with and starts to  
16 speak, I think, fairly vaguely then about  
17 the exact supports that will be given, when  
18 they will be given, how it will change, what  
19 location they will be given, where they will  
20 be given and so on. So, I think that the  
21 general approach is very enlightened. I  
22 think it's very well meaning and I think  
23 it's very consistent with other  
24 jurisdictions. But, I don't think it really  
25 gives a lot of guidance for the actual



1           delivering of actual programs for the range  
2           of children that are going to have to be  
3           there.

4           Q.   Paragraphs 21 to 23, you discuss some of the  
5           assessments in the educational context. I  
6           don't know if you can talk about that a  
7           little bit.

8           A.   Sorry, that was 21 to 23?

9           Q.   Yes.

10          A.   Well, again, if I look at the policies and  
11          so on, I see some mention of sign language,  
12          but it seems like it's almost mentioned to  
13          be equivalent to - it's more like a therapy  
14          than a language. It's more like well, we're  
15          doing AVT therapy and yes, there are some  
16          children that are going to require sign  
17          language. But it doesn't say they're going  
18          to require an environment that supports it;  
19          they're going to be cultural identity issues  
20          here, et cetera, et cetera. I don't see  
21          that. So, it's kind of a limited  
22          discussion. It seems like there's a default  
23          position and then as far as sign language is  
24          concerned, yes, it can come into it, but I  
25          didn't see any real clear ways of

1 implementation. Maybe I missed it, but I  
2 didn't see it.

3 Q. Okay. You have some other comments.  
4 Paragraph 26, you talk about no reference to  
5 the bilingual bicultural model. Can you  
6 explain that?

7 A. Yeah. I guess that surprised me a bit, and  
8 again, maybe I missed it, although I thought  
9 I read it fairly carefully, that if we're  
10 going to introduce sign language, and again,  
11 this sort of reinforces what I just said,  
12 neither in the policies nor in psychology  
13 reports or teacher reports, no, I don't see  
14 "well, if we're going to use sign language,  
15 what model are we going to use? Is it going  
16 to be bilingual bicultural? Are we really  
17 going to promote deaf culture here or is it  
18 just bilingual bimodal and we're going to  
19 have signing and speaking, but not so much  
20 about culture or anything like that?"

21 So, it surprised me that - I mean, I  
22 see the words "total communication" thrown  
23 around, but I think what I've tried to  
24 explain is that can mean almost anything.  
25 That is not a specific thing. To just say

1           "well, we're doing oral only now, but oh,  
2           Carter needs total communication", I don't  
3           know what that means. I'm not sure how -  
4           what Mr. and Mrs. Churchill would know or  
5           what anybody would know because as many  
6           people as you would ask, they would give you  
7           a different answer. So, those things  
8           weren't really being addressed.

9                         Now, for specialized teachers of the  
10           deaf and so on, they would know more. They  
11           would - obviously they took that advice and  
12           they applied it in the way they could, given  
13           the situation they were in because they  
14           understand the various things that go on.  
15           So, in terms of actual delivery, people were  
16           able to implement based on their learning  
17           and understanding and so on, but not, as far  
18           as I can see, as a result of clear  
19           directions from the overarching policies.

20           Q.    Paragraph 28, you sort of talk about the  
21           current situation. I wonder if you can  
22           speak about that for a moment.

23           A.    Well, the general feeling you get reading  
24           the reports that I have is that more and  
25           more people get involved. There's more very

1 strong advocacy on the part of parents, Mr.  
2 and Mrs. Churchill, and eventually each  
3 year, it seems that the service is improved.  
4 There are more people in the classroom.  
5 There's more attention given to sign  
6 language. The qualifications are being  
7 questioned and then the main thing, as far  
8 as I'm concerned, I mean, these things are  
9 all important, but they're not  
10 determinative. To me, the determinative  
11 part is the social part, the part that  
12 eventually, as far as I understand, started  
13 to have a classroom with peers, with others  
14 that there could be communication, with  
15 friendships, and with some role models and  
16 so on.

17 So, you know, if you go from the start,  
18 yes, you see problems, but there is  
19 engagement, a lot of professionals involved,  
20 and it does start to get better. But it  
21 seemed to require a lot of pushing, both  
22 from parents and from teachers and from  
23 everybody to make that happen.

24 Now, you know, that's not unusual, as  
25 far as my own experience in schools and so

1 on. It's a bureaucracy. It's tough. The  
2 resources are limited. It's often not  
3 ideal. But in this case, it clearly did get  
4 better.

5 Q. Pages 19 and 20, you have some conclusions  
6 and recommendations, or 19 to 21, I guess.  
7 So, at a high level, can you outline for the  
8 Adjudicator what were your conclusions? And  
9 maybe if I can walk you through -

10 A. Well, there's various sections here.

11 Q. Yeah, so let's just walk through those.

12 A. Yeah.

13 Q. So, let's start with the first subheading,  
14 compliance with legislation and practice in  
15 other jurisdictions.

16 A. Yeah, I think that, you know, that's  
17 important in a large sense, that's for sure.  
18 We have legislation. But, the legislation  
19 is reasonably vague. I think that it's fair  
20 to say that the people in the schools and  
21 all of the professionals involved are aware  
22 of the legislation, are concerned with human  
23 rights, are concerned with developing  
24 quality education and so on. I don't think  
25 we're going to make much progress solving

1 the particulars by going to UN victims about  
2 what to do with deaf and so on. I think  
3 these things are important: the recognition  
4 of sign language, the rights of deaf people  
5 and so on. I think that's accepted, that  
6 framework. So, and I think it - you know,  
7 we're operating within that framework,  
8 everybody here. I don't see any clear  
9 violations of that. But again, I'm not a  
10 legal expert on that. I just have my own  
11 experiences and so on. So, I think that  
12 framework is important, but I do think that  
13 we are all operating under this framework  
14 here. Everybody is attempting, within  
15 resources and so on and so forth, to meet  
16 the various legal and human rights  
17 legislation that would come from again the  
18 UN and other bodies like that.

19 Q. The next topic you talk about is the  
20 compliance with best practice based on  
21 research.

22 A. Yeah. Well, I mean, there I talk about, you  
23 know, the wide field then, whether it's  
24 communication, mainstreaming, inclusion,  
25 early intervention, language development,

1 educational models, psychosocial  
2 development, children with exceptionalities,  
3 and training and communication, and  
4 certification. So, I could go through each  
5 one of those if you like?

6 Q. Yeah, please. Yeah, so let's talk about -  
7 and your findings there, the paragraph you  
8 have under compliance with best practice  
9 based on research, is that its own  
10 standalone?

11 A. Yeah. Well, I mean, it's always the case  
12 that you expect research is going to be  
13 ahead of practice, right. I mean, and  
14 research is controversial and eventually  
15 there gets to be a kind of consensus and  
16 then you start to try to develop that into  
17 practice and programming and so on, and I  
18 think that's going on and I think here in  
19 Newfoundland, people in the education  
20 department and the school board and so on  
21 are all paying attention to that and that's  
22 going on.

23 As far as the communication, again, I  
24 think you know that I'm saying that that's a  
25 big unresolved controversy. I mean, we're

1 here concentrating, I realize, on education,  
2 on age five to whatever, and we're - I'm  
3 being asked to discuss language and  
4 communication. But what I know and what  
5 everybody knows is the important things  
6 happen between age zero and age four. I  
7 mean, yes, there's a critical period for  
8 language acquisition supposedly up to about  
9 14, but there's kind of a - it's even more  
10 critical in those very early years. So,  
11 what happened in those very early years is  
12 determinative of the state that we have  
13 right now with Carter and certainly had in  
14 grade five. So, he came to grade five with  
15 something happening to him in those very -

16 Q. Sorry, do you mean kindergarten? When you  
17 say grade five, do you mean kindergarten?

18 A. Sorry, grade kindergarten. You know, he  
19 came with all of that programming and I  
20 realize it's not the subject we're here  
21 today but it's very hard to discuss  
22 communication policies and education without  
23 discussing communication policies that  
24 happen between zero and four. I mean, it  
25 doesn't make any sense to me. That policy



1 is going to have to be consistent. You  
2 can't have a big break happening at five  
3 years old. I mean, the child doesn't know  
4 anything about health or education and  
5 neither do the parents for that matter, and  
6 say "look, this is my child and there's a  
7 continuum here and I want all you  
8 professionals and everybody else to get on  
9 at least the same track or at least offer me  
10 options and tell me what the risks and  
11 benefits are" and so on. And I think that  
12 is something that needs to be done here for  
13 sure.

14 Q. The next part of your conclusions are on  
15 mainstreaming, page 20.

16 A. Well again, that's a touchy topic. I don't  
17 think we're here to re-litigate the closing  
18 of the School for the Deaf, but it's  
19 definitely the elephant in the room. I  
20 mean, if you look - I'm talking about the  
21 history of education, the enlightenment in  
22 education happened because schools for the  
23 deaf were made. That's where people got  
24 together. That's where the critical mass  
25 was and so on.

1                   And in Newfoundland here, I mean, I was  
2                   part of the movement to get that school  
3                   established. When I came here, the kids  
4                   were at the end of an airport in Torbay with  
5                   airplanes going over. Every time I sat  
6                   there, the whole classroom rattled. And so,  
7                   certainly, I tried to advocate and a state  
8                   of the art school was made here with  
9                   fantastic teachers and so on.

10                  But, if you live in Makkovik or you  
11                  lived in Labrador or Corner Brook, you had  
12                  to send your kid all the way to St. John's.  
13                  So, that's not so great either. So, it  
14                  wasn't - it's not a - it's ideal from one  
15                  point of view, a lot of good people, a lot  
16                  of community, but from another point of  
17                  view, the kids are ripped away from their  
18                  parents. So, how do you deal with that?  
19                  That's the - that's what we're facing here.

20                  So, we're trying to develop a model  
21                  that takes into account the need to have  
22                  other deaf kids communicating, for parents  
23                  to be able to get together, for connections  
24                  with the deaf community, and yes, for the  
25                  cochlear implant and developing speech and

1 hearing and all that business. How do you  
2 do that? We're not going to solve that  
3 here. Newfoundland's not going to solve  
4 that all by itself. They're working on it.  
5 And I think we're as advanced here as  
6 anywhere in this. But, it's - you know, all  
7 the schools aren't closed. Some schools are  
8 still there.

9 My own view of it is we can't separate  
10 education, early health, education from the  
11 rest of life. Deaf people are going to get  
12 older. They're going to want to go to high  
13 school. They're going to want to go to  
14 university. Where are the interpreters  
15 there? Is the university prepared? Then,  
16 where are the jobs? Is there going to be an  
17 interpreter there? Is the training there?  
18 Do the people understand?

19 Then they get older. The deaf  
20 community in Newfoundland, like the general  
21 demographic, of which I am now a part, are  
22 getting older. What's going to happen with  
23 seniors? The same arguments are going to  
24 occur. Should we have a special place for  
25 deaf seniors so they can all communicate?

1 Or are we going to stick one deaf senior  
2 here in a home for the elderly where they  
3 can't communicate?

4 I faced this with my own mother. I  
5 tried to look after her as she got old, in  
6 her 80s, in Ottawa. I brought her to  
7 Montreal. I couldn't do it anymore. To get  
8 the service I need, I had to send her to  
9 Toronto to the Rumball Centre where there  
10 was a senior centre where everybody could  
11 sign. She saw all her old friends from the  
12 Belleville School for the Deaf. But I was  
13 in Montreal. Every weekend, I'd take the  
14 train and drive in the middle of the winter  
15 back and forth to see my mother. She didn't  
16 like that. I didn't like that. But, I had  
17 to decide what was more important.

18 Those are things that are not just - we  
19 can't just talk about education and  
20 (unintelligible) you know, early education.  
21 Then it's elementary, then it's this. Look,  
22 we need a centre for the deaf. Maybe it's  
23 not a school for the deaf. We need critical  
24 mass of people so that if something happens  
25 with a deaf person, you need advice, you

1 know where to go. The teachers right now  
2 are the main people here that know about the  
3 deaf, apart from the Newfoundland  
4 Association. So, we can't separate that  
5 out.

6 So, I have my own ideas about this.  
7 Other people do. I think we can solve this  
8 problem. Technology now allows us to do  
9 videoconferencing and so on. This is  
10 tremendous breakthrough, computers. So,  
11 there's going to be a way in Labrador.  
12 There's got to be a way. I've been to every  
13 community in Labrador in my study. I've  
14 visited deaf people there. I have visited  
15 deaf people in remote areas of Newfoundland.  
16 I know what - something about the situation  
17 there. There are ways to do this and I  
18 think we have to confront it. We have to  
19 admit these are problems. Let's all get  
20 together and stop fighting and solve these  
21 problems.

22 Q. The last thing you talk about in your report  
23 are early intervention programs, language  
24 development and psychosocial development.  
25 Just give you a chance to refresh your

1 memory on that, Dr. MacDougall.

2 A. Yeah.

3 Q. I think you have touched on some of these  
4 points already.

5 A. Well again, I guess I'm saying that - just  
6 reinforcing what I just said. I don't think  
7 the school board at the school level is  
8 going to be able to solve this communication  
9 issue by itself. This has to be done in  
10 close collaboration with the Janeway. They  
11 are the people that start.

12 Now, I know there's some education  
13 involved and so on, but it's not a coherent  
14 - as far as I can see, it's not a coherent  
15 system that says - I mean, parents need to  
16 know "my child is deaf. Cochlear implant,  
17 yes or no. If I get the implant, what are  
18 the risks? If my child is deaf and has  
19 cerebral palsy, are there other risks? Is  
20 that going to affect signing? Is that going  
21 to affect speech? Do I know what those  
22 risks are? Do I know what the programs will  
23 be?" Are you told all of that at the start?  
24 If my child is deaf and blind, is there -

25 So, these things have to be confronted

1 and explained and so that when the child  
2 ends up at the school, there are no big  
3 surprises. They've been involved all the  
4 way. There needs to be - I know there's  
5 jurisdictional problems and funding  
6 problems, but surely for the good of the  
7 deaf children and their families, we can  
8 overcome that and have a unified system so  
9 the Churchills know when Carter is my age  
10 and has to go perhaps for senior services  
11 that there will be somebody communicating  
12 with him and so on and so forth.

13 What I found with many parents is  
14 they're very concerned about the future.  
15 What happens when they're gone? Who's going  
16 to be there? Who's going to - and so, this,  
17 we have to get out of the silos. We have to  
18 discuss it in the big picture. That's just  
19 my own personal opinion obviously.

20 I think there are a lot of other people  
21 around here that want to do that. I think  
22 there are highly qualified and motivated  
23 people and I think it can be done. But we  
24 have to admit what we don't know. We have  
25 to get together and we have to solve it, and

1           it will help education and it will fill in  
2           some of those gaps and so on.

3           Q.    I note that it's noon.  I have a few more  
4           minutes with Dr. MacDougall on the rebuttal  
5           report, on his rebuttal report.  I don't  
6           know if you want to break for lunch now and  
7           then finish that off.  It'll probably be  
8           another 15 or 20 minutes.

9   ADJUDICATOR:

10          Q.    Any issue with that?

11   MR. REES:

12          Q.    I'm - I mean, look, I'm in the Commission's  
13                hands.  I'm quite happy to push through.

14   ADJUDICATOR:

15          Q.    You're looking to take the break now?

16   MR. PENNEY:

17          Q.    How are you, Dr. MacDougall?

18          A.    I'm good.

19          Q.    Okay.  All right.  Let's - you had an  
20                opportunity to read Dr. Snoddon's report and  
21                her rebuttal to your report and you produced  
22                a short rebuttal report.  Do you have that  
23                in front of you?

24          A.    Yes, I do.

25          Q.    Do you have it there, Dr. MacDougall?



1           A.    I believe so, yeah.

2           Q.    Okay.  So, on the first two pages, you sort  
3                   of talk about sort of the 13 points that Dr.  
4                   MacDougall - or sorry, that Dr. Snoddon  
5                   makes.  I understand that some of them you  
6                   generally agree with her, but perhaps we can  
7                   just talk through some of your comments on -  
8                   let's start with points five, six and seven.  
9                   So, first, number five is on ASL competency  
10                  for teachers.

11          A.    Yeah.  Yeah, I think this is a struggle  
12                  that's been happening ever since the people  
13                  that promote ASL, including myself, have  
14                  been engaged in, to try to get the people  
15                  that are involved with deaf people to learn  
16                  sign language, to become competent in it and  
17                  so on.  And part of that movement is the  
18                  idea of giving people tests and doing  
19                  assessments and so on of language, and I  
20                  understand that.  But, I think it's  
21                  important to think about communication.  
22                  Yes, the level of communication and so on,  
23                  and you look at different places, some  
24                  teacher training programs ask for taking a  
25                  test and making sure that a person has a

1           certain competency.

2           These tests, I can talk about that  
3           separately, have their own difficulties, and  
4           I don't think should be done in isolation  
5           and should be done in context because  
6           communication is a complicated thing.  
7           Communicating with a five-year-old is  
8           different than communicating with a college  
9           student. So, you're going to require  
10          different skills, different understandings  
11          and so on.

12          So, Dr. Snoddon, you know, correctly  
13          talks about ASL competency. It's something  
14          that is in the province of teacher training  
15          programs and if we want to change that, I  
16          think we have to lobby those programs to say  
17          "look, you're not" - I mean, they started  
18          out there was no competency. For as many  
19          years as I there, this is a recent  
20          development to have teachers of the deaf  
21          even know anything about sign language. So,  
22          this has been a slow movement, but it's  
23          gaining a lot of traction. So, we need to  
24          put pressures on the teacher training  
25          programs.

1           But they're going to hopefully take a  
2           sophisticated approach in providing not just  
3           courses, but getting the deaf people to  
4           interact with the deaf community, with deaf  
5           children. And of course, they interact with  
6           deaf children in their training, but it's  
7           the community that they need to learn  
8           signing, yes, from courses and yes, there  
9           will be tests to determine what their level  
10          is and so on.

11           And then when Newfoundland or others  
12          hire, they know, they can feel well, we've  
13          hired from York, from the Mount, we've hired  
14          from Alberta or wherever, that those people  
15          will - we want to know sign language and  
16          we're happy that there or we're not happy  
17          and we're going to lobby. And you know, I  
18          guess the boards themselves -- I mean, I'm a  
19          psychologist, I have to do continuing  
20          education credits, upgrading all the time.  
21          For sure we should make available courses  
22          and so on so that - for teachers and any  
23          professionals and say "well, I'm going to  
24          take that course. I need those credits to  
25          keep my standing and my certificate".

1           But again, when it comes to language, I  
2           don't know how many of you have taken a  
3           language course, but it's not a happy, great  
4           way to learn a language, right. And so, you  
5           got to get out there in the community. It's  
6           got to be a social thing. So, ways of doing  
7           that are important.

8           So, to get back to Dr. Snoddon's point,  
9           yes, various programs have standards and so  
10          on with regard to that. I don't think  
11          there's a specific standard in Newfoundland.  
12          The standard is to hire a qualified teacher  
13          of the deaf and presumably they would have  
14          that built in. If they don't, well, you  
15          don't have to hire them, you know. The  
16          problem we have right now is there's such a  
17          shortage of people, whether they know sign  
18          language or not, and most of them certainly  
19          have some background in that.

20          Q. Point seven talks about the definition of a  
21          meaningful environment. Do you want to just  
22          talk about that point there that you make?

23          A. Again, I think in general Dr. Snoddon, in  
24          this and others, is talking about  
25          aspirational goals and it's hard to - as I

1           said, I don't disagree with most of them,  
2           that's for sure. If you're going to have a  
3           commitment to deaf children having sign  
4           language as their primary language, then  
5           you're going to have to have early on a  
6           social environment, a positive environment,  
7           an environment where they can develop their  
8           identity, where they have role models and so  
9           on. And this is going to have to involve  
10          obviously the deaf community and other deaf  
11          parents and other deaf children and so on.  
12          And if you don't have that, yes, it's going  
13          to affect the development of that child,  
14          about their identity and so on and so forth.

15          Q. Point 12, you talk about other jurisdictions  
16          versus Newfoundland and Labrador. Just  
17          refresh - take a moment to just refresh  
18          yourself on that and then if you could  
19          explain that to the Adjudicator, please?

20          A. Well, I think in her report she mentions,  
21          and I do too, I think I put some people up,  
22          to look at the different jurisdictions.  
23          Ontario's a bigger jurisdiction. They have  
24          - in terms of the training, they actually  
25          have two models. You can qualify under the

1 AVT or the sign. They've kind of got a - I  
2 don't know if it's an either/or approach,  
3 but they clearly at least distinguish two  
4 different models. And if you look at some  
5 of the other jurisdictions, they have more  
6 detail and exactly what the programs would  
7 be and so on and so forth.

8 But again, we have qualified teachers  
9 here. We have a commitment to the basic  
10 principles and so on. So, it's not all that  
11 different here. It's just compared to some  
12 jurisdictions, maybe California or something  
13 like that, you go to North Ridge or you go  
14 to Riverside School where I visited, you're  
15 going to see, you know, much more detailed  
16 approaches in terms of saying "well, we  
17 follow the bilingual method here and what  
18 that means is this; that there's going to be  
19 yes, speech and hearing and we're going to  
20 do the implant and we're going to have the  
21 child with other deaf kids. We're going to"  
22 - you know, spell it all out.

23 But I think she's right, it isn't  
24 spelled out here and if you don't have that,  
25 it will have its effect. Exactly what that

1 effect will be, nobody really knows.

2 Q. And then you had a couple comments on the  
3 bottom of page two to the top of page three.  
4 So, like I think the last two paragraphs on  
5 page two and beginning of page three.

6 A. Yeah, I think, as far as I can see anyway,  
7 Dr. Snoddon has put forward some very good  
8 points about the research, about the ideals  
9 involved in programming and children that  
10 are going to have ASL as their primary  
11 language. And as I've gone through, most of  
12 them I don't disagree. But, I don't think  
13 there seems to be that much actual  
14 connection to the actual programming that  
15 was going on here with Carter. I think it's  
16 left to make inferences. Well, if you have  
17 somebody with a high level of sign language,  
18 that's a good thing. If that isn't there,  
19 then that's a bad thing. So, I mean, you  
20 have to draw those inferences. But I don't  
21 think it's done in specific and it doesn't  
22 specifically refer to actual harms that have  
23 happened or been measured or anything like  
24 that. And that's fair enough. I think it's  
25 just looking at the big picture.

1           There seems to be little or no mention  
2           or very little mention of the impact of the  
3           implant itself and what happened in the  
4           early years and whether that is - the extent  
5           to which - from reading the reports, that's  
6           a complicated thing. I mean, is it - yes,  
7           it's providing some benefit. What benefit?  
8           Not certain things. Yes, other things.  
9           That's complicated. And how does that  
10          relate to learning sign language? So, if  
11          you're going to speak and you're going to  
12          sign, are you going to do it the same time?  
13          Are you going to do one or the other? So,  
14          these are big aspirational things that have  
15          been put forward, but they don't, I don't  
16          think, translate to what exactly do you do.

17                 And then, of course, it's very  
18                 important that take into account the fact  
19                 that Carter has cerebral palsy. That  
20                 affects his ability to speak. It affects  
21                 his ability to sign. We know that that is  
22                 very important for when you're acquiring  
23                 language, not only do you receive it, you  
24                 have to put it out. So, when there's an  
25                 issue there, that is going to affect



1 language. How is it going to - you know,  
2 that's individual. You have to rely on the  
3 assessments of the professionals, the  
4 opinions of the parents and so on. These  
5 are complicated things and we don't really  
6 have the answer to it, but I don't think we  
7 can ignore that. That impacts acquisition  
8 of language, no doubt about it.

9 You have got to - there's a motor  
10 aspect. Cerebral palsy affects - doesn't  
11 affect all the other cortical things,  
12 intelligence and so on. That's absolutely  
13 true. But, it does affect the motor aspect  
14 and speaking and being able to sign is  
15 important in learning language.

16 Now, Carter seems to have been able to  
17 overcome a lot of that. People are working  
18 with that and I think they will continue to  
19 know more about it and study it and do the  
20 appropriate things. But it has to be taken  
21 into account.

22 It goes back to my issue that, you  
23 know, when we're promoting an ideal model of  
24 one of the models of education, hey, let's  
25 take into account that one-third have other

1 issues that need to be taken into account.  
2 This is tricky. This is difficult and we  
3 need to leave it to the experts and  
4 collaboration to solve this, and there's no  
5 magic wand on this.

6 Q. And I know on pages four to seven, you talk  
7 about her rebuttal report, so her rebuttal  
8 report to your report. I mean, I think it's  
9 - your comments are fairly self-evident. Is  
10 there anything in particular you want to add  
11 or anything further you want to add to your  
12 direct examination here today, Dr.  
13 MacDougall?

14 A. Well, I guess, I have to mention *Eldridge*  
15 because that's something I've weighed in on.  
16 I wrote an article for the Globe and Mail  
17 that got me as much response as anything  
18 I've ever written actually about my father's  
19 experience accessing health care and the  
20 importance of the *Eldridge* decision for  
21 accessing health care; that deaf people who  
22 use sign language have the right to have a  
23 sign language interpreter. This was a  
24 breakthrough unanimous Supreme Court  
25 decision.

1                   And I wrote about the sad case of my  
2                   father in Ottawa who had a heart attack and  
3                   was brought to the hospital and they  
4                   wouldn't even let him in the hospital. They  
5                   couldn't communicate with him and instead of  
6                   thinking he had a heart attack, they brought  
7                   him to the mental hospital. That happened.  
8                   I had to go rushing down just before  
9                   Christmas and bail that out and get him  
10                  moved back to the hospital and so on. So, I  
11                  know something about *Eldridge*.

12                 But, I also know that - and I've gone  
13                 to many workshops and so on about that and  
14                 everybody would like to use that to say  
15                 well, that means that we should have sign  
16                 language in the schools and so on. And yes,  
17                 it does, in a general way, contribute to  
18                 that. But the Court made it very clear that  
19                 this was specific; that there was a right;  
20                 that communication was an essential element  
21                 of medical care. If you couldn't  
22                 communicate, you couldn't give it. Okay.  
23                 Deaf person already knows sign language.  
24                 Here's an interpreter. Give it.

25                 A key factor in the *Eldridge* decision,

1           which isn't mentioned here and so on,  
2           because everybody argued - all the - most of  
3           the provinces argued against *Eldridge* by the  
4           way saying it was going to cost thousands  
5           and it was going to be unrealistic. Why  
6           couldn't you read and write? Why couldn't  
7           you read and write with the patient? And  
8           they said "well, it's because most deaf  
9           people, for reasons unknown, or at least in  
10          debate, don't have the written language  
11          skills to make unequivocal communication in  
12          the health system". So, that's why I say  
13          that is one of the main things.

14                 So, yes, we can look at something like  
15          *Eldridge*. It affirms sign language for  
16          people that already know it. It affirms the  
17          right to interpretation. But as far as I  
18          know, it has never been interpreted to mean  
19          very much specifically about educational  
20          programming. It does give a general feeling  
21          about sign language and so, you know, to say  
22          that I didn't take *Eldridge* into account, I  
23          did take *Eldridge* into account.

24          Q. I think those - okay, thank you, Dr.  
25          MacDougall. Those are my questions. I

1 think we'll probably - unless Mr.  
2 Adjudicator, you had some questions while  
3 they're rest, I think we'll take a break.

4 ADJUDICATOR:

5 Q. Yeah, let's adjourn and take the -

6 MR. REES:

7 Q. Mr. Adjudicator, look, can I ask - and I  
8 know it would be unusual, we usually like to  
9 clean break, but there's about three minutes  
10 worth of questions that I'd like to be able  
11 to ask because it will greatly inform what I  
12 do over the lunch break. Would I be able to  
13 ask those three minutes' worth of questions?

14 ADJUDICATOR:

15 Q. Any issue with that?

16 MR. PENNEY:

17 Q. No.

18 ADJUDICATOR:

19 Q. Go ahead.

20 DR. JAMES MACDOUGALL, CROSS-EXAMINATION BY MR. KYLE

21 REES

22 MR. REES:

23 Q. Okay. Introductions and background and  
24 everything later after lunch. The direct  
25 question, you indicated you did a site visit

- 1 as part of your background. When did that  
2 occur?
- 3 A. Oh boy, I'm going to ask -  
4 Q. Month and year is fine.  
5 A. It was - I'm trying to remember. Maybe last  
6 October or November. I can't remember.  
7 Maybe you can help me with this?  
8 Q. October/November 2021?  
9 A. I guess so, yeah.  
10 Q. Right. This is at East Point Elementary?  
11 A. Pardon me?  
12 Q. This is at East Point Elementary, the  
13 satellite classroom?  
14 A. Yes, yes.  
15 Q. You attended there in person?  
16 A. Yes, I did.  
17 Q. Were there any students in the classroom at  
18 the time?  
19 A. No.  
20 Q. Were there any teachers in the classroom?  
21 A. Yeah, some of the teachers that were  
22 involved were there, yeah.  
23 Q. Because this was like what, like 4:00 in the  
24 afternoon or something?  
25 A. Something like that, yeah.

1 Q. Okay. You went into the classroom. Did you  
2 speak with any of Carter's teachers?

3 A. I think some of Carter's teachers were  
4 there. I didn't really - it was Steve that  
5 just introduced them and they spoke  
6 generally about the program that was there.  
7 I didn't ask any specific questions about  
8 Carter and so on. I just thought it would  
9 be a good idea to see this physical  
10 classroom and these people were there and  
11 just described in general the nature of the  
12 program. But there was nothing specific.

13 Q. Okay. How many minutes were you there?

14 A. It didn't really directly inform what I did.  
15 Just the fact that there was a classroom  
16 there.

17 Q. Okay. More -

18 A. I just wanted to see the -

19 Q. More curiosity than of assistance in  
20 providing your report?

21 A. Yeah, I wouldn't say it directly affected  
22 anything that I did here.

23 Q. Okay. Thank you. Those are the questions  
24 before lunch.

25 ADJUDICATOR:

1 Q. In terms of your sense of how much time  
2 we're going to need, do we need to take a  
3 truncated lunch? Do we want to take full  
4 hour? Any sense of the amount of questions  
5 you're going to have?

6 MR. REES:

7 Q. Yeah, I mean, I think I got a couple hours'  
8 worth. But so, with that in mind, a full  
9 hour should be fine.

10 ADJUDICATOR:

11 Q. Okay. So, let's - is it safe to adjourn  
12 until 1:30?

13 MR. REES:

14 Q. Yeah.

15 ADJUDICATOR:

16 Q. 1:30, we'll come back 1:30.

17 (OFF RECORD)

18 ADJUDICATOR:

19 Q. Okay. So, we've broken for lunch. Mr.  
20 Penney, did you have any questions before we  
21 move on to Mr. Rees' cross-examination?

22 MR. PENNEY:

23 Q. No.

24 ADJUDICATOR:

25 Q. Mr. Rees, you may go ahead.



1 MR. REES:

2 Q. Thank you, Dr. MacDougall. I didn't get a  
3 chance, given my immediate questions before  
4 lunch there, to do my usual introduction, so  
5 I'll take the opportunity to do it now. I'm  
6 Kyle Rees. I'm the lawyer for Todd and Kim  
7 Churchill, who are Carter's parents. My  
8 friend has already asked you his questions.  
9 I've got, I would estimate, about two hours'  
10 probably worth of discussion here for you  
11 and the Commissioner may interject with some  
12 questions of his own or may have some at the  
13 end.

14 In addition to your report, which I'll  
15 be referencing, I'll also be referring you  
16 to some of the documents that are sort of  
17 scattered around you. When we come to that,  
18 I'll direct you to which document I'm going  
19 to ask you to look at. It might take a  
20 little while to find it, but we'll get  
21 there. I guess I first want to say, you  
22 know, as a lawyer, and I said this as well  
23 to Dr. Snoddon, you know, I'm always so  
24 interested and excited and engaged when we  
25 have an expert witness testifying in any

1 court proceeding, you know, be it this or a  
2 car accident or anything else because it's  
3 an opportunity for all of us to learn.

4 You know, any of us who are lawyers  
5 called to the Bar have done at least seven  
6 years of school, of postsecondary to get  
7 there, many of us more. And in particular,  
8 I was interested in your work and some of  
9 your discussion - I'm talking too fast, I  
10 know - in your work and some of your  
11 discussion around language and language  
12 acquisition. I took an undergraduate degree  
13 in philosophy and spent a lot of time  
14 reading Noam Chomsky and philosophy of  
15 language. So, I thank you for peaking my  
16 interest.

17 You have, to speak about your  
18 qualifications, and you know, we've all  
19 acknowledged that you, like Dr. Snoddon, are  
20 an expert in this area and that your  
21 testimony in this way is valuable. So, this  
22 isn't, you know, a challenge to your  
23 expertise because we all admit that you're  
24 qualified to speak on what you spoke about.

25 I know that you come at this, I guess,

1 through the psychology angle. That's where  
2 your educational background is. That's where  
3 your research is. And I know that, you  
4 know, a lot - I think of your most recent  
5 research has involved, like you indicated,  
6 the preservation of unique sign languages,  
7 like Inuit sign language, right?

8 A. That's right.

9 Q. And not a lot of your work, especially in  
10 the last say ten years or so, has focused on  
11 deaf culture, the immediate needs of  
12 children in the school system, has it?

13 A. I haven't been directly involved in the  
14 schools, no, since I left Mackay Centre.

15 Q. And when did you leave that centre?

16 A. I think it was around 1988.

17 Q. 1988?

18 A. Yeah.

19 Q. We have the list, and I think it's in the  
20 list of documents in front of the commission  
21 and you referred to it during some of your  
22 testimony, of the documents that you were  
23 provided with in order to prepare your  
24 report.

25 A. Yeah.

1 Q. And I think it's numbered down to number 32,  
2 and the only thing, you weren't provided  
3 with any documents in addition to those 32  
4 enumerated ones? There was nothing that you  
5 were given, you know, in the last few weeks  
6 or anything to update you?

7 A. No.

8 Q. And the only other source of your  
9 information beyond that document and  
10 whatever request letter would have been sent  
11 to you by my friend, Mr. Penney, would have  
12 been the information, which I think you  
13 admitted was fairly limited, which you were  
14 able to glean from the site visit?

15 A. Yeah, although, like I say, I didn't  
16 particularly - I just wanted to see that  
17 there was a classroom there.

18 Q. Okay. When you were provided with these 32  
19 documents, did you at any point request  
20 additional documents or ask for other  
21 documents in addition to what was there,  
22 "hey, I'd like to have the document that'll  
23 help me get to the bottom of this other  
24 issue"? Was there ever any other requests  
25 for documents made by you?

1           A.    In a general way, I did have a discussion  
2                    about seeing if I could get any other  
3                    documents from the early years, but it was  
4                    told to me that that was basically outside  
5                    the scope of this, so I didn't pursue it any  
6                    farther.

7           Q.    Right, okay.  So, all documents related to  
8                    those first four years or so before Carter  
9                    starts kindergarten?

10          A.    Exactly.

11          Q.    To help explain, you know, that that lapse  
12                    or the miscommunication between Janeway and  
13                    Department of Education?

14          A.    Yeah.

15          Q.    Okay.  I'm going to put some other documents  
16                    to you later, I won't yet, that I think are  
17                    going to change your mind about some things,  
18                    but we'll get to those later.  I guess,  
19                    first, I want to - before we start talking  
20                    about maybe some things that we don't agree  
21                    on or some things that you and Dr. Snoddon  
22                    don't agree on, I want to canvas with you  
23                    some things that I believe that the two of  
24                    you do agree on.  Because there is - I mean,  
25                    between the two reports, you know, sometimes

1           when you have duelling experts, you know,  
2           one expert says it's black and the other one  
3           says it's white. In this case, I think  
4           there is, you know, multiple shades and many  
5           of them are you're in agreement with Dr.  
6           Snoddon, right.

7           A. Yes, I would agree there's very little that  
8           Dr. Snoddon and I, in a general way, don't  
9           agree on.

10          Q. Yeah, right. So, I want to put a few things  
11          to you and ask you if these are things that  
12          you and Dr. Snoddon disagree on. I mean,  
13          there's no need for you to expound and  
14          elaborate on the reasons why you agree with  
15          them. Feel free to, but I'm really just  
16          trying to figure out whether when I look at  
17          the two reports and I believe I see  
18          agreement on this subject, whether it is  
19          indeed agreement.

20                   I think you both agree that at least  
21                   since Carter's three years old, I think we  
22                   say earlier, but at least since he was three  
23                   years old, it was clear that ASL was going  
24                   to be the best and in fact, only  
25                   communication route for Carter, right?

- 1           A.    I would say that it was going to be  
2                    important, but I don't think it was going to  
3                    be the only, no.
- 4           Q.    Okay.  It was going to be his primary method  
5                    of communication though, right?
- 6           A.    It appears that it would be his primary, but  
7                    the AVT and the speech certainly wasn't  
8                    discounted in anything that I saw.
- 9           Q.    Right, right.  ASL was going to an integral  
10                   component though of any communication?
- 11          A.    Absolutely, absolutely.
- 12          Q.    I think you and Dr. Snoddon both agree that  
13                   the early years are key for language  
14                   acquisition, I think?
- 15          A.    Yeah, I think we both agree on the general  
16                   finding that it's accepted that critical  
17                   period for language acquisition is between  
18                   zero and up to the puberty years, around 13-  
19                   14.
- 20          Q.    I think you also both agree that there are  
21                   severe psychological, social, economic  
22                   consequences for being language deprived?
- 23          A.    Yeah, language deprivation has been shown to  
24                   have consequences such as you describe,  
25                   yeah.

1 Q. And you'd also agree that deaf students  
2 require a different, and I would suggest  
3 much greater, level of support than hearing  
4 students in order to succeed in the school  
5 system?

6 A. Well, I would say it was a different type of  
7 support, yeah. There are a lot of students  
8 with needs that require support, additional  
9 support. They require specialized support  
10 for sure.

11 Q. One very important thing that I think both  
12 of you agree on, and you expounded upon  
13 substantially during your examination-in-  
14 chief, was the importance of incidental  
15 learning; of children being able to learn  
16 things, you know, that aren't specifically  
17 being instructed, but they pick up from the  
18 environment around them, right?

19 A. Yes.

20 Q. And that there are consequences,  
21 developmental, intellectual consequences for  
22 not being exposed to incidental learning?

23 A. There can be consequences, yeah.

24 Q. And there can be - there usually would be  
25 consequences?



1           A.   Well, it depends on the situation. It isn't  
2                    an absolute thing. Environmental situations  
3                    can be different. Extent of language can be  
4                    different in the environment. The programs  
5                    offered can be different. So, it isn't an  
6                    absolute thing.

7           Q.   I think you also both agree that on an  
8                    examination of the early education in  
9                    Newfoundland and Labrador, before going to  
10                   school, for deaf children provides more  
11                   support and more focus on, you know, the AVT  
12                   route as opposed to the ASL route? There's  
13                   more support there?

14          A.   It appears that way to me, except I qualify  
15                   it by the fact that I don't have a lot of  
16                   additional documents on that, but from what  
17                   I can glean, that is the case.

18          Q.   Yeah, yeah. You also indicated, and I just  
19                   want to make sure that I'm not  
20                   misinterpreting your comments, I think  
21                   you've acknowledged that Carter's  
22                   programming was clearly lacking, I think  
23                   those are your words, until he shows up in  
24                   the satellite classroom. Is that still your  
25                   assessment?

1           A.   Well, I think there - I think I said that it  
2                   clearly improved over time, and once - from  
3                   my understanding of that classroom, a lot of  
4                   his needs were met in the context of  
5                   available resources and so on.

6           Q.   I just want to make sure we're really clear.  
7                   In the satellite classroom, many of those  
8                   needs. I mean, we'll have a discussion  
9                   later about whether they're all being met,  
10                  but many of them are met in the satellite  
11                  classroom in 2020 when Carter goes to grade  
12                  four. But, it appears -- and it appears  
13                  from reading your report that you're  
14                  acknowledging that from kindergarten to  
15                  grade three, Carter's programming was  
16                  lacking. Am I right in attributing that  
17                  statement to you?

18          A.   Yes, I think there were elements that needed  
19                  to be added as it went along and they would  
20                  appear to be added as it went along from  
21                  that period up until the satellite  
22                  classroom. Again, I'm saying that that is  
23                  based on the reports that they're putting  
24                  programs in place to address his needs.  
25                  Whether they were actually met and so on,

1           that would be a matter of people evaluating  
2           that and so on. But those programs were  
3           designed to meet his needs and they seemed  
4           to improve over time, yes.

5           Q. But does it appear to you that from  
6           kindergarten to grade three, pre-satellite  
7           classroom, that those needs are being met?  
8           It wasn't clear to me in your report if that  
9           was your opinion.

10          A. Well, I think some of the needs were being  
11          met. I think that obviously there could  
12          have been improvement in terms of the number  
13          of personnel, the actual programming and so  
14          on. Again, I just have to base that on the  
15          reports that meetings were held, ISP's were  
16          discussed. The team put together programs  
17          and each time, they identified things that  
18          needed to be done and then some of those  
19          things were done, and it was - it seemed to  
20          be more the things were done as the years  
21          went on and I assume resources became  
22          available and so on.

23          Q. One of the things though you were asked to  
24          opine on was whether Carter's educational  
25          needs were being met, and it's clear to me

1 from your report that you believe in the  
2 satellite classroom they are, and so that's  
3 fine. It wasn't clear to me whether it was  
4 your opinion, as expressed in the report -  
5 and I don't need the justification. I just  
6 want to know what your opinion was because  
7 you've told me that you think the needs are  
8 being met in grade four and grade five. Is  
9 it your opinion that the needs are being met  
10 in kindergarten, grade one, grade two, grade  
11 three?

12 A. Well, I guess we need to talk about which  
13 needs. I think some needs were being met.  
14 He was - the policy in Newfoundland and  
15 Labrador is to be in an inclusive classroom  
16 and he was in an inclusive classroom. Some  
17 supports were put in place, whether it was  
18 the AVT or the support personnel and so on.  
19 Did they address all his needs? Probably  
20 not. And the various reports and the  
21 meetings identified things that needed to be  
22 done, and of course, the advocacy from Mr.  
23 and Mrs. Churchill were there and then  
24 different things were done in a progressive  
25 way. So, some of his needs were being met

1           for sure, and increasingly as the  
2           programming developed, more of his needs  
3           were being met, for sure.

4           Q.   And look, and I know things get better  
5           instead of worse in this case, and you know,  
6           we're glad that that's the case over time.  
7           It seems pedantic, but I think I need to - I  
8           just really need to make sure I understand  
9           the opinion you're expressing. I know your  
10          report says you believe the needs are being  
11          met now. There are still things that can be  
12          done and improved upon and that's excellent.

13          A.   I say his needs are being met within the  
14          context of available resources and available  
15          knowledge and so on, yeah. That appears to  
16          be the case that more of his needs are being  
17          met, yeah.

18          Q.   Okay. We're going into the first point then  
19          about what information you were provided  
20          with. What information were you given about  
21          the resources that were available to the  
22          English School District of Newfoundland and  
23          Labrador? Were you given a budget? Were  
24          you given a list of human resources,  
25          personnel? Were you given any information

1 about the resources that were available?

2 A. No, just those reports that are there.

3 Q. Right. So, you're indicating the needs were  
4 being met within the resources that were  
5 available, but you have no knowledge about  
6 the resources that were available, do you?

7 A. No, I don't.

8 Q. Okay. Let's talk about the communications  
9 controversy. That's the phrase you used,  
10 right, communications controversy?

11 A. Sure, yeah.

12 Q. In your report, if we go to page eight of  
13 your report, that's your first subject  
14 there.

15 A. Yeah.

16 Q. Communications controversy. I notice that  
17 the footnotes that you cite in the first  
18 paragraph, and then we'll talk about the  
19 second paragraph in a moment, which are your  
20 paragraphs that purport to acknowledge that  
21 a communications controversy exists, you  
22 cite footnotes 1 to 3 and then later on 4, 5  
23 and 6, and when I look at your - I call them  
24 footnotes but they're appropriately  
25 endnotes, I suppose.

1 A. Yeah.

2 Q. I look at your references which are  
3 contained on page 22 and I see that  
4 footnotes, endnotes 1, 2 and 3 are all  
5 articles that you wrote. One's an article  
6 you wrote in 2004. Another one's an article  
7 you wrote in 1971 and another one's an  
8 article you wrote in 1979. And I also note,  
9 when you - your articles 4, 5 and 6  
10 citation, one is by Dr. Ling, who is the one  
11 who you had to protest because he was trying  
12 to open an oral only facility, and the other  
13 two seem to be, you know, written from the  
14 perspective of audio verbal therapists.

15 A. Yeah.

16 Q. Dr. Snoddon testified, I asked her about the  
17 communications controversy and she testified  
18 that if you asked anybody in the deaf  
19 community and anybody in deaf academia, they  
20 would tell you that as far as people who  
21 require ASL being taught in, instructed in  
22 and acquiring ASL, there is no controversy.  
23 Do you continue to disagree with Dr. Snoddon  
24 on that point; that it is still a live  
25 active controversy that if you're deaf and

1           you communicate in ASL that you should still  
2           be driven towards the AVT route in some way?

3           A.    I'm not sure I completely understand the  
4           question.  Are you asking if people who are  
5           deaf and subscribe to the deaf culture and  
6           use ASL support deaf culture and ASL?  The  
7           answer would be yes.

8           Q.    So, I mean, where's the controversy is my  
9           question.

10          A.    Well, the controversy is among  
11          professionals, among ENTs, people that do  
12          the implant, AVT therapists, teachers of the  
13          deaf, psychologists, teachers, all the  
14          people involved.  Also, there are deaf  
15          adults who don't use ASL, who use cochlear  
16          implant or hearing aids and so on and they  
17          don't subscribe to the concept of deaf  
18          culture.  They see themselves as being part  
19          of the hearing culture.

20          Q.    Okay, fair.  But, when - once it is  
21          identified by all the professionals who  
22          matter in a particular child's care that ASL  
23          is going to be the primary mode of  
24          communication for someone, is the  
25          controversy disbanded, dispelled by that



1 point? I mean, does there still - once  
2 everybody involved in a child's care has  
3 decided ASL is going to be the way this  
4 child communicates, you know, we still do  
5 what you referred to as total communication  
6 or that gets sometimes referred to as total  
7 communication, other assisted devices can be  
8 add-ons, you know, I understand all that.  
9 But once it is decided, as it was for Carter  
10 Churchill, I think you've acknowledged since  
11 at least age three, that ASL is going to be  
12 the primary mode of communication for this  
13 person, does a controversy still exist?

14 A. Well, first of all, the controversy is among  
15 prof - you're saying does the controversy  
16 exist in this particular case?

17 Q. Yeah. You said it was operative in this  
18 case, are your words?

19 A. Pardon me?

20 Q. Your words are that that controversy is  
21 operative in this case?

22 A. It certainly is operative because I don't  
23 think anybody decided that, for example, the  
24 cochlear implants weren't going to be used  
25 or that speech wasn't still going to be

1 used. It was still going to be a component.  
2 The question is how was it going to be a  
3 component along with sign language. So, you  
4 know, that was never particularly explained.  
5 An AVT therapist says we've been doing AVT  
6 therapy for three years, but I know think  
7 that he needs sign language, use a total  
8 communication approach. What does that  
9 mean? Is the AVT therapist qualified to  
10 speak about sign language? I mean, that's  
11 not their job, as far as I know. So, I  
12 mean, this becomes complicated and the fact  
13 that the program itself is part of the  
14 controversy and has a particular perspective  
15 that means it is in the context of the  
16 controversy. So, those factors still  
17 operate, yeah.

18 Q. I just want to make sure that when you say,  
19 you know, the communications controversy is  
20 operative in this case that you're not  
21 implying that like, you know, by the time  
22 Carter is in kindergarten, it would be  
23 unclear whether he should receive any ASL  
24 instruction or instruction in ASL?

25 A. No, absolutely not. No, I'm not saying

1           that.

2           Q.    Okay.

3           A.    No, I'm not saying that that's the  
4           consequence. I'm saying the big picture  
5           makes it difficult to implement that; to do  
6           all of the things around it. No, I - yeah.

7           Q.    Okay. So, the communications controversy  
8           doesn't mean that in some way it is  
9           understandable that the individuals within  
10          the school district making decisions about  
11          programming for deaf children, such as  
12          Carter, who it has, I think you've  
13          acknowledged is going to be communicating  
14          primarily with ASL from at least the age  
15          three onwards, it doesn't provide them any  
16          excuse in saying "we didn't know he would  
17          need ASL"?

18          A.    No, absolutely not, except the controversy  
19          is operative because if the thing is set up  
20          in the first place not to give equal  
21          resources to ASL from the start and you  
22          start in one system and all of a sudden you  
23          switch to the other and the other hasn't  
24          been given those resources that means  
25          there's a problem. That means the

1 controversy affects the present situation, I  
2 think.

3 Q. Okay. Now, see, I thought you and I were  
4 starting off disagreeing with each other,  
5 but it turns out we've been agreeing with  
6 each other violently this whole time. So,  
7 the controversy is, you know, really in the  
8 - sort of in the societal level that causes  
9 to operate to cause, you know, individuals  
10 to be less supported in the ASL route than  
11 they would be otherwise for the AVT?

12 A. I guess the word would be systemic. It's  
13 bred into the system. So, it affects  
14 everything from the time of identification  
15 to whether you're going to get implants, to  
16 whether you're going to follow a bilingual  
17 program right away, whether you're going to  
18 be told that there is a controversy; that on  
19 the one hand you could go with ASL, you  
20 could go with implants and speech or you  
21 could do both or we're going to try one  
22 thing. If it doesn't work, we're going to  
23 go somewhere else. Are there - so, that  
24 controversy affects how all of that happens.  
25 So, it's kind of a systemic thing, yeah.

- 1 Q. Right. And in those kinds of cases, you  
2 know, is it possible for someone who needs  
3 ASL to, you know, slip through the cracks or  
4 receive less -
- 5 A. Sorry, I didn't quite hear.
- 6 Q. In these kind of operative controversy  
7 situations, it's possible for somebody then  
8 to slip through the cracks and not get the  
9 ASL support they need?
- 10 A. Oh, absolutely, yeah.
- 11 Q. I'm going to show you one of the first  
12 documents that I don't think you had an  
13 opportunity to review. So, over on your  
14 left-hand side, there's a pile of documents  
15 with coloured tabs. One of them says Volume  
16 1 on the front. So, we're going to look at  
17 that one.
- 18 A. Volume 1?
- 19 Q. Yeah, there you go. Volume 1, Tab M as in  
20 Mike.
- 21 A. Sorry, which one?
- 22 Q. Yeah, Tab M like Mike.
- 23 A. M as in Mike, okay. There we go.
- 24 Q. So, this wouldn't be - you got it there.  
25 This is Eastern Health up in the top left-

1 hand corner?

2 A. Eastern Health, yeah.

3 Q. And this wouldn't be a document that you'd  
4 seen, but I want to ask you about it. It's  
5 a letter, and the Commission has looked at  
6 this already, that was sent to Bonnie  
7 Woodland at the time, and she still is with  
8 the English School District. She was in  
9 charge of student support services, who  
10 would have directed to what degree DHH  
11 itinerant support was being provided to  
12 Carter Churchill. And this letter comes  
13 from Paula O'Rielly, who is the person who  
14 is, you know, essentially the AVT  
15 specialist. And the letter is written by  
16 this person, you know, who would be from the  
17 Janeway, Eastern Health, who would be in the  
18 AVT route and is saying "we're worried about  
19 this three-year-old boy who has a history of  
20 cerebral palsy, deafness and other health  
21 concerns" and we go down to the bold section  
22 that says "however, in Carter's situation,  
23 he has been unable to develop spoken  
24 language, but has successfully demonstrated  
25 that he is able to understand and use early

1 signs to communicate. Carter has not  
2 received formal support for sign language  
3 since last June, 2013. We are asking that  
4 this little boy be given direct support to  
5 further develop his manual communication  
6 skills, early sign language. We are asking  
7 that Carter receive support from an  
8 itinerant teacher of the deaf and hard of  
9 hearing who has teaching expertise in early  
10 sign language with the preschool  
11 population."

12 So, I mean, I appreciate your comments  
13 that in some of these kinds of  
14 circumstances, the communications  
15 controversy can be operative and cause, you  
16 know, someone to be delayed in the way in  
17 which they're directed to the appropriate  
18 service. I think you'll agree with me that  
19 that letter there, you know, is an  
20 audiologist or whatever she is, spoken  
21 language specialist trying to dispel the  
22 controversy or trying to dispel the negative  
23 consequences of the controversy for Carter  
24 to the school district. Do you share that  
25 assessment?

1           A.    I don't share your characterization of it.  
2                    I'm just trying to read the document now.  
3                    She appears to be writing concerning the  
4                    lack of availability of appropriate services  
5                    for Carter Churchill.  So, somebody from the  
6                    Janeway is saying that - they have the  
7                    responsibility at this point, right, the  
8                    Janeway?  Three years old, I would assume.  
9                    That's before education.  And she's saying  
10                  that there are - there's a lack of services.

11          Q.    Yeah, uniquely, and again -

12          A.    The second sentence says that Carter  
13                  received bilateral implants and third  
14                  sentence says, "given he has cerebral palsy,  
15                  he's been unable to develop spoken language  
16                  or use his voice".  This is something that  
17                  was only known when he was three years old?

18          Q.    It was known prior to three.

19          A.    And so -

20          Q.    But, and perhaps this is the part that you  
21                  might not have been aware of, in  
22                  Newfoundland, we've had evidence before this  
23                  Board of Inquiry that indicated that  
24                  children in the Avalon Peninsula, this area  
25                  - oh, right, you're from Newfoundland.



1 Children on the Avalon Peninsula are  
2 supported in learning of ASL through pre-  
3 kindergarten, during the pre-kindergarten  
4 years, which includes when you're three,  
5 through itinerant teachers provided by the  
6 School District. So, the School District,  
7 not the Janeway, has responsibility for ASL.

8 A. So, in September '13 the Department of  
9 Education changed services for metro  
10 preschoolers with implant. They now avail  
11 of education based AVT rather than itinerant  
12 services. In most cases, AVT direct therapy  
13 and support is the most appropriate form of  
14 therapy for children with cochlear implants,  
15 especially in the first years of acquiring  
16 listening and spoken skills. I go back to  
17 the controversy. I mean, this is obviously  
18 - I mean, if at that point all of a sudden,  
19 they say that that's not working, and you've  
20 got -- three years is a long time in -

21 Q. Yeah, I'm sorry, I think you're  
22 misunderstanding me. I mean, we've been  
23 talking about since, you know, at least  
24 since he's three years old, this problem's  
25 been pointed out. It had been known for

1           some time prior to. What I'm asking you  
2           about, and the reason why I'm putting this  
3           to you is, you know, I'm asking that - I  
4           think you had been working under the  
5           assumption that the Janeway was responsible;  
6           that the children's health centre was  
7           responsible for monitoring and care and  
8           assessing children for their ASL skills, and  
9           I just want to make sure that you understand  
10          that it -

11          A. No, I saw some references to some  
12          interaction, but I never saw a document that  
13          said look, the management of deaf children  
14          in Newfoundland is a joint responsibility of  
15          the school board and the Janeway, and when  
16          we see a deaf child, we present to the  
17          parents what that program is going to be.  
18          You know, it says here that "Carter has been  
19          unable to develop spoken language but has  
20          successfully demonstrated that he's able to  
21          understand and use early signs to  
22          communicate" and he's not received formal  
23          support. So, I mean, those are problems,  
24          yeah. Who's responsible and how that  
25          worked, I don't know. What's the system?

1           That's my point.

2           Q.    And that's what I mean -

3           A.    That's my question.

4           Q.    Well, the reason I showed you the letter is  
5                because it indicates that the responsibility  
6                for teaching ASL falls on the deaf itinerant  
7                teachers managed by the English School  
8                District and I'm asking that wasn't  
9                something you were aware of before seeing  
10              this document?

11          A.    Well, I knew there was some involvement, but  
12                I never saw a document that formally stated  
13                what those policies were and who did what  
14                and who was responsible and who did the -  
15                Who decides, is it the school - the people  
16                from the School District that he needs sign  
17                language or is it the AVT therapist or what?  
18                I don't know the answer to that. That's  
19                kind of crucial in this.

20          Q.    Um-hm. And I just wanted to make sure that  
21                that wasn't something you had been aware of  
22                prior to issuing your report.

23          A.    I was - I knew that there was some  
24                interaction from snippets I read in reports,  
25                but I seen no document that states exactly

1           how that worked or who was responsible and I  
2           go back to my problems that you've got this  
3           controversy about whether you start in sign  
4           language or you start with AVT or you can do  
5           both. They're saying you need sign  
6           language. What does that mean? Under a  
7           bilingual approach? Under not doing AVT  
8           anymore or what? I mean, just that  
9           statement says something, but I don't know  
10          exactly what it means.

11         Q.   Yeah, yeah, because you talked about an  
12           education system that was engaged and you  
13           know, I saw that letter as, you know, a  
14           letter suggesting more engagement was  
15           required and ultimately, in our view, wasn't  
16           met. And I want to know whether that, you  
17           know, that you are now aware that there  
18           requirement, the only ability under the  
19           Provincial Government for an individual, a  
20           deaf individual to access sign language  
21           preschool in Newfoundland comes through the  
22           School District.

23         A.   You're telling me that. I certainly accept  
24           it.

25         Q.   Okay. The next point I want to ask you

1 about is the importance of a language rich  
2 environment, and you've spoken at length  
3 about this this morning.

4 A. May I find - a comment. That is a bit  
5 surprising that there's - that the people  
6 who first see the child and make decisions  
7 about communication are not responsible for  
8 looking at the sign language option.

9 Q. Appears to be a gap?

10 A. It does to me.

11 Q. Yeah, yeah. Page 11 -

12 ADJUDICATOR:

13 Q. Can I ask a question? In other provinces  
14 where - is delivery of sign language to a  
15 child who has received a cochlear implant,  
16 is that a service that's provided by the  
17 Department of Health as opposed to a  
18 Department of Education or what occurs in  
19 other provinces in terms of early delivery  
20 of sign language?

21 A. Yeah, that's a good question and it varies,  
22 as far as I know from province to province.  
23 For Ontario, for example, it's become part  
24 of the early infant hearing testing program.  
25 So, when a child is tested as deaf, it's

1           communicated to the parents and then the  
2           parents are given options. They say "well,  
3           do you want to go the oral route?" and if  
4           you do, usually say in Ottawa that would be  
5           the CHEO, the Children's Hospital in Ottawa,  
6           of Eastern Ontario. So, then they would do  
7           an intensive cochlear implant AVT program.  
8           But they say if the parents want to go  
9           another route, they're referred to a group  
10          called Silent Voice, which is mainly a group  
11          of deaf people who would then start to  
12          interfere. The issue is that group is  
13          separated from the hospital. The two aren't  
14          together. So, there are options given.  
15          Then it might be that if they start out, you  
16          know, in the oral program and if in whatever  
17          case it doesn't work, do they go back to  
18          this other group? And it becomes  
19          complicated.

20                    In Quebec, in Montreal, there's two  
21                    schools. There's the Montreal Oral School  
22                    for the Deaf and there's the Mackay Centre.  
23                    So, the Montreal Oral School for the Deaf  
24                    are identified at the Montreal Children's  
25                    Hospital. Say you want to go the oral

1 route; you go to the Montreal Oral School  
2 for the Deaf. But the Mackay Centre does  
3 provide speaking and use of cochlear  
4 implants and so on. So, they're using more  
5 of a bilingual bimodal bicultural approach.  
6 But there are options there and sometimes  
7 they communicate with each other and  
8 sometimes they don't. And it would vary  
9 from province to province.

10 My understanding with Nova Scotia and  
11 New Brunswick, it's basically the default,  
12 as far as I know, is basically the oral and  
13 if for some reason it doesn't work, it goes  
14 to signing and who provides that and how  
15 that's provided varies from city to city and  
16 so on.

17 Q. Are you aware of any province where the  
18 health care system is responsible for the  
19 delivery of acquisition of sign language?

20 A. In the early years you mean? Well, I'm not  
21 sure where the funding, even for that  
22 Ontario thing, happens. Like in Ontario, of  
23 course, you've still got three schools for  
24 the deaf, one in Belleville, one in Milton  
25 and one in London, the Robart School, and

1           those, they have policies about - you know,  
2           they're all pretty committed to the so-  
3           called bilingual bicultural approach. They  
4           are funded, I think, through the Ministry of  
5           Education, even for the early programs.

6                     Again, these are mixed jurisdictions  
7           and sometimes it switches from one to the  
8           other. And Alberta has another system.  
9           British Columbia again has another system.  
10          So, I can't give you an unequivocal  
11          statement about exactly the funding. But  
12          certainly, Department of Health is always  
13          involved because hospitals are involved in  
14          the early years and so on.

15          Q.    So, it's my understanding, and there's some  
16          evidence presented on this point, that  
17          Carter's level of hearing loss is diagnosed  
18          within his first year and his diagnosis of  
19          cerebral palsy is around - you know, I think  
20          it's shortly before he turns one.

21          A.    Yeah.

22          Q.    And during that time period, the option is  
23          presented to his parents, implant or sign  
24          language. Is that different here than in  
25          other jurisdictions that you're aware of?



- 1           A.    I don't know what's happened here in those -  
2                    I just wasn't provided with that  
3                    information. I don't know exactly what  
4                    happens when a parent has their child tested  
5                    and they're told that the child has a -
- 6           Q.    Just you indicated surprise at finding out  
7                    that the health care department wasn't  
8                    responsible here for the delivery of early  
9                    sign language.
- 10          A.    Yeah.
- 11          Q.    Is that different from elsewhere?
- 12          A.    In terms of the early - well, it certainly  
13                    isn't different in Ottawa. Once the health  
14                    becomes involves, usually it's the auditory  
15                    verbal approach. I guess my surprise is  
16                    from the point of view of what I think ought  
17                    to be done, more than it hasn't - that isn't  
18                    the way it happens elsewhere. I'm not  
19                    saying that only happens here at the  
20                    Janeway, if that's what you're getting at.
- 21          Q.    Oh, I'm sorry. I thought you were  
22                    indicating this is unique to here.
- 23          A.    No, no, absolutely not.
- 24          Q.    Okay.
- 25          A.    No, sorry, yeah.

1 Q. Apologize for interrupting your flow.

2 A. No, that's okay.

3 MR. REES:

4 Q. No problem. If you just turn to page 16 of  
5 your report, I mean, the three points that  
6 I'm wondering if your mind has changed on  
7 are on that page, point 10, 11 and 12.

8 A. Sorry, which page again?

9 Q. Yeah, page 16 of your report.

10 A. Yeah.

11 Q. And I think we might have solved what for  
12 you would have been - was a mystery at the  
13 time you were writing your report.

14 A. Okay, sorry, tell me exactly where you want  
15 me.

16 Q. Paragraphs 10, 11 and 12.

17 A. Okay.

18 Q. Because in this one, in these paragraphs,  
19 you're understanding that Carter was going  
20 to use ASL and you say, "it's not clear how,  
21 if at all, this message was interpreted or  
22 implemented in Carter's educational  
23 program". And I'm telling you that, you  
24 know, you just saw a letter that showed, you  
25 know, that well before Carter went into his

1 educational program, it was unambiguously  
2 indicated that he would be communicating in  
3 ASL and that's something you've learned here  
4 today?

5 A. So, you're referring me back to the original  
6 letter?

7 Q. Yeah.

8 A. Yeah, I note that it also says that he will  
9 continue to receive auditory skill and  
10 receptive language development from AVT and  
11 SLP processes. So, while they're asking for  
12 sign language, they're not.

13 Q. They're not closing the door to AVT.

14 A. No, they're -

15 Q. Right.

16 A. So that makes the situation very complicated  
17 to deliver.

18 Q. Right. I mean, you also say then in  
19 paragraph 11, "the Janeway program does not  
20 appear to offer an equal degree of support  
21 to deaf children and their parents who seek  
22 the ASL approach compared to AVT" and now  
23 you know the answer to that question is  
24 because the Janeway does the AVT and the  
25 School District -

- 1           A.    Yeah, it appears there are two different  
2                    organizations that -- again, I think because  
3                    of this controversy, instead of it being  
4                    unified, two different organizations are  
5                    doing these two different things.
- 6           Q.    Right, and -
- 7           A.    Which from a child's point of view is a very  
8                    unitary -- and parents' point of view,  
9                    should be a very unitary thing.
- 10          Q.    I mean, I agree with you, and that might be  
11                    kind of where this problem comes from, but  
12                    you appear to be implying in your paragraph  
13                    11 that, you know, it was the Janeway who  
14                    failed to offer ASL support, and I suppose  
15                    it's true the Janeway fails to offer ASL  
16                    support, but I'd suggest to you that you  
17                    know now from the letter, the reason the  
18                    Janeway isn't offering the ASL support is  
19                    because the School District does that.
- 20          A.    Yeah.  If you say the school system is  
21                    responsible for doing that, obviously the  
22                    Janeway doesn't take any responsibility for  
23                    offering sign language.
- 24          Q.    Right, and the school system does.
- 25          A.    Apparently.

1 Q. Right, okay. I want to ask you about the  
2 language rich environment. You've spoke a  
3 little bit about this -- and this is on page  
4 11 of your report. You spoke a little bit  
5 about this before the lunch break. You  
6 know, I think it's really interesting, from  
7 an academic perspective, how are brains come  
8 prewired for language, but they don't get  
9 turned on unless we're - those pathways  
10 don't get activated unless we get exposed at  
11 an early age.

12 A. Right.

13 Q. The importance of a language rich  
14 environment then applies equally to spoken  
15 English as it does to ASL, right?

16 A. Absolutely.

17 Q. I mean, the brains of people communicating  
18 in ASL, you know, both contain the sort of  
19 primed condition to be able to be language  
20 activated, whether it's by spoken English or  
21 by American Sign Language, correct?

22 A. That seems to be pretty conclusively  
23 demonstrated now.

24 Q. And if you don't expose individuals at an  
25 early age to peer communication where this

1 kind of language immersion, language rich  
2 environment can occur, those pathways don't  
3 develop properly, do they?

4 A. Well, we still don't know the exact  
5 mechanisms of it all and how much - you  
6 know, there's obviously the communication by  
7 the parents, by siblings. Peer  
8 communication definitely comes into it now  
9 with daycares and then when you get into  
10 schools and kindergartens and so on. So, we  
11 know that there are many variables involved  
12 in, if you will, kicking off normal language  
13 development, whether it be ASL or speech.  
14 But I think, if I could just add the point  
15 that the situation for most deaf kids is not  
16 that simple because usually they're trying  
17 to do both in some way or other.

18 So then, this becomes part of the  
19 controversy. Some of the people that  
20 promote only speech saying using ASL early  
21 will impair the ability of the brain and  
22 those areas to be able to process speech and  
23 the ASL people say the controversy - the  
24 converse. So, the situation isn't just  
25 well, with a nice environment, with speech,

1           yes, it will develop normally and with ASL  
2           with deaf children. And remember, one-third  
3           have additional conditions. Situation is  
4           complex.

5           Q. Yes. Now, in Carter Churchill's case, there  
6           hasn't been any evidence at all before this  
7           Board of Inquiry, and I don't think you've  
8           been presented with any documents that  
9           indicate that, you know, by the time -  
10          certainly not by the time that Carter starts  
11          school in kindergarten that anyone is  
12          saying, you know, "let's rethink this ASL  
13          thing. Maybe we should really focus on oral  
14          skills at this point". It's definitive by  
15          that point that Carter needs ASL, right?

16          A. Well, the way you put it, I think it's  
17          definitive he needs ASL, but I don't see  
18          anybody saying that they're not going to use  
19          the implants or that speech doesn't have -  
20          that sounds and environmental awareness -  
21          we're talking about communication here, not  
22          just language, the big context. So, being  
23          able to - you know, when somebody wants to  
24          communicate, even if they're going to sign,  
25          if they make a noise and he's able to turn

1           because of that, that's part of  
2           communication. It's part of language. So,  
3           the situation is complex.

4           Q. Right. And we've heard evidence that, you  
5           know, Carter can respond to someone shouting  
6           and a noisy classroom would still cause  
7           Carter issues. He might hear a fire alarm,  
8           those sorts of things. He has some access  
9           to sound for that. But for the purposes of  
10          a language rich environment, it's apparent  
11          that as a language rich environment for  
12          Carter Churchill that means an ASL rich  
13          environment, right?

14          A. I think it may mean both, because I don't  
15          think we have a - I mean, all I have are the  
16          reports. I haven't done any personal  
17          evaluation here. With cerebral palsy, the  
18          effect is on the motor system, on the speech  
19          mechanism and on the signing. It's not on  
20          visual reception. So, and he's got cochlear  
21          implants that seem to work reasonably well.  
22          They've been tested. He knows the ling  
23          sounds. He knows all this. They're saying  
24          that he's getting something. I don't think  
25          anybody knows exactly what he's hearing.



1           So, to say that he absolutely doesn't enjoy  
2           hearing his name or language or anything  
3           through speech, maybe we know that. I don't  
4           see that written down anywhere. Or that it  
5           doesn't somehow reinforce the signing or go  
6           with it. I don't know all of those, but  
7           maybe -

8           Q. Was Carter Churchill in a language rich  
9           environment in kindergarten?

10          A. Pardon me?

11          Q. Was Carter Churchill, based on the reports  
12          you have, in a language rich environment in  
13          kindergarten?

14          A. I would say not because for me a language  
15          rich environment, that's a very general term  
16          and can mean different things to different  
17          people, would involve having other peers  
18          around.

19          Q. Was Carter Churchill in a language rich  
20          environment in grade one?

21          A. I think it probably had - I'm not sure what  
22          you mean by rich.

23          Q. Well, I mean, look, you're the one who talks  
24          about language rich environment, not me.

25          A. Okay.

1 Q. So, I'd like you to tell me based on what  
2 you mean -

3 A. Okay. What I mean by rich, okay. By rich,  
4 I mean that people are using communication;  
5 that people are using language in terms of  
6 play, in terms of socialization, in terms of  
7 mental health, in terms of in a global way.  
8 I'm not just looking at, you know, the  
9 particular language. It's language in a  
10 context and paying attention to what  
11 somebody is signing or saying. Language  
12 rich means don't ignore the child, pay  
13 attention to the child, make sure the child  
14 gets to play. I'm looking at it in a bigger  
15 picture.

16 So, I don't know all the elements of  
17 exactly what that classroom was like, how he  
18 interacted with other hearing children, with  
19 people and so on. There were more additions  
20 in terms of people who knew sign language or  
21 used it as life went on. Other people came  
22 in. So, that was part of what I - you asked  
23 me to describe rich, that's what I mean by  
24 rich, communication, the whole big, big  
25 picture, not just somebody that happens to

1 know ASL or happens to know AVT or speech.  
2 That's only part of it.

3 Q. You were - like this is my problem. You  
4 were hired, I presume you're being paid, you  
5 were hired to provide an opinion on whether  
6 the supports that Carter Churchill was  
7 receiving at various points in this  
8 education process, and we were talking about  
9 kindergarten and grade one just a moment  
10 ago, whether they were appropriate, in  
11 accordance with best practice. I think  
12 those are the kinds of questions that I see  
13 showing up on your report.

14 And you take a moment to talk about a  
15 language rich environment in your report,  
16 presumably to inform your answer to the  
17 questions that you've been asked, which is  
18 about whether he received appropriate  
19 programming. And I believe, and I think you  
20 believe, that appropriate programming would  
21 require a language rich environment. Is  
22 that right?

23 A. In the sense that I've described rich, yes.

24 Q. Okay. You told me you don't think Carter  
25 was in a language rich environment in

1 kindergarten.

2 A. I think it had to - it obviously had many  
3 elements that were missing. The main  
4 element for me was the socialization and the  
5 peers and so on.

6 Q. I mean, the main element for me and for Mr.  
7 and Mrs. Churchill too.

8 A. Okay, so we're all on the same page on that  
9 one.

10 Q. We are. So, when I ask you if he was in a  
11 language rich environment in grade  
12 kindergarten, in one, in two, in three, all  
13 grades during which Carter was either unable  
14 to communicate in ASL to any of his peers;  
15 during some years he was able to communicate  
16 with an adult; in one case, with two adults,  
17 but never with a peer.

18 A. I haven't seen in a report that no peer  
19 could communicate with him. Maybe that's  
20 true, but -

21 Q. Hold on a second. You didn't know that when  
22 Carter Churchill was in kindergarten, grade  
23 one, grade two and grade three at Beachy  
24 Cove Elementary, because you weren't told,  
25 that he was the only deaf child in the

- 1 entire school of 750 kids?
- 2 A. Oh no, I knew that, but -
- 3 Q. Okay.
- 4 A. - did that mean that during the year that  
5 some of the kids didn't learn a sign or  
6 learn his name? I don't know.
- 7 Q. How many signs would they need to learn in  
8 order for it to be a language rich  
9 environment?
- 10 A. Well, I don't think it would - I'm talking  
11 about communication here. You keep using  
12 language rich, but -
- 13 Q. You said language rich.
- 14 A. Yeah, okay, but it has elements in it and  
15 I'm saying the crucial element for me was  
16 socialization. So, was he able to socialize  
17 with his peers through - whether it's  
18 pointing or gestures or signing or some  
19 speech and so on, I really don't know.  
20 That's not full language, but it is  
21 communication and it's not what you would  
22 desire. I've said that's lacking, you got  
23 to do better than that, but to say it was  
24 zero, that there was no interaction, so I  
25 don't know. Maybe it was.

1           Q.    You've given me the term language rich  
2                    environment, so I'm sort of trying to play  
3                    on your playing field here.  You've told me  
4                    language rich environment.  You've talked  
5                    about the importance of a language rich  
6                    environment.  Based on what I think a  
7                    language rich environment is, I'm inclined  
8                    to agree with you that a language rich  
9                    environment is integral - in fact, the most  
10                   integral aspect to communication with peers.  
11                   And I've asked you, and I still don't have  
12                    an answer, whether Carter Churchill, only  
13                    deaf child, only student who can speak ASL -  
14                    I mean, sure, the occasional child might be  
15                    able to sign Carter's name, but the only  
16                    child in Beachy Cove Elementary, 750  
17                    students, who can speak ASL.  He cannot  
18                    speak or be spoken to by any other child in  
19                    that building for four years, his first four  
20                    years of school.  Is Carter Churchill in a  
21                    language rich environment?

22            A.    Well, again, I - you know, to just  
23                    characterize it, I've used the word language  
24                    rich, but I've told you what I mean by it.  
25                    If you mean by it that he didn't have a lot

1 of other people in there that could use ASL,  
2 that's for sure. To say that some child  
3 spoke to him or did something with him and  
4 wasn't - and didn't communicate or he didn't  
5 understand the speech through his use of  
6 cochlear implants, I don't know.

7 Q. That's good enough, is it? That's good  
8 enough? If another child in that school -

9 A. No, I've not said in my report that that's  
10 good enough. I said that's clearly lacking,  
11 yeah, and should be addressed and as far as  
12 I know, the people in the program got  
13 together and tried to address that and  
14 started to address it and as time went on,  
15 various elements of improving that  
16 environment were added in. Clearly not  
17 acceptable at that stage.

18 Q. Clearly not acceptable in kindergarten.  
19 Clearly not acceptable in grade one.  
20 Clearly not acceptable in grade two or grade  
21 three, I would put to you, because those are  
22 the four years where - improvements, sure,  
23 but the social inclusion improvement doesn't  
24 happen until he goes to satellite classroom,  
25 does it?

1           A.    No, the social improvement doesn't.  But I  
2                    must add that if it was important then, it  
3                    was ten times more important when he was one  
4                    and two years old.

5           Q.    Oh, you're - are you implying that we could  
6                    already have written off Carter Churchill by  
7                    the time he started school?

8           A.    Absolutely not.

9           Q.    Okay.

10          A.    Absolutely not, but I'm saying he came to  
11                   the situation not having that enriched, if  
12                   you use that word, environment before  
13                   obviously, and so that was kind of a double  
14                   problem for him it seems to me there.  I'm  
15                   not saying that justifies what happened.  It  
16                   didn't.  He should have had more resources  
17                   once it was seen that ASL was going to be  
18                   important for him.

19          Q.    Which was at three.

20          A.    Obviously - right, obvious - and as I say,  
21                   that's a very late time to decide that.  
22                   Then as many programs as you could put in  
23                   place to address that as possible.  But,  
24                   what's the overarching policy?  The  
25                   overarching policy is inclusion.  Close the



1 School for the Deaf where all kinds of other  
2 kids are there. Everybody is there. And  
3 the people that promote that policy say just  
4 by being with your friends in your  
5 neighbourhood school, close to your parents  
6 and so on that it's going to have a  
7 beneficial effect for you. So, that's the  
8 policy and that's what was implemented.  
9 It's clearly lacking when you don't - so  
10 then, how do you reconcile that policy which  
11 says get them in the regular classroom, get  
12 them in his regular school, and you want to  
13 have a whole bunch of other deaf kids there.

14 Q. We're going to get there.

15 A. Yeah.

16 Q. We're going to get there. We're going to  
17 talk about that. What I was trying to get  
18 you to clarify is whether when you talk  
19 about language rich environment and I don't  
20 care what I mean by language rich, I want to  
21 know what you mean by language rich  
22 environment, did you - when you use that  
23 term, did you think Carter was in a language  
24 rich environment from kindergarten to grade  
25 three? And I think your answer is -

- 1           A.    No.
- 2           Q.    - no, he was not.
- 3           A.    No.
- 4           Q.    Okay, thank you.  Let's talk about deaf  
5           peers and psychosocial growth.  I'm not  
6           going to refer to a specific section of your  
7           report, but you know, we've already spoke  
8           about and you indicate that you were aware  
9           that Carter was the only deaf child in his  
10          school for four years, from kindergarten to  
11          grade three; that there were one or two deaf  
12          adults at various times employed in  
13          instructional roles.  To what degree is  
14          providing for social interaction with other  
15          deaf children, you know, outside of  
16          classroom instruction important?  I mean,  
17          Kristin Snoddon said it's very important.  
18          Are you - Dr. Snoddon.  Are you inclined to  
19          agree with Dr. Snoddon on that, on that  
20          point?
- 21          A.    That the extracurricular stuff in the  
22          summer, after school and so on, very  
23          important, absolutely.
- 24          Q.    Things like field trips would be really  
25          important?

1 A. Absolutely.

2 Q. There was testimony from Tammy Vaters, who  
3 was the student assistant who's a deaf  
4 person, who was assigned to Carter Churchill  
5 for much of grade one and some other years  
6 and now teaches in the ASL immersive  
7 classroom, and she described a very  
8 emotional outing in 2019 when Carter and  
9 this cohort of deaf children, who eventually  
10 actually end up at the satellite classroom,  
11 go on a field trip to the Johnson GEO  
12 Centre. I don't know if you've ever been  
13 there.

14 A. I don't think so.

15 Q. It's sort of a museum space. And he was  
16 meeting all of these other deaf children who  
17 were signing with him for the first time and  
18 it was everything we could do not to cry  
19 while the woman was describing the scenario.  
20 So, those kinds of things, you know, in  
21 addition to the sort of language rich  
22 environment of the classroom, but the actual  
23 sort of social self-identity, self-image  
24 piece is important too, right?

25 A. Yeah. It's language, it's communication,

1           it's socialization. It's just everything  
2           that everybody does. All of those things  
3           are important. And obviously, communication  
4           and language are an important part to make  
5           it happen successfully, for sure.

6           Q. Right. And you know, years of isolation can  
7           have a profound - you know, of not being  
8           around your peers that way can have severe  
9           psychological impacts, right?

10          A. Well, I mean, there's been a lot of study of  
11          that. I mean, again, I go back to the  
12          controversy. There are many children who  
13          with implants or with hearing aids were  
14          deemed to be successful as the only child in  
15          a school. People argued that they didn't  
16          have full communication and so on, but the  
17          parents and others were satisfied with what  
18          went on and those children were studied  
19          later. They didn't - some of them seemed to  
20          have emotional problems and so on and maybe  
21          didn't succeed well. Others were -  
22          succeeded very well and so on.

23                    So, the idea that there aren't deaf  
24                    kids in classrooms and being the only deaf  
25                    child in a school, that has happened and it

1 continues to happen and whether - it's a  
2 matter of debate the extent to which that  
3 results in a severe enough language  
4 deprivation to actually cause mental health  
5 problems or not. And there's a lot of  
6 research on this and so on.

7 So, the idea that you can be the only  
8 deaf child in a school and that definitely  
9 means isolation and you're going to have all  
10 of these problems and so on, I mean, it's  
11 just not what the case is out there. There  
12 are many people that don't agree with that.  
13 There are many people that say even if it  
14 causes some problems, it's worth it because  
15 they're in their community; they're in their  
16 school; it's inclusion. They don't have to  
17 be sent away somewhere.

18 Q. I know some people say that, but are they  
19 right?

20 A. Well, it's - you want my own particular  
21 opinion on that?

22 Q. Yes.

23 A. I think they have the right. I think a  
24 parent has the right, if they're offered the  
25 choice, and say look, you could take these

1 implants. We're going to do AVT therapy and  
2 we think this is the best way for your child  
3 to become like a hearing child and we have  
4 other successes, and there may be some risks  
5 involved. But if you're willing to take  
6 that risk, I think it's their right to do  
7 that. I wouldn't do it.

8 Q. Carter didn't become -

9 A. That's not what I -

10 Q. - like a hearing child.

11 A. It's not what I would promote. It's not  
12 what I do promote and have promoted  
13 throughout my career. I say well, why can't  
14 we have both. Why can't you have that and  
15 this beautiful sign language that's out  
16 there? And there's this deaf community and  
17 there's richness to it and so on. Let's try  
18 to figure a way to do both, especially since  
19 we know there are risks that not everybody  
20 is going to be able to speak and hear well  
21 enough to communicate, and all of a sudden,  
22 when you're eight, nine, ten years old,  
23 somebody's going to say "learn sign language  
24 and socialize with deaf people" and what  
25 about the parents? How do they learn sign

- 1 language? Like that's the -
- 2 Q. Good point.
- 3 A. What about that environment? So, it's
- 4 complicated. There's no one solution. I
- 5 don't - you know, you say is it right or
- 6 wrong. I don't think that's a good way to
- 7 look at it. I think it's more complicated.
- 8 There are a lot of grey areas in there.
- 9 Q. And there are many layers - I mean, the
- 10 Churchills are both hearing people, didn't
- 11 speak ASL. You know, they spent several
- 12 thousand dollars of their own money to learn
- 13 ASL to assist Carter, right, and that's a
- 14 burden that people have to take on, isn't
- 15 it?
- 16 A. Well, it's a burden that they shouldn't have
- 17 to take on.
- 18 Q. Yeah, and Ms. Churchill has asked me to
- 19 clarify it, it's fair for the record, she
- 20 doesn't consider it a burden, the financial
- 21 burden -
- 22 A. I don't either. I'm sorry I used that word.
- 23 Q. No, no.
- 24 A. It's a pleasure really and an opportunity.
- 25 Q. I want to ask you about the impact of

- 1 cerebral palsy because it shows up in a  
2 couple of points in your report, and I know  
3 that you were critical that Dr. Snoddon  
4 didn't address it. I'm having a hard time  
5 in understanding whether the impact of  
6 cerebral palsy means that there ought to be  
7 less ASL support or more ASL support or if  
8 it has any impact on ASL support for a child  
9 like Carter.
- 10 A. I don't think it - I think you would give as  
11 much - once you decide ASL, you should give  
12 as much support as possible.
- 13 Q. Yeah.
- 14 A. Whether you got cerebral palsy or not.
- 15 Q. I just want to repeat that. One -
- 16 A. No, where it does affect it is the -
- 17 Q. Can I just interrupt?
- 18 A. Sorry.
- 19 Q. Sorry, I want to make sure I get this part.  
20 Once you've decided that ASL is the correct  
21 route to go, you should get as much ASL  
22 support as possible, and the cerebral palsy  
23 doesn't factor into that decision once it's  
24 made?
- 25 A. Well, it affects it because you have to



1 realize that the expressive part of language  
2 is going to be affected by cerebral palsy.  
3 So, not only is speech affected, but your  
4 motor movements are going to be affected.  
5 So, that's going to - in the same way that  
6 cerebral palsy for hearing children, many  
7 hearing children can't speak at all or have  
8 impaired speech and so on. That's the motor  
9 system.

10 And in the acquisition of language, as  
11 I've explained before, yes, stimuli come in  
12 through your eyes and your ears, but in  
13 order to get that device going in your  
14 brain, you have to vocalize yourself. You  
15 have to sign yourself. It isn't just a  
16 passive thing. So, if you have problems  
17 with the motor aspect that affects the  
18 language acquisition.

19 So, cerebral palsy is a very important  
20 thing to take into account and it looks  
21 like, I'll comment, that it was taken into  
22 account. There's terrible team at the  
23 Janeway, worked with everybody, as far as I  
24 can see. They did all of the things that  
25 they need to do. I mean, I think, as I said

1 earlier, at the Mackay Centre, we had two  
2 schools. One of the schools was a school  
3 for disabled children and there were many  
4 cerebral palsy, children with cerebral palsy  
5 there. So, I had quite a bit of experience  
6 with that.

7 And so, yes, cerebral palsy definitely,  
8 but it doesn't mean you should do less or  
9 anything like that. It might mean you do it  
10 different; that you tailor the program  
11 uniquely to the fact that the signing may  
12 not look standard. You explain to people  
13 that to try to - you expect the teachers and  
14 others to learn to interpret those signs,  
15 even though they don't look like standard  
16 signs and so on.

17 Q. That's what I was going to ask. I mean, it  
18 sounds to me that with a child with - who's  
19 deaf and also had cerebral palsy, that given  
20 the motor complications that may make  
21 learning sign language and expressing sign  
22 language, having your sign language  
23 understood more difficult, I mean, that's a  
24 person who would require, I would suggest,  
25 more intensive intervention than a deaf

1 child without something like cerebral palsy  
2 because they need someone who can, you know,  
3 read signs that are sometimes signed  
4 incorrectly as a result of the motor issues.  
5 A. That's what teachers do. Teachers operate  
6 at - you know, by the theory of mind, a  
7 kindergarten teacher is trained to look at  
8 little children to say what are they  
9 thinking, what are they doing. So, I don't  
10 think it's a matter of more or less. I  
11 think it's a matter - I mean, if you look at  
12 hearing children, children come from other  
13 countries. They don't know the language.  
14 So, yes, a teacher has to say well, these  
15 children came from China, speaks Chinese.  
16 They're now in my class. I have to be  
17 sensitive to that and so on. So, sure,  
18 that's all part of what goes on in  
19 education.  
20 So, I don't think it's more or less.  
21 It's just you tailor your program to the  
22 individual. You have to recognize that this  
23 is going to be an issue in language  
24 acquisition and language expression, and so,  
25 yes, you deal with it and you bring in the

1 experts involved to deal with it and you  
2 bring the teams together and so on.

3 Q. I'm going to talk to you about a new topic;  
4 about ASL training and testing. You have an  
5 appendix to your report, Appendix B, which  
6 is on page 30 or so, 29 and 30. Thanks for  
7 that. It's good to have all that  
8 information all in the one place in your  
9 Appendix B. And I noticed kind of looking  
10 at that, you've canvassed a variety of deaf  
11 education programs, as well as I note in  
12 particular York University, I'm a graduate  
13 of York University, that in fact they in  
14 their program require somebody to attain the  
15 ASL PI level 3 or equivalent in order to  
16 graduate from their program. So, I mean, I  
17 appreciate there's no one unified standard  
18 for ASL testing. I also appreciate that  
19 there are some academic reasons to have a  
20 unified standard and some not to, because  
21 sometimes testing can be - one test versus  
22 another. We all took the LSAT and all made  
23 the mistake of fixing our own personal  
24 values based on how well we did on the LSAT.  
25 Big psychological mistake there.

1                   So, I understand that that's an issue.  
2                   But wouldn't it be the case that while  
3                   there's no unified test, it would be  
4                   incumbent on educators and those employing  
5                   educators to be able to have some method to  
6                   gauge ASL ability, even if not one test  
7                   versus another test?

8           A.    Yeah, I think that if you look at the  
9                   training programs, and as I was saying a  
10                  little bit about the history of it, you  
11                  know, they started out oral and then all of  
12                  a sudden, well, ASL was going to have to  
13                  come into it. So, some of the programs, for  
14                  example in Ontario and so on, they - it's  
15                  not just the testing. It's the offering of  
16                  the courses and offering of the opportunity  
17                  to learn but isn't just learning sign  
18                  language. If you look at the Ontario  
19                  program, it's the history of deafness. It's  
20                  about what it's like to be deaf, what it's  
21                  all about, what the deaf community is all  
22                  about, what is deaf culture, what does it  
23                  mean.

24                         So, all of those things, yeah, the  
25                         central core in this is ASL, but there's

1 much more to it. And what I'd like to see  
2 the programs doing is not just offering a  
3 course in ASL. These are second language  
4 learners.

5 Q. Right.

6 A. We're talking - you know, there are some  
7 deaf teachers that are deaf, yes, but most  
8 of them are second language learners. So,  
9 are we going to prevent them from coming in?  
10 They're never going to have - very few are  
11 going to have native skills. Some will  
12 become interpreters and so on, and that's  
13 terrific. So, what I would see is not just  
14 putting ASL in it, but getting them out  
15 there in the deaf community, getting the  
16 deaf community in the training program.

17 Q. Immersion in the deaf community?

18 A. I wouldn't know if I'd call it immersion.  
19 Just maybe go to a social event or do  
20 something or go watch some deaf sports or,  
21 you know, whatever. Watch some movies that  
22 involve CODA or something, you know. I  
23 mean, so yes, they put - so then, back to  
24 your question about the standards. Well, as  
25 ASL started to come in, the deaf community

1           especially became very concerned about  
2           people saying they knew sign language.

3           Q.    Yeah.

4           A.    And we saw - and I've been to some schools  
5           that I was called into in different  
6           provinces where they claimed to have an  
7           interpreter in a classroom and that  
8           interpreter really couldn't sign very well.

9           Q.    There was a really famous public event,  
10          wasn't there, where someone was faking sign  
11          language?  It was a (unintelligible) or  
12          something.

13          A.    I actually wrote an article on it.

14          Q.    Yeah, yeah, I think that's where I saw it.

15          A.    And actually, was waving his arms around and  
16          so on.

17          Q.    Right.

18          A.    So, the deaf people are saying "wait a  
19          minute.  You know, we've been stigmatized  
20          and discriminated, and sign language was a  
21          gesture system and it was primitive.  Now  
22          you're wanting it, but everybody learns a  
23          few signs and they say they're competent.  
24          So, wait a minute, we want some standards"  
25          and understand that.  The trouble is, as you

1           were just saying, language is a complicated  
2           thing and it isn't just language we wanted  
3           here. We wanted knowledge of deafness. We  
4           wanted it embedded in the community.

5                        So, yes, I think it's important  
6           obviously for teachers of the deaf, even if  
7           they're not going to use sign language, to  
8           be knowledgeable and they're going to start  
9           to acquire it. Some are going to be really  
10          good at it. Some aren't. You can take  
11          courses and courses and some people seem to  
12          get it. Sign language is a very difficult  
13          language to acquire. It's different. It  
14          has different syntax. It has different way  
15          of relating and turn-taking and so on. Some  
16          people seem to be able to do it easily.  
17          Other people not. You'd expect people that  
18          went for teacher of the deaf would have some  
19          predilection, but there are a lot of other  
20          qualities you want. So, you're going to get  
21          variation.

22                       Yes, you want to do that. If I look at  
23          testing, I look at my friends at NTID that  
24          did the first test of SLIP.

25          Q.    Okay.



1           A.    Okay, Kakames and Neumas. They have a paper  
2                   they wrote. They were questioned a lot  
3                   about it. So, they wrote a paper about the  
4                   history of it. So, they went to a  
5                   conference, I think back in the late 60s, on  
6                   language and somebody gave a paper about  
7                   language testing in the American military.  
8                   They wanted a quick test for people that  
9                   were going to be sent to Italy or sent to  
10                  Germany or whatever. So, they developed  
11                  this test.

12                         So, they decided to take that test  
13                         developed for that purpose, which is usually  
14                         what, 20-30 minutes of a video being  
15                         analyzed subjectively by people and convert  
16                         it and make it accessible for sign language,  
17                         and they did interesting job. But then, all  
18                         of a sudden, the people at Gallaudet decided  
19                         well, they wanted a more holistic approach.  
20                         So, there was something different, and other  
21                         tests popped up all over the place, and I  
22                         think you said earlier okay, there's  
23                         variation and so on.

24                                 Testing for language, when you test  
25                                 somebody for language, you're touching on

1           their essence, on their very being. Look at  
2           the politics of language in Canada. French,  
3           English, Inuktitut, all of this, residential  
4           schools. We have to be careful when we say  
5           somebody has a great language ability, they  
6           don't have. I think we have to be careful  
7           about that, and if we're going to test  
8           language for somebody for grade one or grade  
9           six and so on, let's do it in that context.  
10          Let's do the communication there. Yeah,  
11          those tests might tell you something, but I  
12          don't think they've been proven to predict  
13          anything about teaching and so on. They're  
14          important, but it's complicated.

15          Q. And you know, I appreciate there are  
16          problems with testing and the degree to  
17          which a test actually reflects reality, an  
18          area of academic discussion. What I guess  
19          I'm putting to you, and what I'm asking you  
20          about is that, you know, is the fact that  
21          there are many different tests and that, you  
22          know, the utility of tests in some cases is  
23          overstated, does that mean we shouldn't be  
24          testing those who are teaching in ASL at  
25          all? I mean, how else do we evaluate their

1 skills?

2 A. Well, first of all, I'm not saying we  
3 shouldn't be testing. But what are you  
4 testing for?

5 Q. Right.

6 A. What are you going to use that test for?  
7 Are you going to use it to determine pay  
8 grade, determine whether you get a job? So,  
9 what is the purpose of the test? That's  
10 what I'm saying. Yeah, you can test, but  
11 what's the purpose? And I mean, there's a  
12 lot of argument about just regular school  
13 curriculum over testing kids and so on.

14 The other thing, this particular test  
15 has one study on reliability and validity  
16 that I know of, and it was done by the  
17 authors of the test. The actual Gallaudet  
18 test, that's the SLIP test, doesn't actually  
19 have such a study. So, I mean, in the world  
20 that I come from, you start giving tests and  
21 you're going to have serious consequences  
22 from it, you better have some scientific  
23 background here. If you don't, doesn't mean  
24 you can't give it, but let's take it easy  
25 about what it means and how it applies, et

1           cetera. That's all I'm saying.

2           Q. You weren't provided with any information  
3           about whether the teachers who teach Carter  
4           Churchill now or the teachers who taught  
5           Carter Churchill over the last few years,  
6           whether or not they were tested? You  
7           weren't provided with that information?

8           A. Well, I heard that they were tested, but I  
9           wasn't provided with the information, no.

10          Q. You weren't provided with the results of  
11          their testing?

12          A. No, absolutely not.

13          Q. We'll talk about that later.

14          A. Okay.

15          Q. I want to talk about page 15 of your report.

16          A. 15.

17          Q. I think, I mean, the top of - the first  
18          sentence on this page, I think is sort of  
19          your, what would we call it, thesis  
20          statement, if I was back in academia, of  
21          your report, which says "my overall  
22          impression, based on the reading of the  
23          available reports" and we'll talk about the  
24          available reports, "from the educators and  
25          other professionals, as well as transcripts

1 of various meetings held to discuss Carter's  
2 situation, is of an engaged educational  
3 program striving to provide Carter with an  
4 appropriate education according to the  
5 general policies and procedures applicable  
6 to the School District".

7 A. Yeah.

8 Q. Still stand by that statement?

9 A. Yeah.

10 Q. Okay. We're going to break that down.

11 "Engaged education program", what program  
12 are you talking about? What engaged  
13 education - what program?

14 A. Well, my mandate was to look at kindergarten  
15 on, yeah.

16 Q. Okay. So, you just meant the time that  
17 Carter was in school from kindergarten -

18 A. Yeah, yeah.

19 Q. - till present?

20 A. Yeah.

21 Q. Okay.

22 A. And again, there was some incidental  
23 information there about previous and so on.

24 Q. I was wondering about whether you were  
25 evaluating like a specific program.

- 1 A. No, no, no.
- 2 Q. Kind of like for ASL -
- 3 A. No.
- 4 Q. You know, ASL students in Newfoundland and  
5 Labrador.
- 6 A. No, no.
- 7 Q. Because there is no such program?
- 8 A. Exactly.
- 9 Q. Is that a problem?
- 10 A. Oh, I think it's a problem, yeah. I think  
11 I've made it clear in my report that I think  
12 that the information about the specifics of  
13 program and so on is very unclear.
- 14 Q. Okay. So, by - you know, by education  
15 program, you mean the situation, what has  
16 come to pass during Carter's time in school?
- 17 A. Yeah.
- 18 Q. Okay. Engaged, was that educational program  
19 engaged from kindergarten to grade three, in  
20 your view?
- 21 A. I think the teachers were engaged. I see  
22 reports right from the get-go of people  
23 getting together, making ISPs, large teams  
24 of people, including people from the  
25 Janeway, teachers and so on, discussing what

1 to do. A lot of detailed reports about  
2 Carter does this, he doesn't do that, and so  
3 on. They obviously were concerned with his  
4 programming and very engaged, yeah. That's  
5 the feeling I got that, you know, there were  
6 lots of meetings and then in a very short  
7 period of time, called for assessments and  
8 then outside assessments at APSEA and going  
9 to psychologists and going to deaf people  
10 skill that evaluating sign language,  
11 educational psychology and so on and  
12 audiology being done again and again.

13 Q. So, by engaged -

14 A. Paying attention to the cerebral palsy  
15 aspect and the adaptation and so on. So,  
16 yeah, I read it all and just in terms of a  
17 global picture of engagement, of addressing  
18 issues and doing things, yeah.

19 Q. So, by engaged, I mean, I think what you're  
20 implying to me is that, you know, without  
21 evaluating the outcome, because you know,  
22 engaged isn't depending on the outcome.

23 A. No.

24 Q. So, engaged is that, you know, as problems  
25 were being raised and identified, they were

1           being addressed?

2           A.   Not quite.  I think that - my understanding  
3           is that there's a requirement to have the  
4           individual ISPs and so on and they were  
5           done.  There's a requirement to meet with  
6           parents.  There's a requirement for report  
7           cards.  I think the program itself started  
8           to feel they need outside assessments and so  
9           on.  So, it wasn't just waiting - I didn't  
10          get the feeling they were all waiting for a  
11          problem and then did something.  I felt that  
12          they were doing what any normal program  
13          would do.

14          Q.   But what I mean, and by "engaged educational  
15          program" though, I mean you mean that these  
16          meetings, the ISP meetings, you know, were  
17          being held and information that came out of  
18          those meetings was being used to alter the  
19          program, to make things better?

20          A.   Yeah, things like that; that it was being  
21          discussed.  They were looking at Carter.  
22          They were trying to find out what the best  
23          way to address his educational needs were  
24          and made suggestions and had specific  
25          objectives at the end of the year.  There's



1 a report card.

2 Q. Were people listening to those experts?

3 When those experts were coming forward and  
4 saying Carter needs this, that or the other  
5 thing, I mean, were they being listened to,  
6 understood?

7 A. Well, the thing is that the expert reports  
8 that I saw actually weren't all that  
9 specific about the things we're discussing  
10 right now, and should he have - and I think  
11 I said this in my report. It surprised me  
12 if sign language was going to be a big  
13 element, why some of those experts didn't  
14 say let's do it according to bilingual  
15 bicultural or let - they just - the experts  
16 report gave their assessment of various  
17 areas, intellectual, cognitive, language,  
18 where he excelled, where he didn't, where  
19 the problems were and so on, and then they  
20 would just say "well, let's work on this  
21 more". They would get all the - and so they  
22 gave it back to the educators. But I don't  
23 think it - some questions were answered.  
24 There seems to be a big question well, about  
25 intellectual range and so on. They said no,

1           that's - it's all fine. That's okay. Let's  
2           not go there. And that was important. But  
3           apart from that, that isn't a very specific  
4           thing. That doesn't help a teacher very  
5           much, you know.

6                        So, I don't think - they gave a lot of  
7           information, but they didn't really offer  
8           much in the way, as far as I remember, in  
9           specific programming that would say okay,  
10          we're going to do this now or we're going to  
11          - you know, they need two educational aids.  
12          We need somebody who can speak sign language  
13          better and so on. I didn't see that in the  
14          outside reports. That was more internally  
15          generated.

16          Q.    I see. So, I mean, an "engaged educational  
17          program", you know, if professionals and  
18          those who are set to assess Carter and the  
19          needs of other deaf children, you know, are  
20          coming forward and saying, you know, these  
21          areas exist and needs to be addressed, I  
22          mean, you're expecting to see those areas  
23          addressed as an engaged program?

24          A.    Yeah, for sure.

25          Q.    You can't ignore them, right?

1 A. No.

2 Q. Yeah, okay.

3 A. No, absolutely not.

4 Q. I just want to ask you about - you noted  
5 about Carter's intelligence. You said, you  
6 know, by the documentation you were  
7 provided, and I appreciate you didn't have a  
8 chance to do any kind of cognitive  
9 assessment on him -

10 A. No.

11 Q. - but you know, we tend to agree with you  
12 that all indications show that he's  
13 personable, of average intelligence, that  
14 beyond the language delay and you know,  
15 issues that go along with that, I mean,  
16 there doesn't appear, from any of the  
17 evidence that you've seen, and I can tell  
18 you none of the evidence we've seen, that  
19 indicates Carter has any other kind of, you  
20 know, intellectual disability or other  
21 complicating factor. I want to - and you're  
22 agreeing with me?

23 A. I agree. I didn't see anything about that.  
24 And if I can just comment, the thing that  
25 jumps out from all the reports, whether its

1 teachers or outside people, is all the  
2 positive things they say about Carter.

3 Q. Right.

4 A. About what a pleasant child he is, how  
5 engaging he is, how social he is, and how he  
6 adapted to situations that were novel and so  
7 on. So, that was something that jumped out  
8 of just about every report I saw.

9 Q. You used the phrase earlier, you know, that  
10 this stigmatizing phrase that deaf people  
11 used to get labelled as deaf and dumb,  
12 right. I mean, we're familiar. It is often  
13 the case that deaf people are labelled by  
14 hearing people who don't know better, who  
15 don't understand or perhaps who have  
16 prejudice, as being, you know,  
17 intellectually less than. That's a common  
18 problem within the deaf community, isn't it?

19 A. I don't - you mean by the hearing people?

20 Q. Yeah. I mean, there are presumptions made  
21 about deaf people. You mentioned your own  
22 father showing up at the emergency room.  
23 You know, there are assumptions -

24 A. Yeah.

25 Q. - made about deaf people by the hearing

- 1 community that are inaccurate and -
- 2 A. Yeah.
- 3 Q. - and attribute, you know, either mental
- 4 health or -
- 5 A. Yeah, I agree with that, but I think that
- 6 that has changed a lot in the last 20 years.
- 7 I mean, the Covid, for example, all of a
- 8 sudden put sign language right up there in
- 9 front of presidents and -
- 10 Q. Sure.
- 11 A. - prime ministers and there have been so
- 12 many articles. There have been movies. So,
- 13 the general awareness about deaf, so I don't
- 14 - I regret to say the only place that I
- 15 really see that, sometimes when I'm doing a
- 16 clinical case, and I see a report by a
- 17 professional who uses the word "deaf mute"
- 18 or "deaf dumb" right in that report.
- 19 Q. Right.
- 20 A. The odd - I was interviewed once by the CBC
- 21 over a Court case and the interviewer talked
- 22 about deaf mute people right on the TV and
- 23 it almost stopped the interview. But that
- 24 doesn't happen that often. It's getting
- 25 better. But it still - there's

1           misunderstanding about deaf people. There's  
2           misunderstanding about sign language, but  
3           it's getting a lot better.

4           Q.   And the reason I ask this is because we saw  
5           documentary evidence last week and heard  
6           oral evidence from the person who produced  
7           that document, who was - who met Carter and  
8           within three or four days of meeting Carter,  
9           this person indicated, you know, that "while  
10          Carter's parents thought he was a genius"  
11          and you know, which was meant in a sarcastic  
12          context, you know, he likely has other,  
13          implying cognitive delays and issues as  
14          well. And in our view, I mean, that was a  
15          case of that kind of mislabelling that's  
16          endemic. Would you - is that the kind of  
17          thing that you've encountered and is that  
18          something that operates as a barrier to deaf  
19          people getting access to the services they  
20          need?

21          A.   Well, I can't comment on the specific thing  
22          that you're talking about, but I have  
23          definitely seen that out there. I mean,  
24          somebody tried - I mean, I'm dealing not  
25          only with education, I've been dealing with

1 the justice system. I'm dealing with people  
2 that are seniors and trying to get - I'm  
3 dealing with vocational, with employment.  
4 So, all of those areas have their problems.  
5 Deaf people go to get a job, they get the  
6 job, they can't get promoted because they  
7 can't take the course that they need because  
8 they can't provide an interpreter, and then  
9 the person says "well, that person couldn't  
10 do that job anyway".

11 Q. Right, yeah.

12 A. You know, so yeah, that happens.

13 Q. Would that shock you to know that that  
14 comment was made by Carter's grade three  
15 teacher?

16 A. Sorry, would you tell me the comment again?

17 Q. The comment was that "while his parents  
18 think he's a genius, I think that he has  
19 other" I think it was cognitive delays,  
20 other problems.

21 A. Well, I don't know if it shocks me, but I  
22 think it's - that would be an unfortunate -  
23 that's the opinion of that person, I guess,  
24 and maybe it's based on something, maybe  
25 it's not. I don't know.

1 Q. You haven't seen any documents -

2 A. I haven't seen any documents to support that  
3 point of view.

4 Q. Would it surprise you to hear that person is  
5 teaching Carter today?

6 A. Well, I don't know if surprise is the word I  
7 would use. I don't know what the context of  
8 that was. I don't think I can make that  
9 kind of speculation would be fair.

10 Q. Fair. I want to move on to another area. I  
11 note that we've been an hour and a half, so  
12 that puts us at about the halfway point.  
13 Good time for five minutes.

14 ADJUDICATOR:

15 Q. We'll adjourn until ten after.

16 (OFF RECORD)

17 ADJUDICATOR:

18 Q. Mr. Rees, go ahead.

19 MR. REES:

20 Q. Dr. MacDougall, you say at two points in  
21 your report that the staff that are working  
22 with Carter Churchill throughout these six  
23 years or five years that he's been in school  
24 are highly qualified.

25 A. Yeah.



- 1 Q. And you say that twice actually. Which  
2 staff are you talking about?
- 3 A. I'm talking about the teachers and all the  
4 professionals, yeah, the certified  
5 professionals.
- 6 Q. Right. Right, from kindergarten to grade  
7 one, two, three, four, five?
- 8 A. Yeah, any certified professional that's  
9 mentioned.
- 10 Q. Do you know any of their names? I'll tell  
11 you what, why don't I take you down through  
12 the list of names and you tell me on what  
13 basis you have assessed them as highly  
14 qualified, because those are your words and  
15 I want to make sure that you stand by them.
- 16 A. I can tell you in general I am because they  
17 are - they have a license to practice.  
18 That's what I'm saying.
- 19 Q. They have a license to teach.
- 20 A. To teach, yeah, that's what I mean by highly  
21 qualified.
- 22 Q. Okay. So, when you say -
- 23 A. I don't mean any more than that.
- 24 Q. - "all the individuals involved in Carter's  
25 program were all highly qualified" what you

- 1 mean is like none of them were teaching  
2 illegally? You mean like, you know, they  
3 all had -
- 4 A. I mean they're certified, just like a lawyer  
5 is a lawyer and they're highly qualified. A  
6 psychologist - that's what I mean. I don't  
7 mean -
- 8 Q. I can tell you, I'm a lawyer, but not all my  
9 clients would say I'm highly qualified.
- 10 A. Okay, they may not, but I can tell you, if  
11 you want to know what I meant by that, it  
12 meant that they were legally certified to do  
13 their - carry out their profession.
- 14 Q. Okay. So, I'd suggest that when you say  
15 that they're highly qualified, you mean that  
16 they're qualified to teach?
- 17 A. It wasn't just the - it was the SLP's too I  
18 was talking about. You know, I saw reports  
19 from psychologists and from other people.  
20 So, all of the certified people were  
21 certified. They didn't - you know, there  
22 was nobody doing a psychological test that  
23 wasn't a psychologist. There was nobody  
24 doing AVT that didn't have their  
25 certificate, as far as I could see. That's

- 1           all I meant.
- 2           Q.    Okay.  Well, so -
- 3           A.    I didn't mean any more than that.
- 4           Q.    I'm happy for you to retract that because,
- 5           you know, the -
- 6           A.    I'm just qualifying it.  I'm no retracting
- 7           it.
- 8           Q.    Okay.  Yeah, did I say retracted?  I didn't
- 9           mean retract, I meant qualify.  That you're
- 10          qualifying your statement that people are
- 11          highly qualified.
- 12          A.    Right.
- 13          Q.    So, you know - I mean, you also - I mean, I
- 14          can tell you you're not wrong, but you also
- 15          don't even know whether these people are
- 16          actually certified to teach.  I mean, no one
- 17          gave you their certificates.  You're just -
- 18          you're working on the assumption.
- 19          A.    No, I don't know that the reports I have are
- 20          the actual reports.  No, I'm taking it for
- 21          granted that the things I'm reading reflect
- 22          reality.  I haven't -
- 23          Q.    So, what you mean is, you know, you were
- 24          informed that the individuals who delivered
- 25          various kinds of programming to Carter

1 Churchill were qualified to do their jobs  
2 and you had no reason to question that?

3 A. Yeah. I took it on face value that when I  
4 saw a report from a psychologist that they  
5 were a psychologist and saw a report from a  
6 teacher that they were a teacher with a  
7 certificate and so on. I didn't investigate  
8 their qualifications and so on. I don't -

9 Q. So, you didn't know anything about any of  
10 the teachers who may have been ASL  
11 proficiency tested? You didn't know the  
12 results of any of their proficiency tests?

13 A. No.

14 Q. You didn't know the number of hours that  
15 various itinerant teachers would have spent  
16 with Carter through the process?

17 A. There were hours mentioned in some of the  
18 reports, especially the summaries done when  
19 they went to APSEA. Then the psychologist,  
20 for example, would say here's what happened  
21 in kindergarten, grade one, in some of them.  
22 Then some of the teaching reports, the - you  
23 know, when they have their meeting, the  
24 individual planning and so on and so forth,  
25 they list all of the people and their

1 profession. So, I'm just taking all that at  
2 face value.

3 Q. And when you refer to the number of hours  
4 and things of itinerant support that would  
5 have been provided to Carter Churchill  
6 during various years, do you have any way of  
7 knowing how many hours would be enough, how  
8 many hours a student at Carter's level of  
9 language level would require?

10 A. No, I don't.

11 Q. Of itinerant support? You don't know?

12 A. That would be up to the teachers and the  
13 programming and so on.

14 Q. Right. And I know it would be up to them to  
15 decide, but you would have no idea whether  
16 that was a good decision or a bad one?  
17 You're not qualified to speak to whether  
18 that was enough or whether there should have  
19 been more or less?

20 A. I don't know if I'm not qualified to speak  
21 to it, but I just don't have the information  
22 on hand.

23 Q. You don't have the information. So, none of  
24 the opinions that you've expressed are  
25 premised on Carter receiving a sufficient

1 amount of DHH itinerant support because you  
2 don't know how much would have been enough?

3 A. No, I just looked at what it was; that it  
4 was there; that they did provide some. It  
5 could have been ten hours, could have been  
6 20 hours, could have been once every two  
7 weeks or once every week and so on. I  
8 haven't commented on that. Just that it -  
9 decisions were made to provide that type of  
10 service and no, I have no evaluative  
11 statement about that.

12 Q. Do you know anything about what any of those  
13 teachers themselves, do you have any - were  
14 you presented with - let me make it easier.  
15 I put it to you that you were not presented  
16 with any narratives from any of the teachers  
17 themselves attesting to how well they felt  
18 they were able to deliver various  
19 objectives, educational objectives to  
20 Carter.

21 A. No, all I saw were the reports, the report  
22 cards, the summaries at the end of the year,  
23 their progress reports and so on, but there  
24 was no narrative from them about that, no.

25 Q. And you didn't, of course, interview any of

- 1 the teachers to find out that -
- 2 A. No.
- 3 Q. - what from their perspective, whether they
- 4 were able to sufficiently engage with
- 5 Carter?
- 6 A. No, not at all.
- 7 Q. And when you say that, you know, he had
- 8 qualified teachers and other professionals
- 9 throughout his time, for instance, you know,
- 10 in kindergarten, his classroom teacher,
- 11 Shane Porter, was a qualified teacher for
- 12 hearing children.
- 13 A. Right.
- 14 Q. Had no education or training at all to teach
- 15 deaf children.
- 16 A. Right.
- 17 Q. So, what you mean is he was a qualified
- 18 teacher for hearing children and had no deaf
- 19 qualifications, right?
- 20 A. Yeah, and just what you said, yeah.
- 21 Q. Do you have any idea at the various points
- 22 along Carter's educational journey which
- 23 teachers or student assistants he had were
- 24 able to communicate with Carter in ASL? Do
- 25 you know which ones could and which one

1           couldn't?

2           A.    The degree to which they could or the degree  
3           to which they had ASL and so on?

4           Q.    Or just whether they professed to be able to  
5           communicate or not?

6           A.    No, I didn't - that would - I didn't have  
7           any direct information about that, just from  
8           reports where they would say they're  
9           evaluating ASL or Carter can show a sign or  
10          not a sign and we're asking him to do more  
11          about that, and he now does two signs  
12          together. We're trying to get three. We're  
13          trying to reduce the amount of pointing and  
14          put that into signs and so on. So, I see  
15          different teachers who obviously must have  
16          known something about sign language, talking  
17          about the language and so on. But I have no  
18          direct evidence beyond that.

19          Q.    Okay. And when you were provided with a  
20          report that says, you know, for instance,  
21          one of your reports would have said, in  
22          synopsis, you know, in grade - in  
23          kindergarten, Carter had a student  
24          assistant, you would have no way of knowing,  
25          would you, whether that student assistant



1           was proficient in ASL or whether they could  
2           communicate in ASL?

3           A.   Well, I think at various points they said  
4           that - whether a student assistant had some  
5           ASL or not. That's all I knew, what was in  
6           a report. I had no farther knowledge about  
7           their degree of proficiency or anything like  
8           that.

9           Q.   Okay. We'll talk about whether we can change  
10          your mind later. I want to ask you about  
11          the policy aspects that you commented on in  
12          your report and I think that's an  
13          interesting area. So, I want to make sure I  
14          find the right place. Here you go,  
15          paragraph 18 of your report. It's on page  
16          17.

17          A.   Page 17, yeah.

18          Q.   And paragraph 18, you say "an overarching  
19          issue is that the School District does not  
20          appear to have clearly articulated policies  
21          and procedures that the frontline  
22          professionals and others involved in  
23          education of deaf children can follow. The  
24          general policies that do exist for children  
25          with exceptionalities are excellent and

1 enlightened in a general sense, but they do  
2 not provide specific policies and procedures  
3 which are left to the education and other  
4 professional experts to carry out.”

5 I think what we have here, and tell me  
6 if you agree, I think we have, you know,  
7 vague general policies that from a practical  
8 perspective can justify any level of  
9 programming, right? I mean, the policies  
10 are not specific enough that they’re really  
11 of great utility to the frontline staff,  
12 right?

13 A. I don’t think I would go that far. I think,  
14 you know, the general policies about  
15 quality, about communicating with parents,  
16 about having individual plans and so on and  
17 so forth, these are general policies that  
18 could be more specific. But, no, I don’t  
19 think I agree with your characterization of  
20 it.

21 Q. Well, the lack of specificity caused  
22 problems though, didn’t it?

23 A. Definitely, yeah. I’m saying they should be  
24 - I would think that - well, there’s  
25 policies and procedures, right.

1 Q. Right.

2 A. So, policies can be general, but there  
3 needed to be another step in there about  
4 implementation and it seems to me that if  
5 anything is missing, it was that.

6 Q. Right, because then in paragraph 19 of your  
7 report, you talk about, you know, the  
8 problems with these vague policies and you  
9 say, last sentence of paragraph 19, "in my  
10 view, this situation," the lack of  
11 specificity, "contributed substantially to  
12 the misunderstandings and miscommunications  
13 between the school and the parents". What  
14 misunderstandings and miscommunications are  
15 you referring to?

16 A. Well, I think that there was - I know that -  
17 I can see from some of the reports,  
18 especially of the ISPs and so on, that  
19 parents, Mr. and Mrs. Churchill, were  
20 pushing for, you know, more ASL, more aids  
21 with qualifications and so on, and not being  
22 happy about what was going on and that you  
23 can kind of get the general flavour, and  
24 towards the end, there are meetings where it  
25 says right in the meeting, the meeting

1           didn't go well. So, it seems to me a lot of  
2           that was probably due to the fact that they  
3           couldn't just go to a meeting and bring out  
4           a document and say "it says right here these  
5           are the things, given Carter's situation,  
6           that should be done". You have general  
7           statements of policy which are great. You  
8           have a lot of things that are being done,  
9           but there seemed to be a dissatisfaction  
10          between what parents wanted and what was  
11          actually being done.

12                    So, and I think a lot of it is because  
13          there was - you couldn't easily refer to  
14          something to say what it was. And again, I  
15          emphasize the fact that again, that's in  
16          that confusing context of different people  
17          saying one thing and the other thing being  
18          caught in this thing and I think it  
19          contributed to it. So, that's what I mean.  
20          I think that contributed to the apparent  
21          misunderstandings which are there and  
22          disagreements.

23          Q.    And you know, ultimately led to this Human  
24          Rights complaint being filed and heard.

25          A.    Yeah, exactly.

1           Q.    We heard kind of a similar complaint or I  
2                    guess an issue alluded to by Mr. Price, who  
3                    was the chair of the Schools Board of  
4                    Trustees and he said "look, my job, you  
5                    know, we're an advisory oversight board." He  
6                    said, "my job is to make sure that the  
7                    School District complies with its policies  
8                    and procedures and hasn't gone outside its  
9                    policies and procedures and only to  
10                  intervene, you know, in those kinds of  
11                  cases".

12                            And it's our position, and I'm  
13                            wondering if you agree with this position,  
14                            that it doesn't really get the school board  
15                            anywhere in this case, the School District  
16                            anywhere in this case to be able to say  
17                            "well, we complied with our procedures" when  
18                            it's fairly easy to comply with these  
19                            procedures because they're vague and  
20                            general. I mean, do you think that's the  
21                            case?

22            A.    I'm not sure I'd state it that way, but I  
23                    think I did state a similar thing in my  
24                    report and that's why I said it appears that  
25                    what was done fell within those policies and

1 procedures. So, that isn't going to be the  
2 way to solve the - but I mean, that's not an  
3 unimportant thing. I mean, there are a lot  
4 of safety issues actually going to the  
5 school. You know, there are a lot of things  
6 that we're not talking about that I'm sure  
7 were done by the school. And so, it's a  
8 general thing and things were done, but it  
9 didn't give that specific. So, I agree,  
10 that doesn't get us anywhere.

11 Q. Sure. I mean, no one files a Human Rights  
12 complaint because someone is doing a good  
13 job.

14 A. No.

15 Q. The question that this Board of Inquiry is  
16 being asked to address, you know, isn't  
17 whether or not the School District complied  
18 with all of its policies because it is  
19 entirely possible, and we'd suggest that  
20 it's the case in this case, is our argument  
21 anyway, that if indeed, and it appears maybe  
22 it did, that the School District complied  
23 with its policies, they still discriminated  
24 against Carter Churchill in providing him  
25 inadequate services, from our perspective.

1           So, I mean, you'll agree with me that the  
2           mere fact that the District complied with  
3           its policies doesn't mean that they were  
4           providing appropriate programming? Those  
5           two things don't - they're not synonymous,  
6           are they?

7           A. They're not completely synonymous. They are  
8           related because people would look at  
9           policies and presumably the educators and  
10          other people involved would look at those  
11          policies and have a way themselves of  
12          implementing that and so on. So, I mean,  
13          let's put it this way. If there were no  
14          policies there, I think we'd have a very  
15          different situation. So, I think the  
16          policies do mean something, but they don't  
17          give us a way of evaluating the specifics of  
18          the program and I'm not going to comment on  
19          the discrimination or the Human Rights.  
20          I'll leave that to the Commissioner.

21          Q. It's not your decision, right.

22          A. No, I leave that to the Commissioner.

23          Q. Absolutely. And I guess my concern is, and  
24          you've, I think, pointed us to, you know,  
25          one of a few dozen things we need to do, one

1 of which is we need to have more specific  
2 policies that give direction to  
3 administrators and educators as to what  
4 they're supposed to do to provide a quality  
5 education to a deaf child, right. I mean,  
6 we need - we agree on that much.

7 A. I agree, and if I could be a little more  
8 specific than that, they need to address  
9 this situation I've been talking about about  
10 the controversy among professionals and so  
11 on. They need to be upfront about the fact  
12 with parents and with others, we recognize  
13 that there are controversies in the field.  
14 There are various legitimate ways to go.  
15 Some of these are complimentary, some of  
16 them are contradictory. Here are the  
17 various things that are going on. And this  
18 is informed consent, right, really inform  
19 people about what's going on and then work  
20 with the teachers, the professionals and so  
21 on to say "well, those are the - how are you  
22 implementing that policy? And what are the  
23 procedures involved? And what about  
24 qualifications and what about socialization  
25 and what" - those things should be not left



1 to an individual, you know, all of a sudden  
2 an individual comes and you simply argue  
3 about what language is. You know, I mean,  
4 that should all be sorted out ahead of time.  
5 So, I think we need to bring those people  
6 together. You're not going to solve  
7 everything. Just at least frame the  
8 problem. Say what you know and admit what  
9 you don't know and be transparent. I guess  
10 that's what I'm looking for.

11 Q. Right, and that would be, you know, one step  
12 on the road to ensure that, you know, other  
13 children don't have to start back at the  
14 beginning, like Carter Churchill did, you  
15 know, back the way Carter Churchill was in  
16 kindergarten; that Carter Churchill could -  
17 you know, the next Carter Churchill can get  
18 supports like Carter has now when they start  
19 school. Policies would help that occur,  
20 wouldn't it?

21 A. I think if you have better policies and  
22 better procedures and you address the things  
23 that I talk about, that will help everybody  
24 from Labrador to Newfoundland, to every  
25 area, yes, every child. But again, there

1 are going to be a lot of challenges in  
2 there, but let's be transparent about the  
3 challenges and let's say what we can do.  
4 Let's be transparent about the resources.  
5 They aren't unlimited. Where the priorities  
6 are. I think all of these things need to be  
7 done. But we have qualified people here.  
8 We have dedicated people. We have engaged  
9 people. So, it's not we're starting from  
10 scratch. A lot of good things are  
11 happening.

12 Q. Were you provided with the Department's  
13 inclusive education model in your documents?

14 A. Problem or policy?

15 Q. We can look at your list. Safe and Caring  
16 Schools Policy, not the same. I don't think  
17 you were given it, no. Why don't I show it  
18 to you? You can let me know if you're  
19 seeing it for the first time. Volume 3 is  
20 one of the tabbed books there over to your  
21 left-hand side. Volume 3 it says on the  
22 cover.

23 A. They're in order.

24 ADJUDICATOR:

25 Q. What document are you looking for?

1 MR. REES:

2 Q. Volume 3.

3 ADJUDICATOR:

4 Q. But what is the document you're looking for?

5 Is it the service delivery model?

6 MR. REES:

7 Q. Tenets of Inclusive Education.

8 ADJUDICATOR:

9 Q. Okay.

10 A. And where is that? 063W?

11 MR. REES:

12 Q. Yeah, Tab W as in whiskey.

13 A. I'm not sure I've seen this document.

14 Q. We've pulled it off of the schools' website.

15 A. But I've certainly seen similar documents,

16 but I don't think I've seen this one.

17 Q. This is from the Department of Education, so

18 perhaps as opposed to the School District.

19 They're separate entities, at least for now.

20 One of the rights, and they describe it as a

21 right, under the Inclusive Education policy,

22 is that students have - the first bullet

23 point says "the right of all students to

24 attend school with their peers and to

25 receive appropriate and quality

- 1 programming". And I think you've indicated  
2 that from kindergarten to grade three,  
3 Carter Churchill was not attending school  
4 with his peers, was he?
- 5 A. Sorry, that Carter -
- 6 Q. Carter Churchill was not attending school  
7 with his peers? He was attending school  
8 with hearing children with whom he couldn't  
9 communicate.
- 10 A. Well again, I guess we get into the  
11 controversy about what we mean by peers.
- 12 Q. Right. Dr. Snoddon said Carter's peers are  
13 other deaf children. Do you agree with that  
14 assessment?
- 15 A. Well, that's one way to look at it. But I  
16 think we can't exclude other hearing  
17 children, if he has siblings, if he has -
- 18 Q. Oh sure, and he does.
- 19 A. And he does. And so, I mean, I think the  
20 wider definition of peers would definitely  
21 be blind children, hearing children, people  
22 in wheelchairs, people not in wheelchairs,  
23 people from Africa. I mean, this is a  
24 diverse thing. So, yes, deafness is one  
25 characteristic. It's one culture, but I

1 don't think - I think the word "peers" can  
2 be used in a wide sense and I think in this  
3 case it means the wide sense. The whole  
4 premise of the inclusive education is to go  
5 to the local school with everybody that's in  
6 that neighbourhood, whoever they are,  
7 wherever they come from, whatever language  
8 they speak. So, you know, deafness can be  
9 seen as a culture and is seen as a culture  
10 and has a language and there's a sense in  
11 which the smaller group of peers would be  
12 those people. But I think you'd have to  
13 consider all of the children in his  
14 neighbourhood to be his peers. They're  
15 children.

16 Q. Okay. So, do you think Carter - you think  
17 that in kindergarten, grade one, grade two,  
18 grade three, Carter Churchill, one student  
19 750 hearing kids, he was attending school  
20 with his peers?

21 A. Do I think he was -

22 Q. As per an inclusive education policy?

23 A. I think if - I think I've said that I would  
24 define peers at least in two different ways  
25 and it could be probably defined in other

1           ways. In the sense that he was in a  
2           neighbourhood school with other children,  
3           yes, he was with his peers. Was he with  
4           other deaf children? Was he with other deaf  
5           children that had cerebral palsy? You know,  
6           these - evidently he wasn't. So, if that's  
7           how we define peer, but I don't think -  
8           Q. Look, another - look, let's talk about  
9           another bullet point, because I'm surprised  
10          that I'm getting resistance on that one. "A  
11          welcoming school culture where all members  
12          of the school community -  
13          A. Sorry, can you tell me where that is?  
14          Q. Same document, three bullet points down.  
15          A. Okay.  
16          Q. "A welcoming school culture where all  
17          members of the school community feel they  
18          belong, realize their potential and  
19          contribute to the life of the school."  
20          There was affidavit evidence given and  
21          evidence given on the stand by Tammy Vaters,  
22          the deaf student assistant who was with  
23          Carter for several years, indicating that,  
24          you know, Carter was surrounded by hearing  
25          children, had no ability to communicate and

1           that he - and in fact, she said she herself  
2           felt socially isolated. Do you think the  
3           welcoming school culture where a student  
4           feels like they belong are being met in that  
5           context?

6           A. Very minimally, I think. I think there  
7           probably were things that could be done and  
8           may have been done, but the fact of not  
9           having other deaf children there and I don't  
10          know what was done to inform the - I mean,  
11          there are schools where the hearing kids  
12          have all been informed about deaf kids, have  
13          learned some sign language and so on. So, I  
14          mean, there are ways of doing that. Whether  
15          they were done in this case, I do not know.

16          Q. Right. I mean, that would be an important -  
17          if you have to go to school with your  
18          hearing peers as a deaf child, I mean at the  
19          very least having those children exposed to  
20          - the hearing children exposed to ASL starts  
21          to go some of the way.

22          A. And the realities of deaf, because when you  
23          talk about just ASL, but I keep wanting to  
24          make the point that language is embedded in  
25          culture, in identity and everything. So,

1           yes, I think it would be important to do  
2           that.

3           Q.   Doing things like acknowledging  
4           International Week of the Deaf, you know, in  
5           a hearing school would be an important thing  
6           to help someone feel like they belong?

7           A.   Well, I mean, you could give a lot of  
8           examples of how to do it.

9           Q.   That would be one though?

10          A.   That would probably be one of them, but it  
11          would be up to local people to decide that.

12          Q.   Yeah. Same volume, but this time turn to  
13          Tab T as in tango.

14          A.   Yeah.

15          Q.   This was a statement from the Canadian  
16          Mental Health Association, the Newfoundland  
17          and Labrador chapter.

18          A.   Um-hm.

19          Q.   And I don't know if it's dated. It was  
20          released during the International Week of  
21          the Deaf, so last year, 2021. It's not  
22          dated, but I think it says that in our table  
23          of contents. I want to direct you to the  
24          middle paragraph, which I'll read aloud and  
25          then ask for your commentary, whether you



1 agree with the Canadian Mental Health  
2 Association. Probably a few of your  
3 colleagues would serve on various provincial  
4 chapters of that group. "For children  
5 belonging to the deaf and hard of hearing  
6 community and their families having basic  
7 developmental needs met in mainstream  
8 schools can be a complex process" like  
9 you've been saying, "in a system not built  
10 for them. Mainstream schools are the  
11 foundation of learning and advancement for  
12 children and without proper support, deaf  
13 and hard of hearing children can be left at  
14 both a social and academic disadvantage.  
15 The development of social and emotional  
16 skills for children and youth in school is  
17 equally important in curriculum learning to  
18 prevent social isolation and maintain  
19 positive mental health. However, although  
20 there are some supports in place to  
21 accommodate deaf and hard of hearing needs  
22 in mainstream school, at times these  
23 accommodations cannot suitably be met. We  
24 have become a culture of accommodation  
25 rather than one of universal access and

1 acceptance.”

2 So, you know, in our view, and I’m  
3 asking whether you share it, you know, that  
4 statement from the Canadian Mental Health  
5 Association ties right in to this inclusive  
6 education model by saying, you know, there  
7 can be problems with an inclusive education  
8 model if it serves to isolate students or  
9 they’re not being supported. And you would  
10 agree with that?

11 A. Agree that that model raises risks in that  
12 line. Whether they actually occur for  
13 children is something that would have to be  
14 empirically shown, but there’s certainly a -  
15 that’s one of the main risks involved is the  
16 socialization and the overall wellbeing and  
17 mental health. You’ve got to be able to  
18 socialize. You’ve got to develop self-  
19 esteem, self-awareness and so on. So,  
20 definitely that model has that risk in it.  
21 It doesn’t mean it can’t be addressed, but  
22 it has that risk.

23 Q. You talk in your report and you’ve said as  
24 much when you’ve been here today about the  
25 steady improvement of Carter’s education;

1           that things, you know, were less than ideal,  
2           I think was your phrase, at some point in  
3           the beginning stages, but gets better as  
4           time goes on. And the District has made the  
5           argument here in front of this Board of  
6           Inquiry that education is, the term they  
7           keep using, is an iterative process; that  
8           you know, things get better in phases.

9                    I mean, it sounds like a funny  
10           philosophical question, but you know, why  
11           not make things better all at once? Why not  
12           - you know, why work our way up to 100  
13           percent? Why not jump right to 100 once we  
14           know? I mean, I guess the problem is that  
15           we don't know the problem yet, right?

16           A. I think that's a very good and complex  
17           question and I think - I hate to keep coming  
18           back to this, but it comes back to the lack  
19           of agreement among all of the relevant  
20           professionals about what to do. So, you  
21           have a situation that starts at a point in  
22           kindergarten and so on. You've got cochlear  
23           implant. You got AVT. You've got sign  
24           language coming in. You've got, in this  
25           case, cerebral palsy. You've got a bunch of

1 things, but it has - those things weren't  
2 really addressed right at the start to say  
3 "look, we know all of these things are here  
4 and we're going to start making programs"  
5 and I think it's right, it is an iterative  
6 process. You know, you start, you  
7 experience the child, you experience the  
8 classroom. You start to get feedback and,  
9 you know, obviously you're not going to know  
10 - he's not the only child in the class,  
11 right. I mean, there's other kids and so  
12 on. So, you're not going to know exactly  
13 what to do in the class. I mean, I ran a  
14 school for quite a few years, and I know  
15 what it's like in September matching  
16 teachers to classes and ratios and so on and  
17 so forth, and so yes, it is an iterative  
18 process. But that doesn't excuse  
19 identifying and addressing the special  
20 issues that you're going to know for any one  
21 child right from the get-go.

22 Q. Right. So, the -

23 A. So, it's not going to be to the best of your  
24 ability and resources and so on. It's going  
25 to improve. So, yeah, the fact that it's

1           iterative, I don't think excuses - but in  
2           this case, the trouble is you had various  
3           approaches which are on language one way,  
4           language another way. It's not - it wasn't  
5           easy. Nobody has the answer to that.

6           Q.    The trouble was we didn't know. We didn't  
7           know at various points in time what needed  
8           to be done and it was only through gradually  
9           acquiring the knowledge of what needed to be  
10          done that we were able to implement those  
11          things?

12          A.    Yeah, I don't quite see it that way. I  
13          think -

14          Q.    You're afraid to agree with me.

15          A.    Yeah, even though I -

16          Q.    I think you do. I mean, you must agree. I  
17          mean, the only reason -

18          A.    Well, what it is is that it isn't just the  
19          experience of that child. You can go and  
20          read the literature. You can see the  
21          research. You can see what happens  
22          elsewhere. You can gather information.  
23          When you have a child that's born with  
24          severe hearing loss, that gets a cochlear  
25          implant early, that does have cerebral

1 palsy, right away, you're going to know a  
2 lot of things that might be at risk, that  
3 might not, what programs are there, and it's  
4 going to be difficult transition from health  
5 to education. There are going to be times  
6 that people say "I don't know what's going  
7 on". You start assessing intelligence of  
8 children that are three years old? I mean,  
9 that's a risky thing to do because  
10 intelligence, as you know, is seen as  
11 something that's stable and doesn't change.  
12 Once that gets in a file, it stays with you  
13 for life. So, you know, how many  
14 assessments should you do? So, you need to  
15 do a lot of research. You need to - it  
16 isn't just here's what we have and we're  
17 going to start dealing with this problem.  
18 And of course, that's what teachers know.  
19 That's what professionals know and so on.  
20 So, you've got to bring all that to bear.  
21 Again, in this case, it's more difficult  
22 because some people say do one thing and  
23 some people say do the other and they can't  
24 tell you how to bring it together.

25 Q. Yeah. Yeah, that's right. Sometimes it's

1 hard to know how to bring it together. I  
2 mean, even when a problem is known, knowing  
3 what the solution to that problem is can be  
4 tricky.

5 A. Again, I'm not going to completely agree  
6 with what you're saying. I think it's not  
7 that hard to bring it together. I think  
8 these people should sit down and work it  
9 out.

10 Q. We will get to that. Tell me about the  
11 current situation though. I mean, you got a  
12 look at the satellite classroom. You know,  
13 Carter was there today, was talking to his  
14 parents about it. The supports that are  
15 provided there are leaps and bounds ahead of  
16 where things were from kindergarten. Is  
17 that - I mean, I think you described it as  
18 close to ideal. I mean, tell me about that  
19 situation and what makes it close to ideal  
20 at present?

21 A. Again, I think I qualified it, said given  
22 the existing resources and so on, you know,  
23 the context. From what I understand, you  
24 know, have all the teachers of the deaf.  
25 You have people in there that are signing.

1           You have other - that's one thing, but you  
2           have other deaf kids in there. That's my  
3           understanding. And so, I saw a nice  
4           classroom, very airy, all stuff on the walls  
5           and so on, and that's all I wanted to see,  
6           it was there, for myself. And so, I don't  
7           know anything much more about it than that.  
8           That it has evolved in that way.

9           Q. Do you have any indication of how the  
10          students are doing academically?

11          A. I have absolutely no idea.

12          Q. They didn't indicate to you?

13          A. No. I don't have any of that information.  
14          And you know, it - obviously, you know, from  
15          my point of view, I mean, I ran a school for  
16          the deaf, the schools for the deaf were the  
17          places where we got the most ideal  
18          situation. Take out the fact that they had  
19          to leave their parents, you know, unless  
20          they lived in the area. Let's take that out  
21          for a moment. You know, the school here, I  
22          was involved in the design, you know, the  
23          acoustics, the lighting, the technology, the  
24          teachers, the ancillary personnel, the  
25          housekeeper, you know, the residence people.



1           So, you had a community. And then the deaf  
2           people went there. The community was there.  
3           It was a community centre. So, from - we  
4           know what it is from that point of view of  
5           all of the things we're talking about to  
6           make it good.

7           Q. I mean, the School for the Deaf was for the  
8           benefit of hearing people as well.

9           A. But - yeah, and here - but, what about the  
10          people in Goose Bay?

11          Q. Right.

12          A. What about the people in Corner Brook? What  
13          about the people in Rigolet? So, it's  
14          complicated and this inclusion movement is  
15          there. It's an enlightened movement. It  
16          says look, I mean, I don't want to send my  
17          kids somewhere else. But I want them to  
18          thrive. Yes, if they have to learn sign  
19          language, but that means other deaf kids in  
20          the community, we're all going to have to  
21          work together on this and we have a lot of  
22          ideas and so on. A lot of it's being done  
23          here. This classroom, as far as I  
24          understand, is - you know, is one attempt to  
25          do that, and I'm sure people will be looking

- 1 at that across the country in fact.
- 2 Q. It could serve as a bit of an example for  
3 the rest of the country?
- 4 A. I wouldn't be at all surprised.
- 5 Q. We have -
- 6 A. Based on the knowledge I have, which is not  
7 detailed, you know.
- 8 Q. I'd like to put something to you that I've  
9 put to a couple of witnesses already, a  
10 positive thing, believe it or not. I'm not  
11 all doom and gloom. This proceeding is  
12 being watched we're told by two, three  
13 thousand, four thousand people.
- 14 A. Oh dear.
- 15 Q. Online. Yeah.
- 16 A. Now you tell me.
- 17 Q. Better make sure your teeth are clean. And  
18 many of them are members of the deaf  
19 community and many of them are members of  
20 the deaf education community.
- 21 A. Yes.
- 22 Q. You've gotten not just a physical look at  
23 this satellite classroom, but you've also  
24 had the ability to have some review of the  
25 programming and things that are there and

1 the motivation for establishing it. Does  
2 this classroom appear to be the kind of  
3 environment that a, you know, professional  
4 who's interested in deaf education could  
5 thrive and succeed in?

6 A. I think so. Again, I think I have to limit  
7 my knowledge. You know, I don't want to  
8 speculate beyond what I've seen and so on.  
9 I think it's one good attempt. I will say  
10 that - I think I mentioned, if I can be  
11 permitted, when I left Newfoundland, I went  
12 to Rochester, New York to the National  
13 Technical Institute for the Deaf. So that  
14 centre, postsecondary, was part of the  
15 Rochester Institute of Technology and you  
16 know, Gallaudet University is there. I'm  
17 sure you've discussed it. It's the only  
18 university in the world where deaf people  
19 are there, the mecca for the deaf and so on.  
20 But there was a feeling among some of the  
21 kind of oral deaf and some of the people  
22 signing that well, that was all deaf people  
23 together. What we need is a model for  
24 postsecondary education where deaf students  
25 can be with hearing students.

1                   So, the Federal Government directly  
2                   funded NTID and I went there right at the  
3                   start. It was a very exciting place to be.  
4                   So, we had all these deaf students. We had  
5                   RIT students. So, that was like a classroom  
6                   with -- not just one classroom and they took  
7                   some of their courses with RIT with  
8                   interpreters. They did - so, this model of  
9                   having special situation within a  
10                  neighbourhood school, it's been thought of  
11                  for a long time.

12                  When I was at Mackay Centre, I was  
13                  being pressed about integration and so on  
14                  and I said "okay, we're going to bring kids  
15                  that aren't deaf into the school or aren't  
16                  physically disabled". So, there are ways of  
17                  having that.

18                  So, this iteration here, if I can use  
19                  that word, I think is part of that. And  
20                  this isn't the only place it's being done.  
21                  If you go and read articles on inclusion and  
22                  mainstreaming for 20-30 years, one kid in  
23                  the classroom with support, one special  
24                  classroom, two special classrooms.  
25                  Sometimes the special classroom, sometimes

1 the school for the deaf. So, they're all  
2 various iterations of it. Yes, this is one  
3 way to do it, but I think, as everybody will  
4 know, it's serving the metro area here. You  
5 know, I'm sure that school boards in Corner  
6 Brook or somewhere else are saying "well,  
7 that's great for you guys. You've done all  
8 of this. But what about me? How's this  
9 going to work? Can I send my child here?  
10 Where's he going to be?" et cetera.

11 So, it doesn't solve the big problem.  
12 It solved a local problem it seems. My  
13 issue that I mentioned is that it doesn't  
14 become what some of us call a white cross  
15 program.

16 Q. What does that mean?

17 A. It means everybody was excited, everybody  
18 made a program. When things changed, it all  
19 went away and the program disappeared.

20 Q. Right.

21 A. Sustainability.

22 Q. Yeah. Yeah, I mean that's what I wanted to  
23 ask you about. I mean, this satellite  
24 classroom has been billed as, you know, a  
25 pilot project that was created to address

1 the exceptional needs of someone described  
2 them as two handfuls of deaf children, you  
3 know, between six and eight deaf children in  
4 the metro area, who have severe language  
5 delay and have this need. But as that  
6 cohort moves on through the school system,  
7 if some of them don't need the program  
8 anymore or move away and the program  
9 shrinks, it could be discontinued or there  
10 are no provisions made to ensure that a  
11 program like the one at East Point  
12 Elementary exists and is available for new  
13 deaf children entering the school system.

14 You know, from your point of view, the  
15 concern that you've articulated is, you  
16 know, this program exists now, is laid in  
17 front of this Board of Inquiry as a solution  
18 or a part solution anyway to several  
19 problems that we maintain have led to the  
20 discrimination of a child, but there's  
21 nothing that guarantees that program or any  
22 other program like it continues to exist.  
23 So, is that where the policy change comes  
24 in?

25 A. Yeah, I think that that should be - we

1           should know if - part of the policy would be  
2           if that is accepted as one model that works  
3           say "look, whenever possible, we're going to  
4           implement that model, given resources and so  
5           on. We're committed to that" and so on.  
6           So, yeah, there would be discussions.

7                        But it goes beyond that. What's the  
8           use of technology? How are kids in another  
9           place going to interact? And you say kids  
10          with language deprivation or something, but  
11          I hope it applies to all deaf kids that they  
12          could have access to a model like that. So,  
13          yeah, these are things to address. They're  
14          not easy questions. Nobody has the answer  
15          to this. But we have good people here. We  
16          have dedicated people and I think we can -  
17          it can be sorted out obviously.

18          Q. I want to put some of your conclusions to  
19          you before we look at some other documents.  
20          So, page 19 of your report is some of your  
21          conclusions and recommendations. The first  
22          paragraph says, "it is my opinion that the  
23          educational programming offered to Carter  
24          does not fall outside of international,  
25          Canadian, or Newfoundland guidelines in

1 terms of denial of language." Which  
2 international, Canadian and Newfoundland  
3 guidelines are you talking about? Maybe  
4 let's just start at Newfoundland. Which  
5 Newfoundland guidelines are you talking  
6 about?

7 A. Well, I think the ones that I saw from the  
8 school board, for example.

9 Q. Okay, the general ones?

10 A. Yeah, the general ones and then the ones I  
11 have in my appendix, the United Nations and  
12 some of the other -

13 Q. Great. Well, look, I'm glad you mentioned  
14 United Nations because that's actually where  
15 I want to go next.

16 A. Okay.

17 Q. Not to New York, I mean, but to discussion  
18 about the United Nations.

19 A. Yeah.

20 Q. Page - sorry, no, that's my page. You're  
21 aware of the World Federation of the Deaf?

22 A. Yes, matter of fact, I was the cochair, I  
23 think, or the co something of it when it  
24 came to Montreal, of arranging the whole  
25 thing to happen in Montreal and I was an



1 active participant in it, so very aware.

2 Q. Right. I mean, they're a fairly  
3 authoritative organization. I mean, they're  
4 not some controversial fringe group.  
5 They're a fairly authoritative organization  
6 in terms of articulating needs and standards  
7 and issues within the deaf community?

8 A. I'm not sure I would use the word  
9 "authoritative", but they are a major  
10 organization in the world involved with deaf  
11 people.

12 Q. Right. And in fact, you know, the way in  
13 which the World Federation of the Deaf sort  
14 of links to this proceeding is, you know,  
15 the World Federation of the Deaf is a key  
16 stakeholder in the drafting of the  
17 Convention on the Rights of Persons with  
18 Disabilities.

19 A. Right.

20 Q. And Canada is a signatory to that, right?

21 A. Signatory, yeah.

22 Q. And in fact, our *Human Rights Act* in this  
23 province explicitly recognizes that  
24 convention.

25 A. Yeah.

1 Q. So, I mean, the World Federation of the  
2 Deaf, I understand, takes positions on deaf  
3 education and specifically those related to  
4 inclusive education. Are you familiar just,  
5 you know, generally? And we can look at it  
6 specifically. Are you familiar generally  
7 with the World Federation of the Deaf's  
8 positions on items in deaf education?

9 A. Yeah, they're big advocate of sign language,  
10 of congregate education and so on, all of  
11 the things that most people agree with in  
12 that particular modality. They don't talk  
13 very much about children that get cochlear  
14 implants and perhaps have the right to  
15 speech and hearing and so on. So, they're  
16 concentrated on one side of this.

17 Q. Sure. It doesn't make their opinion any  
18 less valid.

19 A. Absolutely not.

20 Q. I understand it just applies to a more  
21 limited smaller subset of folks.

22 A. Yeah.

23 Q. But it would be considered, as I indicated,  
24 you know, authoritative?

25 A. I'm not sure what you mean by authoritative,

1 but -

2 Q. Well, let's put it this way. The World  
3 Federation of the Deaf expresses concerns  
4 about, you know, the inclusive education  
5 model that sees children not being taught  
6 American Sign Language when they're  
7 designated as needing American Sign  
8 Language.

9 A. Absolutely.

10 Q. In that regard, did Carter Churchill's  
11 education from kindergarten to grade three  
12 accord with the World Federation of the  
13 Deaf's guidance?

14 A. I think that the World - that it - that  
15 program accepted sign language. There was  
16 an indication that sign language should be  
17 used. The various people in the program  
18 started to implement sign language, however  
19 it was. So, there was no actual rejection.  
20 What we've faced with in the deaf world are  
21 programs that say, "we will not use sign  
22 language". Many cochlear implant programs  
23 say you can't stay in this program if you  
24 use sign language. So, in that sense, I  
25 have to say it does fall within the rubric,

1 and obviously it was shown that it did,  
2 because -

3 Q. Hold on. It didn't fall within the rubric  
4 because they didn't force Carter to stop  
5 using sign language?

6 A. No, because it was accepted that sign  
7 language was going to be his primary  
8 language. There seemed to be a consensus  
9 about that. They were going to do what they  
10 could. There were gaps in how they did  
11 that. Over time it improved and now they're  
12 doing it in a fairly high level. So, there  
13 was a commitment. So, that's why I say it  
14 does fall within it. Didn't happen  
15 instantly. I don't - you know, a guideline  
16 like this from the United Nations or the  
17 World Federation of the Deaf, again they're  
18 not telling people exactly how to implement  
19 this. There was no denial, I think is the  
20 word I use, and that's what I'm faced with  
21 or what we're faced with in the deaf  
22 program. There are people that forbid the  
23 use of sign language. When the kids get  
24 cochlear implant, they say you cannot use  
25 sign language.

1 Q. I mean, like we're not talking about - you  
2 know, East Point or sorry, Beachy Cove  
3 Elementary, you know, isn't an indigenous  
4 residential school.

5 A. No.

6 Q. You know, that's trying to stamp out deaf  
7 culture. I mean, we've never asserted that.

8 A. Absolutely not.

9 Q. And you wouldn't assert that either. There  
10 was no - but our concern, and the Human  
11 Rights complaint grieves that, you know,  
12 through omission, through failing to immerse  
13 or expose Carter to other deaf children, ASL  
14 using children, I mean, they've effectively  
15 deprived him of the social - sorry, the  
16 interactive experiences in language that  
17 other individuals would have.

18 A. I think there are elements of that that need  
19 clarification. We know that language  
20 deprivation, there's a certain level of  
21 language deprivation that can have this  
22 effect that we talked about earlier on  
23 mental health and on the development of  
24 language itself, right. In the deaf  
25 education field, we have two approaches.

1           These approaches are within the ambit of  
2           what went on here. Nobody was saying we're  
3           going to deny Churchill language - sorry,  
4           Carter language. You know, at the very  
5           start, maybe at the very start, they were  
6           lacking because they didn't do sign language  
7           and then there were gaps as it went along.

8                     But, it all - there was no denial.  
9           Nobody was saying we're not following United  
10          Nations declaration. We are not following  
11          World Federation of the Deaf. A.G. Bell  
12          Association, an equally big association,  
13          doesn't want sign language. It says if you  
14          want that, go somewhere else. And a lot of  
15          people subscribe to that and do it.

16          Q.    You're aware that there is only one public  
17          school district in Newfoundland and  
18          Labrador. The Churchills don't have the  
19          A.G. Bell advantage of being able to go  
20          somewhere else.

21          A.    Sorry, I'm not quite getting -

22          Q.    The Churchills had to enrol their child -  
23          the only public school system in this area  
24          of Newfoundland and Labrador is the English  
25          or the French school system.

- 1 A. Yeah, for sure, yeah.
- 2 Q. You know, they - I appreciate your - you  
3 know, your private institution of A.G. Bell  
4 can say, you know, we're a specialized  
5 institution, come to us or don't.
- 6 A. No, that's not a school. That's an  
7 association like WFD or something.
- 8 Q. Right.
- 9 A. They are the promoters, going back to A.G.  
10 Bell of oralism.
- 11 Q. Right.
- 12 A. And they certify people. They hold  
13 conferences and so on. They're not a  
14 school, and yeah.
- 15 Q. I guess my point is, and what I'd ask you to  
16 confirm is that while there was no - and we  
17 don't assert there was - a deliberate  
18 attempt to deprive Carter of ASL because,  
19 you know, they didn't like ASL, I mean,  
20 someone can still have their rights violated  
21 or their education fall below standard  
22 through inadvertence of negligence or apathy  
23 or lack of knowledge, right. All those  
24 things don't require intent, do they?
- 25 A. No, no, they don't require intent, but they

1           require empirical evidence. If you're going  
2           to say that something happened and this had  
3           a definite impact on mental health or a  
4           definite impact on language, you would  
5           actually have to demonstrate that.

6           Q. I understand.

7           A. You would have to get a professional to  
8           evaluate that and say in this case, this  
9           child has severe language deprivation or has  
10          this mental health issue or has this  
11          behaviour issue. I don't see any of that in  
12          any of the files.

13          Q. How do people, parents in particular of a  
14          child in kindergarten, get that empirical  
15          evidence, other than through their school  
16          system?

17          A. Well, I mean, if you had a child in  
18          kindergarten that was suffering from extreme  
19          language deprivation and you sent him to a  
20          psychologist or an AVT or a teacher, they  
21          would have a professional responsibility to  
22          diagnosis that and report that and take  
23          steps to fix it, you know, to alleviate it  
24          and nobody that saw Carter said that, that I  
25          know of.



- 1 Q. And we're going to talk about that.
- 2 A. Pardon me?
- 3 Q. We're going to talk about that.
- 4 A. Okay.
- 5 Q. Yeah, actually going to take you there. I  
6 mean, I understand your conclusion or your  
7 overall take on the efforts of the District  
8 in this case or of, you know, the District  
9 striving and sometimes missing the mark, but  
10 you know, eventually by grade four, by grade  
11 five, getting there or getting close to  
12 there, you know, to meet the need. And it's  
13 not attributed to any kind of deliberate  
14 attempt to exclude anybody, but it's on a  
15 lack of - I think you framed it as, you  
16 know, a lack of empirical evidence. You  
17 needed evidence -
- 18 A. No, I don't think I'm saying that.
- 19 Q. Okay.
- 20 A. I'm saying that they were trying - they  
21 obviously made a commitment to do it and  
22 started to do it at every stage and might  
23 have been slow, it might have been fast, but  
24 it all pointed in a certain way. They were  
25 trying to reach these goals, and whether the

1 goals have been reached there, somebody  
2 could come in and look at that classroom and  
3 say this is not doing it at all and we need  
4 to do other things, and actually, he needs  
5 to go to the Durrey School in Ontario and  
6 that's the only place he can get what he  
7 wants. I mean, there are a lot of people  
8 that would say a lot of things. I'm sure  
9 that probably isn't the case, but no, I  
10 don't think it's empirical evidence. I'm  
11 just saying that if there are harms done and  
12 so on that are visible, then there were so  
13 many professionals involved, that needed to  
14 be reported. I don't see any actual  
15 evidence of that.

16 Q. Again, we're going to get there. The reason  
17 why you find it to be acceptable or within  
18 acceptable practice for this process to be  
19 iterative, to be a process of small steps  
20 that eventually, you know, lead to the right  
21 direction instead of just jumping right to  
22 the satellite classroom from kindergarten is  
23 because it took time to understand what  
24 those needs were and overcome the  
25 controversy, as you described it?

- 1 A. I don't think I've said that.
- 2 Q. Yeah, I need to understand.
- 3 A. I think when it came to that, I said that  
4 there obviously should have been more  
5 attention paid to looking at the factors  
6 that would be involved in his case with  
7 deafness, with the implants, with cerebral  
8 palsy, with the early programs for that,  
9 with transition and so on. I didn't say  
10 they were just waiting around for something  
11 to happen. No, I don't -
- 12 Q. Okay. So, is there - I mean, is it  
13 excusable, from your point of view, that  
14 Carter had, you know, the level of supports,  
15 kindergarten to three that he had versus the  
16 supports that he had now? Is it excusable  
17 that he didn't have a satellite classroom in  
18 kindergarten?
- 19 A. Well, I don't know - honestly don't know  
20 what you mean by excusable. Like what -
- 21 Q. Is it within the realm of - I think what do  
22 you say, in keeping with norms and  
23 practices?
- 24 A. Well, I think the problem, as I said, is the  
25 norms and practices are general, aren't

1 specific, are varied across the country and  
2 across the world. So, it might be way  
3 better than in some places. It might be way  
4 less than in other places. And I've made a  
5 distinction between practice and what we  
6 find in the literature. It certainly  
7 doesn't - there's a greater discrepancy  
8 between what we know from the literature  
9 about early language and mental health and  
10 so on that things should have been done. In  
11 terms of practice, I regret to say that it  
12 does vary. I've certainly seen places  
13 where, you know, deaf kids sit in a  
14 classroom all year and never get a proper  
15 communication and nobody is paying attention  
16 to it and so on. Here, they were trying to  
17 do something and committing to those ideals  
18 and so on. Again, it may have not been met  
19 at certain points and so on. I allow that.  
20 But it went in a certain direction. It was  
21 a commitment to a certain approach and I  
22 think that that's what was done.

23 Q. And I mean, my point is it took a while to  
24 get there. I mean, it took - Carter spends  
25 four years in a classroom where there are no

1 other deaf children before he gets to East  
2 Point, right?

3 A. Yeah.

4 Q. I would suggest four very valuable years, I  
5 think you'd agree with me. And what I'm  
6 trying to understand from you is why you  
7 think it was okay to take small steps  
8 forward towards something like East Point  
9 eventually instead of, you know, a large  
10 step forward as soon as the problem is  
11 identified.

12 A. I don't remember saying I thought that was  
13 okay.

14 Q. Okay. Do you think it is not okay?

15 A. Well, I don't think okay is the appropriate  
16 way to look at it. I was asked to look at  
17 compared to other jurisdictions, whether it  
18 fit in frameworks and so on, and whether  
19 there was a commitment there, whether they  
20 had qualified professionals, whether they  
21 followed the procedures of meetings and  
22 setting objectives, asking for outside  
23 assessments, et cetera. All of those things  
24 looked to me like an engaged commitment of  
25 trying to do something. Whether they met

1 every goal that was set and so on, probably  
2 not, and certainly - and when you say there,  
3 I'm not allowing that we're there. I think  
4 there's probably a lot more that can be  
5 done. So, I wouldn't want to give the  
6 impression that I think that's it. I think  
7 there's probably more that - especially now,  
8 he's going to hit high school. That's a  
9 very different game and so we have to look  
10 at that and so on. So, yeah, I -

11 Q. Would it make a difference to you and your  
12 finding of that opinion if it was  
13 demonstrated that the School District knew  
14 that Carter was suffering from language  
15 deprivation, if it was known by the District  
16 that Carter was suffering from social  
17 isolation and if it was known by the  
18 District that he only way to address that or  
19 the best way to address that would be to  
20 place Carter in an immersive classroom and  
21 they still did not do it? Would that make a  
22 difference to your opinion?

23 A. Well, I guess I'm going to have to once  
24 again ask you what you mean by knew. I  
25 mean, when you use the word language

1 deprivation, are you talking about language  
2 deprivation syndrome or -

3 Q. Yes.

4 A. Okay. Language deprivation syndrome, as you  
5 know, is still not an accepted mental health  
6 definition.

7 Q. And I don't need the DSM5, but I mean, you  
8 know, somebody -

9 A. Well, I need the DSM5. You know, I can't  
10 use words that don't refer to actual  
11 conditions. There's a controversy about  
12 whether there is such a syndrome and so on  
13 and if you're telling me that there were  
14 people that had that evaluation even though  
15 it doesn't occur in the DSM and didn't do  
16 anything about it, then that is very  
17 serious.

18 Q. Let's look at some documents. Volume1,  
19 coloured tabs.

20 A. Let me see now if I've got them mixed up  
21 here. Hopefully not.

22 Q. Tab Y as in Yankee.

23 A. Tab Y, okay.

24 Q. Sorry, it's actually Tab Z as in Zulu.

25 A. Sorry, are we in Tab Y?

- 1 Q. Z as in Zulu, my mistake.
- 2 A. Z.
- 3 Q. So, one page.
- 4 A. I thought we were in Canada here.
- 5 Q. Oh, zed, apologies. How does that translate
- 6 to ASL? That's interesting. You see the
- 7 page, proposal for satellite classrooms for
- 8 students who are deaf and hard of hearing?
- 9 A. Yes, I do, yeah, yeah.
- 10 Q. I know you're going to need some time to
- 11 read it. Here's the context first. This is
- 12 a document prepared in the spring of 2017 by
- 13 the DHH teachers in the metro area, one of
- 14 whom was the DHH teacher for Carter
- 15 Churchill, but it was jointly submitted on
- 16 behalf of many of them in 2017. It was sent
- 17 to their supervisor, Bonnie Woodland, who
- 18 was in charge of, I forget the term,
- 19 something along the lines of special
- 20 education. This is your first time seeing
- 21 this document I understand.
- 22 A. Yes, it is. And sorry, who wrote this?
- 23 Q. This was a joint document written by six, I
- 24 think it is, deaf and hard of hearing
- 25 teachers, the deaf and hard of hearing



- 1 teachers who would have been servicing  
2 children in the Avalon, including Carter  
3 Churchill. When I say a DHH teacher, you  
4 know what I mean?
- 5 A. Yeah.
- 6 Q. Okay.
- 7 A. So, they were basically asking for this  
8 satellite program on the basis of the idea  
9 that there are a number of children - I  
10 think it says here - and they have  
11 significant language delays. So, they don't  
12 use the word -
- 13 Q. They're not diagnosed. I agree with you.
- 14 A. And they don't use the words that you used  
15 which are technical words, okay. Yeah, I  
16 get the general idea here.
- 17 Q. So, you see not just the proposal, which is  
18 very similar to what ultimately becomes East  
19 Point?
- 20 A. Yeah.
- 21 Q. But also, the list of needs that are being  
22 identified to justify that proposal and I'm  
23 telling you that this proposal is made and  
24 is District knowledge by at least May of  
25 2017. Is it apparent to you from this

1 document that, you know, the problems that  
2 were being identified in this Human Rights  
3 complaint, the problems that ultimately are  
4 sought to be resolved by the satellite  
5 classroom in 2020, are already apparent,  
6 obvious and known in 2017? And I can tell  
7 you that the - you know, the person to whom  
8 this was reported, Bonnie Woodland is her  
9 name, you know, acknowledged receiving this  
10 and understanding what was being requested.  
11 So, it's not this - you know, didn't just  
12 sit in somebody's inbox.

13 A. And it went to who?

14 Q. It wouldn't mean anything to you, Bonnie  
15 Woodland. She was, for lack of a better  
16 term, director of student services,  
17 specifically related to special education.

18 A. Okay.

19 Q. Which included the deaf file.

20 A. So, this was made in 2017?

21 Q. 2017, May.

22 A. I guess my first impression is the  
23 engagement of these teachers. Obviously,  
24 they're very concerned and very engaged and  
25 very aware of all the issues involved.

1 Q. Some of them are sitting in the room today.

2 A. Okay. And so, they did something which was  
3 probably very difficult for them to do in  
4 that situation, and so they put forward  
5 these ideas, yeah. And so that was 2017 and  
6 then a class was established in 2020 or -

7 Q. 2020.

8 A. 2020, yeah.

9 Q. In fact, I'll tell you something else that  
10 you don't know. Sorry, I should be clear.  
11 When I'm saying you don't know, I don't  
12 mean, you know, because you're too dumb to  
13 know.

14 A. No, no.

15 Q. You understand what I mean?

16 A. I do.

17 Q. Something else you don't know, this same  
18 proposal gets made in 2018 and in 2019 with  
19 the same reasons justifying it, the same  
20 need.

21 A. Yeah.

22 Q. We've talked about the District's position  
23 that education is an iterative process and  
24 you've stated your agreement with that. You  
25 know, when you find out that since at least

1           2017 these problems are being identified, a  
2           solution like the one that eventually gets  
3           implemented is being proposed, but they're  
4           not being listened to or if they are being  
5           listened to, there are reasons for  
6           objecting, it doesn't fit within the  
7           inclusive model and other things. I mean,  
8           does that still indicate to you that we have  
9           an education system that's engaged in  
10          providing services as appropriate?

11          A. I'm not sure I said the system was engaged.  
12             I said the people working - direct people  
13             working within it, like these teachers -

14          Q. Like these teachers.

15          A. - that did this were engaged. So, there  
16             were certainly people in there that  
17             addressed the problem, had proposed  
18             solutions to the problem. I guess I will  
19             say, being a director of a school for a  
20             while and soon, that it's not that easy to  
21             make instant changes and so on.

22          Q. Sure.

23          A. The fact that these changes were made is  
24             something. The fact that how long it took  
25             and so on, I don't know what the reasons for

1           it were or anything else, but you've drawn  
2           this to my attention, yeah.

3           Q.   Do you know how long after receiving this  
4           proposal by email it took the director of  
5           special education, Bonnie Woodland, to  
6           indicate to her superiors that they would  
7           not be endorsing the satellite classroom  
8           proposal?

9           A.   I take it that's a rhetorical question.

10          Q.   An hour and a half.  An hour and a half  
11          after receiving this in her inbox, she  
12          emailed her superior to say that "we're not  
13          endorsing this, but here's the proposal all  
14          the same".  Was that a missed opportunity?

15          A.   I don't know.  I don't think I can comment  
16          on the evaluating the bureaucracy and how it  
17          works and why that was refused.  Was it  
18          resources?  Was it not a belief in sign  
19          language?  Did it have to do with the  
20          controversy?  I don't know why that  
21          happened, so I don't think it's legitimate  
22          for me to comment on bureaucracy and how  
23          people make decisions.

24          Q.   When you were being asked to evaluate the  
25          educational programming provided to Carter

1 Churchill, you know, whether it was - I  
2 don't think adequate was what you were being  
3 asked to do, whether it was, you know,  
4 within the norms and practices expected and  
5 you opined that it was, you know, a system  
6 that was engaged in meeting the needs.  
7 You've acknowledged that education can be an  
8 iterative process. It takes time for  
9 practice to catch up with research and known  
10 best practices. And now you've been  
11 confronted with a document that says, in  
12 2017, these needs were being flagged in an  
13 explicit way to the exact people who needed  
14 to solve - you know, who were responsible  
15 and tasked with addressing these problems,  
16 does that give you pause?

17 A. I don't know if it gives me pause. You're  
18 telling me how this transpired. I'm not  
19 sure I can comment much more on it than  
20 that.

21 Q. Sorry, I'm taking a bit of a pause just to  
22 make sure that I don't ask you the same  
23 questions multiple times. Would you agree  
24 with me that the social isolation piece  
25 doesn't get resolved for the deaf children

1           until they're brought together in the  
2           satellite classroom? I know we've talked  
3           about language acquisition and all that  
4           kinds of things, but -

5           A. I think that's complicated. I mean to say  
6           that deaf children can't interact with  
7           hearing children I think is a bit of a  
8           stretch. I've seen deaf children interact  
9           with hearing children all over the place,  
10          maybe different qualities and so on. We  
11          don't want to have just deaf children be  
12          with deaf children. There are siblings.  
13          There are family members. People get  
14          together. There's the neighbourhood and so  
15          on. So, I think to be fair part of this  
16          inclusive approach is to have deaf children  
17          interacting with hearing children, to have  
18          them learn some sign, to have the hearing  
19          children be able to speak to the extent that  
20          they can. All of these things are  
21          important.

22          Q. Right. But I mean, Carter goes from  
23          kindergarten to grade three certainly having  
24          interactions with students that are less  
25          meaningful by interacting with hearing

1 students than they would be if he had the  
2 opportunity to interact with similarly  
3 classmates who could communicate in ASL and  
4 were deaf, right? I mean, there's a reason  
5 why you - I mean, I'm not attributing this  
6 to you for the first time - you and almost  
7 every other academic, I think you say  
8 something like almost everyone almost  
9 universally, it's understood that the  
10 ability for children who communicate in ASL  
11 to be exposed to other children who  
12 communicate in ASL is an important thing.

13 A. Right.

14 Q. And an important thing that is missing for  
15 Carter Churchill from kindergarten, grade  
16 one, grade two, grade three.

17 A. I don't know the extent to which other kids  
18 might have been communicating to whatever  
19 degree and so on. It isn't the only aspect  
20 of communication. There are many aspects,  
21 whether you're participating in sports and  
22 doing things and so on.

23 Q. Right. You don't need to be in a classroom  
24 to interact with other deaf children.

25 A. No, exactly, yeah, yeah.



1 Q. I agree with you.

2 A. So, there's all of that. And, you know, if  
3 I look through the reports, it seems like  
4 everybody is saying that Carter was a very  
5 engaging, very social, very likeable. There  
6 were no reports that I read saying well, he  
7 was isolated and lonely. It just doesn't  
8 come across that way. Now, maybe I'm  
9 reading only little sections or I don't have  
10 the whole picture.

11 Q. Yeah, I mean, look, and I don't -

12 A. So, I just don't get this picture of a  
13 lonely, isolated child and so on. That  
14 isn't what comes out of this.

15 Q. I'd seen -

16 A. In spite of the fact that - and remember  
17 that the people who support this other  
18 approach want deaf kids to interact with  
19 hearing kids through speech and through all  
20 of this and they feel the only way they're  
21 going to be motivated to do that is to be  
22 with other kids that speak and do things.  
23 So, it isn't just as simple as that. There  
24 are people who feel that it's a good thing  
25 for deaf kids to be interacting with hearing

1 kids all the time and it benefits them,  
2 because as they grow up in society, they  
3 won't be with deaf people all the time.  
4 They will be with hearing people at work, at  
5 school, and so on and so forth. So, the  
6 object can't be to just create a group of  
7 people that are just deaf all the time.  
8 There's much more to it. It's much more  
9 complicated than that.

10 Q. I understand that you don't get the, you  
11 know, impression of a lonely, socially  
12 isolated child during those kindergarten to  
13 grade three years. You didn't watch any of  
14 the other testimony that was being streamed  
15 online?

16 A. No, I did not.

17 Q. And you weren't here when that testimony was  
18 given.

19 A. No.

20 Q. And you haven't read the affidavit of folks  
21 like Tammy Vaters and things because they  
22 weren't given to you?

23 A. I have not.

24 Q. Right. So, I mean, I don't think I need to  
25 put them to you because the Adjudicator was

1 here to hear that evidence and would have an  
2 idea of the evidence that had been given  
3 regarding socialization, social isolation,  
4 so I don't need your pronouncement, I don't  
5 think, on that point.

6 A. But I didn't see any reports by any  
7 professionals or anybody about that. That's  
8 all I'm saying.

9 Q. Okay, great. We talked about getting kids  
10 together. I want to show you another  
11 document. Volume 1, I think you were still  
12 at Volume 1 most recently.

13 A. Let's see now. I have Volume 1.

14 Q. Tab T as in tango.

15 A. Okay.

16 Q. Three pages in, that's a document that says  
17 meeting minutes from DHH teachers, 1-2-3,  
18 the fourth page in. This is a document from  
19 December 2016. We're going even further  
20 back in time. So, these are - I just - and  
21 if I can stop you, just make sure you hear  
22 this part that I'm going to say to you.

23 The-

24 A. Is this the one that says action items at  
25 the top?

- 1 Q. Yes, that's right.
- 2 A. Okay.
- 3 Q. You acknowledged earlier how important it  
4 was for administrators to consider empirical  
5 evidence. You know, for administrators to  
6 take advice and listen to the people who are  
7 interacting with these children. You know,  
8 neither you nor Dr. Snoddon had an  
9 opportunity to sit and interface with Carter  
10 to assess his needs. These people would  
11 have been doing this, you know, regularly,  
12 maybe not as regularly as you would have  
13 liked.
- 14 A. You're saying these people. I'm not sure  
15 who -
- 16 Q. Sorry, they're the deaf itinerant - DHH.
- 17 A. The people that are listed at the start of  
18 this?
- 19 Q. That's right. There are I'd say eight of  
20 them, I think, nine of them.
- 21 A. Nine, yeah, okay.
- 22 Q. One of them, I think, is an administrator.
- 23 A. Yeah, okay.
- 24 Q. So, they're interacting with, you know,  
25 these deaf children in the metro area who

1 eventually become to be the cohort in the  
2 satellite classroom. In December of 2016,  
3 which is when this report is dated, they say  
4 "some very young children with cochlear  
5 implants receive lots of support at school  
6 but have very low language comprehension  
7 skills. There is significant concerns that  
8 their programming is not what they need. It  
9 would be helpful if local students with  
10 cochlear implants/hearing impairments to get  
11 together to communicate and learn. Can we  
12 bring these students together once a week?  
13 It would be helpful for the children to see  
14 others with cochlear implants."

15 So, this is being - and it goes on to  
16 talk about how this, you know, could be a  
17 human rights concern, various other issues.  
18 These are the people who are dealing with  
19 deaf children like Carter Churchill on a  
20 regular basis. This is what they're seeing.  
21 These are the same people who make the  
22 satellite classroom proposal. I think we  
23 can probably see why, you know, the ones who  
24 bring this fantastic idea forward, and one  
25 of the things they're talking about is

1 "look, can we bring these children together  
2 so that they can socialize, they can see  
3 each other" and they suggest doing it once a  
4 week.

5 You would agree with me that these DHH  
6 teachers, you know, are proposing doing this  
7 for a reason because simply having these  
8 deaf children in a school with hearing  
9 children, there's something they're not  
10 getting from that, right? I mean, there'd  
11 be a reason why they - they have a lot of  
12 things to worry about, these teachers,  
13 right, but the fact that they're identifying  
14 it would be helpful to bring these children  
15 together once a week, you can understand  
16 that there will be value to that?

17 A. Yes, I can, yeah.

18 Q. And that would help address things like  
19 social isolation?

20 A. For sure.

21 Q. Self-image?

22 A. Everything.

23 Q. Right. Self-esteem, all that kind of stuff?

24 A. Yeah.

25 Q. Right.

1           A.    Except you're talking about bringing  
2                    children with cochlear implant together.  
3                    The theory in that segment is don't bring -  
4                    they don't want those children to be  
5                    together. They want them to be with hearing  
6                    children. They want them to be integrated.  
7                    The philosophy is not to do that. So, when  
8                    you start proposing that to people that have  
9                    set a policy that deaf children won't be  
10                   segregated, won't be together, that goes  
11                   against that. And that, we have to respect,  
12                   is a legitimate point of view of a lot of  
13                   people, a lot of professionals that are out  
14                   there that are in universities and hospitals  
15                   and doctors and everything else that would  
16                   not agree with this in principle. So that  
17                   is why I say it's hard to look at this  
18                   outside the context of this. The thing that  
19                   would mitigate against this would be that it  
20                   would go against a lot of the tenets of the  
21                   philosophy.

22           Q.    You're telling me there are legitimate  
23                   qualified professionals out there who would  
24                   look at the problems that are being  
25                   identified by these DHH itinerant teachers

1 and would say bringing them together for a  
2 field trip once a week would be a bad idea?

3 A. Absolutely.

4 Q. Do those - I mean, Dr. Snoddon says those  
5 ideas don't hold traction.

6 A. Well, they - Dr. Snoddon doesn't agree with  
7 that position, and neither do I, that's for  
8 sure. But the fact that some people hold to  
9 that is the fact and the fact that they are  
10 supported by professionals who say that we  
11 don't want deaf people to associate with  
12 each other particularly. We want them to be  
13 part of the mainstream. We want them to  
14 interact with hearing people, and that's  
15 what's behind this whole movement.

16 Q. If that's what's behind the philosophy of  
17 why you would deny something like that,  
18 would you agree with me that it is harmful  
19 to these children that that was the case?

20 A. In my opinion, I wouldn't do that. I think  
21 it has potential harm, but I'm not saying  
22 that it would have actual harm in various  
23 cases. That would have to be demonstrated.  
24 There are a lot of research studies that  
25 show that people who are oral and never



1 associate with other deaf people have no  
2 harm, they get along fine. They live life.  
3 They get married. They have kids. They  
4 have jobs and they go on. Others for whom  
5 it didn't work start to have problems. Why?  
6 Did they have other problems? Didn't they  
7 get good schooling? We don't have the  
8 answers to all this.

9 But I think we have to respect that  
10 some parents don't want their children to be  
11 in deaf culture. They themselves don't want  
12 to be in deaf culture. They want their  
13 children to get implants or hearing aids and  
14 learn to hear and speak and be part of the  
15 so-called mainstream society. It's not the  
16 approach that I would take, but I have to  
17 respect that approach.

18 Q. Are you aware of any policy change or  
19 philosophy change at the School District  
20 that allow them to overcome - I mean, I'll  
21 call it what is to overcome that prejudice  
22 to allow them to eventually establish  
23 something like East Point Elementary? Are  
24 you aware of any change that allowed that to  
25 happen? I mean, you're telling me there's a

1 philosophical or a policy problem that would  
2 have stood in the way of allowing deaf  
3 children to see each other once a week and  
4 that's the operative philosophy that causes  
5 trouble, and it must have been present at  
6 the School District, you tell me, in order  
7 to prevent something like this from  
8 happening as it did. So, do you see a  
9 change in that philosophy or policy when  
10 East Point gets established?

11 A. Well, I've only got the documents that I've  
12 got. I don't have - I don't see - I haven't  
13 seen any new policy documents and so on.  
14 The fact that it happened, does that mean  
15 that the policy has changed or that - I  
16 mean, the guidelines and so on don't really  
17 - that are there don't prevent this from  
18 happening. Who's preventing this from  
19 happening? It's really some of the  
20 professionals that are involved that are  
21 promoting this point of view about the so-  
22 called oral point of view.

23 Now, they're giving advice to  
24 governments, to school boards and so on and  
25 obviously that has had an influence here.

1 So, when an administrator that's committed  
2 to the inclusion philosophy of having one  
3 deaf kid in a whole school being a good  
4 thing, yes, we can provide some supports,  
5 when all of a sudden they say "well, this  
6 isn't working for a whole bunch of deaf kids  
7 and we need to get them together", it  
8 doesn't really fit with that philosophy, but  
9 in practical terms, it doesn't violate the  
10 guidelines that are there. So, they make -  
11 they do it. Did that change the policy? I  
12 don't know. Will it change it? I don't  
13 know.

14 Q. Darlene Fewer Jackson, the individual who  
15 was appointed director of deaf and hard of  
16 hearing - have you spoken to Darlene Fewer  
17 Jackson before?

18 A. I have spoken to her, yeah.

19 Q. Yeah, okay, so you know who I'm talking  
20 about. When she took on that role in 2019,  
21 she was able to, you know, sort of take the  
22 football and run with it to establish the  
23 satellite classroom in 2020. She testified  
24 a few days ago and she indicated, you know,  
25 she came into the role. She saw all of

1           these recommendations that she had been  
2           making when she was at the Department of  
3           Education in 2011 had not been fulfilled.  
4           Saw this satellite classroom proposal,  
5           thought it was a great idea, brought it  
6           forward. A year later, we've got a  
7           satellite classroom.

8                     I put it to her that, you know, it's  
9           been raised as a barrier by some of your  
10          previous administrators the existence of  
11          this inclusive education policy that sees  
12          children placed in their neighbourhood  
13          schools. Was that a barrier here? And she  
14          said if you asked 50 different teachers what  
15          the inclusive education - I don't remember  
16          if it was her or Alma McNiven, but one of  
17          them said "if you put 50 different teachers  
18          and ask them what inclusive education meant,  
19          you'd get 50 different answers" and  
20          confirmed that that policy was not a barrier  
21          to creating the inclusive classroom at East  
22          Point Elementary.

23                    Instead, what Bonnie Woodland, who was  
24          the one who turned - who occupied a  
25          predecessor type version of that role, the

1 one who rejected the satellite classrooms in  
2 2017, 2018 and 2019, what Bonnie Woodland  
3 said was that it really was an issue of  
4 leadership. Bonnie Woodland said, who's a  
5 hearing person, who has no background in  
6 deaf culture or education like most of the  
7 administrators, said it required the  
8 appointment of someone like Darlene Fewer  
9 Jackson to a very specialized position that  
10 would allow the time and attention and focus  
11 to be able to do something like East Point,  
12 and she categorized it as it being a  
13 difference in leadership.

14 So, if - when I'm putting that  
15 testimony to you and I'm telling you that  
16 the person who implemented it did not see  
17 the inclusive education model as being a  
18 problem and the person who was not able to  
19 implement it indicated, among some other  
20 things, that it was a leadership problem, I  
21 mean, what does that tell you?

22 A. Well, now we're getting into bureaucracy and  
23 who said what to whom and so on and so  
24 forth. The idea that the word like  
25 "inclusion" has 50 equally valid

1 definitions, I understand her saying that.  
2 I respect her. She's a very well-known  
3 dedicated expert on deafness.

4 I think we know what this inclusion  
5 thing - you know, when the UN, when that  
6 mental health document comes and says what  
7 inclusion is and so on, I think they're  
8 referring not to 50 different definitions  
9 but one that says the default position is  
10 that child goes to their neighbourhood  
11 school and yes, the default position often  
12 seems to be that the approach, first  
13 approach taken will be restoring hearing and  
14 speech and so on, and then there's some  
15 mention somewhere yeah, well, if that  
16 doesn't work at some point sign language.  
17 But they're not saying sign language, deaf  
18 culture, all of this.

19 So, the default position of inclusion,  
20 if you go all around the country, has been  
21 just this, what we see here, one deaf child,  
22 sometimes two, pressures mount. The  
23 pressure came from the teachers, not - and  
24 the idea that something as important as  
25 inclusion and programming had to do with

1           just leadership, yeah, leadership is  
2           important, but that can't be the operative  
3           thing. I'm sorry, I don't agree with that.

4           Q. I mean, you think the barriers to Carter  
5           being able to access the kind of services he  
6           has at present from day one or at least day  
7           one of kindergarten, maybe even before, was  
8           a controversy that is inherent to the  
9           system, which is a belief or sometimes a  
10          prejudice or sometimes a favoritism towards  
11          the speaking avenue for deaf people and not  
12          the, you know, ASL and deaf culture avenue.  
13          And in order to address that inherent - it's  
14          called inherent bias, that inherent bias,  
15          there needs to be policy change and there  
16          needs to be educational change. Would you  
17          agree with that?

18          A. Yeah, I think I more or less agree with it.  
19          I don't think it is the only factor. I'm  
20          not trying to say this controversy - I mean,  
21          the realistic factor here is that the School  
22          for the Deaf closed. As far as I know,  
23          Carter was born the year after the School  
24          for the Deaf.

25                           So then, all of a sudden, the school

1 boards, everybody has total responsibility  
2 for something, an institution that's been  
3 established like and developed for a 100  
4 years with all kinds of bureaucracy and the  
5 funding model being kind of separate from  
6 everything else, being able to - I mean, I  
7 knew Charlie Harkins well, the last director  
8 here. I worked with him a lot lobbying for  
9 the school to get more money and so on. All  
10 of a sudden, you know, which department do  
11 you go to? Who's responsible? People that  
12 were qualified aren't there anymore.

13 So, all of a sudden, you've got people  
14 scrambling and you're changing the model  
15 radically and you're changing it in favour  
16 of one of the approaches, albeit legitimate,  
17 which are going to be good for some kids but  
18 raise problems for others, and so it's going  
19 to be very difficult. The teachers are  
20 there. They're doing what they need to do.  
21 They're striving for communication, for  
22 doing all of these things. Bureaucracy is  
23 there. You know, every time you want  
24 something, you don't get it in a bureaucracy  
25 and so, you have to fight for it and so on.



1           There are a lot of factors involved.

2           Q.   This is the last question I have for you,  
3           because I think it - it was a good jumping  
4           off point. It appears to me, and I'd ask  
5           you to acknowledge, that when the School for  
6           the Deaf closes, the Department of  
7           Education, you know, just isn't ready, from  
8           a policy standpoint, you know, from an  
9           administration standpoint, isn't ready to  
10          meet the complex needs of deaf children,  
11          which are very different than the needs of  
12          other students with exceptionalities. Would  
13          you agree with that? I mean -

14          A.   Well, I haven't looked into the whole system  
15          here. I just have these documents with  
16          regard to Carter's case. And there are  
17          indications there that the - what I've said  
18          before that the policies maybe weren't as  
19          specific as they needed to be and especially  
20          the procedures and especially going from the  
21          age of identification, the funding from  
22          health, changing back and forth to  
23          education. Those things all seem to affect  
24          the actual delivery and the complexities of  
25          this business. But you've got qualified

1 people and they all had the same goals to do  
2 the best, but it - there's bureaucracy.  
3 There are many factors involved to do that  
4 and that's what happened. But it did seem  
5 to improve over time.

6 Q. I mean, we've said in prehearing  
7 conferences, and you said as much actually  
8 during your evidence at one point that, you  
9 know, this isn't an inquiry into the closure  
10 of the School for the Deaf and you know, I  
11 share that approach on a - you know, on a  
12 technical level. I think you and I would  
13 both agree that the story of why Carter  
14 Churchill's Human Rights complaint is here  
15 starts in 2010 with the closure of the  
16 School for the Deaf and the need to build  
17 that capacity, and I think the reason you  
18 agree with me is because at page 42 of your  
19 report, which is the very last page, you  
20 included an excerpt from the Office of the  
21 Child and Youth Advocate's report, and I  
22 thought it was - you didn't - I don't  
23 believe you had a long discussion about it  
24 in your report, but I thought it was -  
25 showed a great degree of insight that that

1 was included at the back of the report.

2 I'd like to read this out and then have  
3 you, in light of the new documents that  
4 you've been exposed to here today, in light  
5 of the new information that you've seen, in  
6 light of the issues that we're here to  
7 argue, I'd like to get your comments.

8 So, the Child and Youth Advocate said -  
9 acknowledges that getting a quality  
10 education is guaranteed by the United  
11 Nations Convention on the Rights of the  
12 Child. And then she says "in a Provincial  
13 Government news release on August 2<sup>nd</sup>, 2010,  
14 announcing the closure of the School for the  
15 Deaf, the commitment read", and she's  
16 quoting from the commitment, "the School may  
17 be closed, however this does not mean a  
18 reduction in services for deaf and hard of  
19 hearing students in our province". That  
20 ends the quote, and she says "in this  
21 release, Government offered the assurance to  
22 current and future deaf and hard of hearing  
23 students requiring supports by stating" she  
24 quotes again, "we will continue to provide  
25 all the necessary services and supports to

1           them in the school system so that they can  
2           receive a quality education", ending the  
3           quote. And she says, the Child Youth  
4           Advocate, "in all good conscience, I cannot  
5           give a passing grade on this commitment.  
6           This report shines a light on this important  
7           children's rights issue."

8                         And she concludes her entire report by  
9           saying "a meaningful systemic commitment and  
10          approach is needed to address the rights and  
11          needs of deaf and hard of hearing children  
12          in the Newfoundland and Labrador education  
13          system. Such an approach would support and  
14          enhance the valuable efforts currently  
15          underway in some schools and would also  
16          create a requirement for all in the school  
17          system to embrace tangible change to better  
18          support the rights of deaf and hard of  
19          hearing children to a quality education".  
20          Do you share the Child and Youth Advocate's  
21          view?

22          A. Well, first of all, as I say, the Child  
23          Youth Advocate did a study here, interviewed  
24          people and so on. I did not do that, so I  
25          don't have any of the information she has.

1 I am limited here to this case with Carter  
2 and what I've been given.

3 In reading that report, it seemed like  
4 she said that there were a lot of good  
5 things going on and there were a lot of  
6 things where people complained. There was  
7 breakdowns of communication, all that kind  
8 of thing. I read all of that with interest.  
9 But I haven't, myself, determined that. So,  
10 in some places, things might be fine. In  
11 other places, they aren't.

12 And she's calling for a commitment to  
13 change and as you said, such an approach  
14 would support and enhance the valuable  
15 efforts currently underway in some schools  
16 and would also create a requirement in all  
17 the school system to embrace tangible change  
18 to better support the rights of deaf and  
19 hard of hearing children to a quality  
20 education.

21 That's her report and I find it of  
22 interest and that's why I put it in. I  
23 think in the same way that I said that the  
24 context of the debate is important, it's  
25 important to look at what somebody that is

1 very knowledgeable and did this study, what  
2 they said. That's certainly an element.  
3 Exactly how that applied in Carter's case, I  
4 don't know. I don't have any - I can't make  
5 the direct connection, except to say that  
6 obviously there's - she determined that  
7 there's problems in the system.

8 Q. Do you support her call for meaningful  
9 systemic change?

10 A. On the basis of - again, I haven't done a  
11 study of the situation here. I haven't gone  
12 to see what's actually going on and so on.  
13 I have said that I think that the policies  
14 need to be improved. They need to be made  
15 more specific and the so-called SOPs,  
16 standard operating procedures, need to be  
17 made much more explicit. We need to say  
18 what the various approaches are, what the  
19 commitment is, what the resources are, so  
20 that when parents find out on that day that  
21 their child is deaf that they can expect to  
22 see what's actually going on, what we know,  
23 what we don't know, what services they can  
24 get. So, in that sense, I'm neither  
25 agreeing nor disagreeing. I'm just saying

1           that's one element that I looked at and I  
2           think that's obviously, in a general way, we  
3           should listen to what somebody like the  
4           Child Advocate is saying.

5                     My testimony here today is mainly  
6           limited to the situation with Carter and the  
7           big picture, this is part of the big  
8           picture. I will agree.

9           Q.    Okay, thank you. I don't have any further  
10          questions.

11   ADJUDICATOR:

12          Q.    Mr. Penney?

13   MR. PENNEY:

14          Q.    No.

15   DR. JAMES MACDOUGALL, CROSS-EXAMINATION BY ADJUDICATOR

16   BRODIE GALLANT

17   ADJUDICATOR:

18          Q.    We're talking an awful lot about what  
19          happened in, you know, 2010 and the system  
20          that was in place. The complaint that's  
21          been referred to me to decide has to do with  
22          whether or not - you know, it's a complaint  
23          made on behalf of one boy and we know that  
24          he has, early in his life, been diagnosed as  
25          - you know, it's identified early on, he's

1 deaf. You know, his hearing loss is  
2 profound. It's also identified that he has  
3 cerebral palsy and that has an impact on his  
4 motor control, fine and gross motor control.

5 And I'm hearing from experts about how  
6 children acquire language and I'm hearing  
7 that, you know, zero of four age is a  
8 critical period. I'm hearing another  
9 period, you know, zero to teenage years, and  
10 I'm hearing about, you know, difficulties  
11 later in life acquiring language. I'm  
12 hearing about acquiring language by being  
13 exposed to it from peers, from others who  
14 are using the language and I'm also hearing  
15 about direct instruction in language. You  
16 know, being immersed versus following a  
17 particular curriculum, different  
18 methodologies are being discussed.

19 It's pretty clear to me, from the  
20 evidence so far, that by the time Carter  
21 arrives in kindergarten, his language, his  
22 access to language, his proficiency in  
23 language is delayed, and I take your point,  
24 you know, in being careful in the  
25 terminology that's used and whether or not



1           we've got a diagnosed condition.

2           A.    Yeah.

3           Q.    But I also have a lot of evidence before me  
4           that his vocabulary was behind what would be  
5           expected of a kindergartener; that his use  
6           of grammatical features of ASL, very far  
7           behind what we would want for him at  
8           kindergarten level.

9                    I'm hearing evidence about a system  
10           that was put in place after the closure of  
11           the School for the Deaf and how  
12           responsibility for certain aspects -- for a  
13           child who's implanted with a cochlear  
14           implant are the responsibility of health,  
15           you know, the Janeway and AVT professionals.  
16           Some are provided by the health; some are  
17           provided by the Department of Education. And  
18           then there's also itinerant teachers of the  
19           deaf and hard of hearing who are involved.  
20           And I'm hearing evidence that it was a  
21           mixed-up system back then for that time  
22           period, that age group.

23                    But as a result, or certainly part of  
24           that caused or contributed to Carter  
25           arriving at school or kindergarten severely

1           delayed in his language. And I'm hearing  
2           that he's still severely delayed in his  
3           language, notwithstanding everything that's  
4           been done in the meanwhile. Within the  
5           satellite classroom, teachers are saying  
6           "we're not grading the children yet because  
7           they don't have the language skills to learn  
8           at grade level. I can't teach grade five  
9           science to a child that has kindergarten  
10          language."

11                   And I want to understand whether there  
12           are - whether in the literature, whether in  
13           the research that is specifically focused on  
14           addressing these language delays, what best  
15           practices there are, established or  
16           supported, for a child coming into  
17           kindergarten or who's identified early on as  
18           having a severe language delay. What do we  
19           need to do to support that child early on in  
20           acquiring language skills or trying to close  
21           that gap? What can you tell me about the  
22           research that's out there specifically and  
23           how do we address - because I'm hearing it's  
24           a common problem for deaf children,  
25           especially those who are - have cochlear

1 implants, it works sometimes and its  
2 intended function is that we're going to  
3 access sound. You're going to access  
4 English as your language. That is one goal  
5 of that implant. But I hear that sometimes  
6 it does not work and that's a predictable  
7 outcome in the sense that we know it's not  
8 going to work for everybody.

9 Is there research out there on what the  
10 best practice is for that group of children?

11 A. I wish I could give you a clear answer to  
12 that. But, like for the last 100 years, you  
13 read the literature and there are problems  
14 with language development with deaf  
15 children. As I've said, the literacy level,  
16 in spite of the best programs, is still not  
17 where we'd like it to be. Hundreds,  
18 thousands of researchers are trying to study  
19 that, trying to figure it out, trying to say  
20 we need more hearing, we need more speech,  
21 we need earlier sign language. Some studies  
22 show one thing. Some studies show the other  
23 thing. This is a work in progress. There  
24 is no real answer to it.

25 But what we do know is that it's hard

1 to say a student has - is behind in  
2 vocabulary or behind in the various things  
3 that you measure. Why is that? Is that a  
4 characteristic of the way their brain is  
5 working? Is that got something to do, in  
6 this case, with cerebral palsy and the lack  
7 of ability, if you will, to speak or - and  
8 so on, or is to do with the fact that there  
9 wasn't enough social sign language going on?  
10 Nobody can - I mean, just think of how hard  
11 it would be to do research that would  
12 determine that, to have comparable kids and  
13 do one thing with one group and another  
14 thing.

15 So, what happens is you've got a lot of  
16 theories and you've got people that get  
17 trained in what they think the best evidence  
18 is and they apply it and it ends up that  
19 many deaf kids don't have good language.  
20 And why? It may be an inherent issue for  
21 them. It may be something that happened in  
22 the environment. Most likely it's both.  
23 And did something happen in that critical  
24 period between zero and six months that had  
25 a permanent effect or was it later? Some

1 people can learn a second language very  
2 easily. So, some people that started in the  
3 oral and where it didn't work, later on they  
4 learn sign language and they're very fluent.  
5 Some kids, it didn't work, and they have a  
6 hard time learning sign language because  
7 second language learning is hard. There are  
8 studies on bilingualism and so on.

9 So, I'm afraid I just can't give you  
10 the best practice answer. All I can say is  
11 we have to bring the qualified people, the  
12 teachers of the deaf, the psychologists, the  
13 AVT people and they have to look at the  
14 situation, use their training and try to do  
15 what they think is best, and it's going to  
16 be different everywhere and of course, I  
17 hate to keep saying it, there are these  
18 differences which make it much more  
19 difficult to say this will be the best  
20 practice. Is it bilingual bimodal  
21 bicultural? Is it starting with AVT and  
22 after somebody determines it's not working,  
23 when, at two years, two months, three years,  
24 we switch? Or do we do both all the time?  
25 I'm afraid I just don't have the answer to

1           that. It varies everywhere and sometimes  
2           everything works great and sometimes it  
3           doesn't and we try to say "well, where did  
4           we go wrong? Was that a characteristic of  
5           the child? Was that their brain or was it  
6           something we did?" I'm afraid in most cases  
7           we just simply don't have that answer.

8           Q. Does the literature, does the research  
9           support the conclusion that children who are  
10          deaf and have a severe language delay when  
11          they enter the school system, that they can  
12          acquire ASL?

13          A. Yes. I mean, most - I mean, if you look,  
14          turn back the clock and you look at the  
15          older deaf people and so on, they've mainly  
16          gone to oral schools and for many of them,  
17          it worked. For most of them, it actually  
18          didn't. So, most of them learned sign  
19          language, either in the residence or through  
20          other people, through no formal instruction,  
21          and if you look at the deaf population, my  
22          parents and so on, they were normal people.  
23          They had a good life. They were able to  
24          communicate and so on. So, yes, there is  
25          evidence that especially up until at 14.

1           So, that's why it's so critical now to do  
2           the right thing.

3                    But research papers are coming out  
4           saying well, we know how to do second  
5           language later. Some people learn at 30  
6           years old. They learn French just like  
7           that. But, it's a little different for the  
8           deaf kids. So, yeah, there's a lot of hope  
9           here. Yes, there's a critical period, but  
10          there is second language learning and so on.  
11          We know, for example, deaf kids of deaf  
12          parents learn language just like that, the  
13          sign language. But the trouble is then,  
14          well, then what about the English. Well,  
15          they do well in English too, but they still  
16          have literacy problems.

17                   So, all of these problems we're trying  
18          to address. But to answer your question,  
19          yes, there is hope for that.

20          Q.    So, those children that we have examples of,  
21          because it's - you know, they're documented  
22          in literature that, you know, we can see  
23          that this does - you know, these children  
24          who have arrived at school, have a severe  
25          language delay but they are then able to

1           acquire a language, ASL, how are they  
2           acquiring that language? Like trying to  
3           understand, we - you're telling me that yes,  
4           those children who arrive at school.  
5           They've come and they're school age now and  
6           they have a language delay, severe language  
7           delay. They can, and the literature  
8           confirms that they can learn ASL and they  
9           can close that gap.

10          A.    Yeah. I think -

11          Q.    How are they learning?

12          A.    Okay, I think I've got to go back to the  
13               terminology here because there's such  
14               controversy now about these terminologies,  
15               about severe language delay and so on. So,  
16               if somebody has what we would call severe  
17               language delay and it's diagnosed, even  
18               though it's not a totally accepted  
19               diagnosis, you will see all kinds of mental  
20               health behavioural mood problems in that  
21               child. So, that is a diagnosis that is -  
22               gets - it's actually a mental health  
23               diagnosis. So, I think we have to be  
24               careful about this. Yes, you know, you sort  
25               of compare kids and say okay, at this level



1 the person has this vocabulary, has this,  
2 and the other one is above it or below it.  
3 There's a line if it crosses and gets into  
4 that severe and that's what I've specialized  
5 in, people from other countries, people who  
6 didn't go to school at all, and I've seen  
7 what that looks like, and boy, that's - you  
8 know, and the famous case of Genie, where,  
9 you know, was deprived and then couldn't  
10 learn language at all.

11 So, I mean, I think we have to be  
12 careful about talking about that because are  
13 we talking about that real severe or are we  
14 talking about language delay, which we see  
15 in deaf kids all the time. If we're just  
16 not talking about the severe part, yes,  
17 there's a lot of evidence that you can teach  
18 through sign language, some with speech,  
19 with whatever way, absolutely.

20 Q. And I am trying to - but when I'm saying  
21 severe language delay, it's because that's -  
22 I'm trying not to use language deprivation  
23 syndrome.

24 A. Right, I understand.

25 Q. Because I think that's the term we would use

- 1 if we were talking about a diagnosis.
- 2 A. Right.
- 3 Q. And the diagnosed, potentially diagnoseable  
4 syndrome that might be included in the DSM  
5 at some point would be probably termed a  
6 syndrome.
- 7 A. Right.
- 8 Q. Well, I'm talking about a child that's  
9 arriving with a language delay and it's  
10 getting -
- 11 A. Okay, so we're okay on that, yeah.
- 12 Q. - it's towards the severe end of things in  
13 the sense that very small vocabulary, not  
14 using grammatical features. Maybe that  
15 wouldn't be considered severe language - but  
16 that's what I mean.
- 17 A. It's a significant language delay, yeah.
- 18 Q. It's Carter's situation. He's got a small  
19 vocabulary compared to what we would expect  
20 and he's not using grammatical features at  
21 this point that we would expect. He's got a  
22 language delay. But what I'm trying to get  
23 at with my question is those examples that  
24 we have of children with language delay -  
25 because I understand that for those children

1           that have gone down the AVT route first and  
2           then switch over, I understand that that  
3           cohort comes to school with a language delay  
4           that's fairly predictable it's going to  
5           happen because they've gone down a route to  
6           acquire English that didn't work.

7           A.    Right.

8           Q.    Or a route to acquire French or another  
9           spoken language, and it doesn't work.

10          A.    Yeah.

11          Q.    So, now we're getting to an age where  
12          they're about to go into school. We're  
13          recognizing it and I'm trying to understand  
14          what method of acquiring language or  
15          delivering language to them works. What -  
16          when we see in those studies that oh, these  
17          children can acquire the language, in what  
18          way have they acquired the language?

19          A.    Well, I think -

20          Q.    Is it direct instruction? Is it they go -  
21          we immerse them in a school? How are they  
22          acquiring the language?

23          A.    Yeah, I think from what I know of the  
24          literature and so on, direct instruction  
25          would play some role, especially for

1           vocabulary and so on. But what the parents  
2           do and the family do is going to be very  
3           important, critical. And what - it's the  
4           social thing. It's the peer - because  
5           you're not just learning a language, as I'm  
6           trying to get across, I guess. You're  
7           learning a way of life, like the famous  
8           philosopher Weigenstein said, "learn a  
9           language is to learn a way of life", right.

10                   And so, you're - at that point, I don't  
11           think there's any question that sign  
12           language, ASL, being deaf, have a deaf  
13           identity, but you can't ignore the fact that  
14           there's some speech there, that there's  
15           going to be interaction with hearing people.  
16           But there's some exposure there and the more  
17           you expose, the better it's going to be, and  
18           it works quite well in some cases. In other  
19           cases, it doesn't. And so, the question  
20           again becomes is that an intrinsic factor in  
21           that person that their brain just isn't  
22           working, something happened early or it  
23           wasn't there in the first place or we didn't  
24           do enough at the right time?

25                   But clearly, that would be intervention

1 with sign language and everything about what  
2 I would call deaf culture and the deaf way  
3 of being because you want the child to have  
4 a sense of identity, a sense of belonging,  
5 to see this is what I'm going to grow up to  
6 be like and so on. And it works. That  
7 works.

8 Q. Are there -

9 A. Not for everybody, but in general it will  
10 work.

11 Q. Are there examples in the academic  
12 literature of children who do not acquire a  
13 language, whether it be English, French, ASL  
14 or any other language, but they're able to  
15 learn and engage with curriculum and have  
16 what we would consider successful outcomes  
17 without ever acquiring language? I mean,  
18 I'm hearing evidence, and I'm - my  
19 understanding so far, and I'm - correct me  
20 if I'm wrong, is that we need language in  
21 order to - it's a building block upon which  
22 we learn all these other things. But are  
23 there examples of folks who never learn  
24 language but were able to demonstrate that  
25 they've acquired knowledge in some other

1 fashion?

2 A. Well, these are - you know, back to the  
3 famous philosophical things about the wold  
4 boy of Aveyron and so on about people who  
5 are in the wild and never were exposed to  
6 language. The trouble is that if you find  
7 somebody that hasn't been exposed to  
8 language, they're going to be the subject of  
9 widespread abuse. So, it's impossible to  
10 find somebody if they don't have a language  
11 that can otherwise function because to get  
12 in that situation, they would have had to  
13 have been - like Genie, been totally  
14 isolated in a room and not, you know,  
15 interact with anybody. So, this question of  
16 language and thought being dependent or not  
17 is a great philosophical question that's  
18 never been completely resolved.

19 Language and thought are together.  
20 Language and emotion are together. Language  
21 and personality are together. Language is  
22 part of the human condition so that we can't  
23 separate it out. There's - I don't - there  
24 are people who, you know, have lower level  
25 of language that do quite well in maybe

1 manual work or carpentry and so on. Other  
2 people have high level of language. There's  
3 no such thing as a person that we've been  
4 able to study. The only famous one is Genie  
5 of somebody who was deprived of language,  
6 and then we found out that she was just  
7 deprived, period.

8 So, the answer to your question is no.  
9 There is no such thing. Language is, you  
10 know, you think. You have an idea and your  
11 brain turns it into language and then your  
12 motor system puts it out and they all go  
13 together. They're unified.

14 Q. And I mean, it's not an altogether  
15 unexpected answer that language is, you  
16 know, plays that sort of an essential role.  
17 But, you know, I'm hearing from experts, and  
18 that's why I'm asking these questions, is  
19 there something in the academic literature  
20 that would be contrary to my own -

21 A. No.

22 Q. - preconceptions?

23 A. No.

24 Q. So, when we're talking about total  
25 communication, and I also take your point

1           that there's a debate as to that may have a  
2           technical term and maybe now it's being  
3           tossed around in the sense where we've lost  
4           its original meaning, but there's discussion  
5           of, you know, this we're using a total  
6           communication approach to instructing Carter  
7           where, you know, in order to have him  
8           demonstrate choices, we're showing him two  
9           pictures and he's picking from one, you  
10          know, maybe which picture has the ball in  
11          it, and you know, like that's perhaps a way  
12          of engaging with language on a certain level  
13          as well. But the goal is to acquire  
14          language so that he can learn. Like all of  
15          these various approaches are to give him a  
16          language, whether it's English, whether it's  
17          ASL. Is that correct? Is that part of my  
18          takeaway?

19          A. Yeah, I wouldn't put it quite like that  
20          because for me, the goal is yes, the  
21          language, but what's the purpose of the  
22          language? Yes, learning is one thing, but  
23          communication is fundamental. You got to  
24          communicate with parents, with your  
25          brothers, with your sisters, with the world.



1           So, language serves this function of being  
2           the vehicle, yes, of instruction and  
3           learning, but unless you have language as  
4           part of communication, you won't be there to  
5           learn. You'll be - have mental health  
6           problems and all the rest of it.

7                     So, I think we have to be careful. I  
8           think it's - we don't do communication on  
9           the iPad just to teach language. If  
10          somebody says "I need to go to the washroom"  
11          or say, well, that's not language. We'll  
12          wait till you can tell me that, you know.  
13          And no, I mean, you see whatever they point  
14          to. That's a communication. Let's go to  
15          the washroom.

16                    So, I think it's important to see that  
17          everything that - in my view anyway,  
18          everything that has to do with communication  
19          and the original idea of total communication  
20          is what I support. Could be gesture, could  
21          be this. Those things are not going to  
22          detract from language. They're only going  
23          to enhance communication, enhance motivation  
24          and enhance self-image and being able to  
25          communicate in your environment. Yes, one

1 of the goals is to show - well, you could  
2 show a few pictures now. We could put the  
3 vocabulary there and maybe that's going to  
4 work great. But that's not the only goal.

5 Q. In the academic literature, when these  
6 students or these children who have a  
7 language delay are learning language, are  
8 they - I guess this is going to be a bit of  
9 a different question. If Carter Churchill  
10 arrives in kindergarten and he's got an  
11 itinerant teacher of the deaf and hard of  
12 hearing who is providing him with direct  
13 instruction in ASL or just they're there and  
14 they're providing direct instruction in the  
15 schoolwork and ASL is one of the means in  
16 which they are attempting to facilitate his  
17 access to the curriculum, is it reasonable  
18 or are there any examples of children  
19 acquiring a language from being exposed to  
20 it for an hour once a week?

21 A. I'm sure that would contribute to the  
22 process of acquiring a language. Again, if  
23 we're talking about kindergarten, taking  
24 kids out of the normal play and so on is -  
25 for special therapy or what, it almost looks

1           like you're doing ASL therapy rather than  
2           language. So, you're trying maybe to do  
3           vocabulary and so on. So, I think that  
4           would be helpful. That's not going to -  
5           it's obviously going to increase language  
6           ability. It's not the whole story. I mean,  
7           language is about communicating with people  
8           about things. It might increase motivation.  
9           It might do a lot of things. It might  
10          decrease motivation, being taken out of play  
11          to do that. So, it's a complicated thing.  
12          Say well, would ten hours of that be better?  
13          No. You don't want to do too much of that  
14          with kids in play. You want it to be play  
15          based. You want to participate and so on so  
16          that you want to augment and facilitate  
17          what's going on. You don't want it to be  
18          all instruction, if you will.

19          Q. This series of questions, I'm trying to get  
20          to the bottom of what is the best way for a  
21          child with a language delay to acquire  
22          language because Carter goes on to grade one  
23          and there - you know, we'll debate on  
24          whether its - well, I'll decide whether  
25          it's, you know, sufficient what's done next.

1           But the evidence is that the itinerant  
2           teacher of the deaf and hard of hearing is  
3           assigned to him for two hours a day. It  
4           subsequently gets increased to five hours a  
5           day, which is fulltime for a school day. He  
6           has fulltime support from the teacher and he  
7           continues to have that same teacher grade  
8           two. You know, there's going to be some  
9           things to consider as to whether or not the  
10          same approach is used all the way along or  
11          whether his teachers have the same  
12          qualifications all the way along, but you  
13          know, there is more access to that teacher.  
14          He goes into the satellite classroom and  
15          there are two teachers of the deaf and hard  
16          of hearing. There are deaf people who are  
17          in the classroom, native signers. There are  
18          other students. And he's been in that  
19          classroom two years.

20                 I'm also hearing language is still  
21                 pretty delayed. Are we doing something  
22                 wrong still? Is there an approach that is -  
23                 can you tell me what we need to be thinking  
24                 about in terms of the way in which we are  
25                 helping this little child acquire language?

1           Because we're grade - you know, we're  
2           getting into the end of the elementary  
3           grades and I'm still hearing there's a  
4           language delay to the point where he's got  
5           kindergarten level language in some areas.  
6           Is the literature telling us anything about  
7           the right way for a child with a language  
8           delay to acquire language?

9           A. Well, I wish I could give you a clear  
10          answer, but I can't. I mean, I'm - you  
11          know, the evidence that I have is what  
12          you're saying and what's in reports and so  
13          on. I haven't been right there like when I  
14          was in the School for the Deaf and I'm a  
15          psychologist, not a teacher. I think the  
16          first thing I would say is get qualified  
17          teachers in there, people who've studied  
18          this, who've seen other children, who have  
19          experience. Yeah, get some native speakers  
20          of sign language in there. That's fine.  
21          But there's also his own characteristics.  
22          Trying to figure out how he can learn and so  
23          on. This is something that's going to take  
24          time. There's no - I can't give you an  
25          answer to say well, put ten teachers of the

1 deaf in there or something. It's not going  
2 to do any good.

3 You have people in there who can sign.  
4 Some are teachers, some are deaf people and  
5 so on. It seems to me that's good. There's  
6 other kids in there. Parents are obviously  
7 supporting this. I can't - I don't think  
8 anybody can give you the answer to say well,  
9 I could tell you right now. I mean, maybe  
10 if I went and saw Carter and saw the program  
11 and so on, I could make some suggestions.  
12 That's possible. But I think at this point,  
13 we have to reasonably defer to the qualified  
14 experts that are - you know, you got a range  
15 of physios, OTs, speech and language people,  
16 sign language people, psychologists,  
17 educational psychologists. They're all  
18 trained people in this. Okay, I know a lot,  
19 maybe even - or some more about certain  
20 aspects of sign language, but I can just  
21 contribute to one side of it. And yes, I've  
22 had the experience with a school, and I've  
23 had my parents deaf and so on. But that's  
24 just one perspective. I think I've got to  
25 respect the perspective of these other

1 people and what they're doing. That's our  
2 best shot and that's what everybody else  
3 does. To say that I can second guess that  
4 or you know, Monday morning quarterback it  
5 or so on, I wish I could do that, but I  
6 don't think so. I think once you get the  
7 people in there, they're going to do what  
8 they're trained to do. They may make  
9 mistakes but obviously they're all trying  
10 hard to accomplish this.

11 Q. Say someone else has to decide and they have  
12 an expert in deaf education in the room with  
13 them, are you seeing - is anything missing  
14 from Carter's programming or is his  
15 programming -

16 A. Well, I can't -

17 Q. - what should be in place right now?

18 A. I can't rightly say that I know all the  
19 details of his programming right now. I  
20 mean, I visited just the physical classroom.  
21 Again, I have to respect the people that are  
22 there. I'm pretty sure they would know what  
23 they're doing. I mean, you might - you  
24 know, the idea that you can keep bringing in  
25 more consultants and more experts and so on,

1 I mean, the people here in Newfoundland, as  
2 far as I know, are as qualified and as  
3 capable of figuring it out. There may be  
4 some specific things that you would bring  
5 somebody in for, but I think that to say  
6 there's one more thing that can be done and  
7 so on, I don't have enough information  
8 really to reliably say that. I mean, there  
9 may be, but I doubt it. I think that we - I  
10 have faith in the people here.

11 Now, you know, the bigger context is,  
12 you know, whether the program is going to be  
13 there, the bureaucracy, all of that. I'm  
14 not putting faith in that. I'm just putting  
15 faith in the frontline.

16 Q. Anything arising from my questions?

17 MR. REES:

18 Q. No.

19 MS. COLE GLENDRON:

20 Q. No, and Mr. Penney asked me to apologize  
21 that he had to leave. He had to pick up his  
22 child because there's daycare closing.

23 ADJUDICATOR:

24 Q. Dr. MacDougall, I do want to thank you for  
25 taking the time and providing your evidence



1 and assistance to the Board of Inquiry.

2 You're free to go.

3 A. Thank you very much.

4 Q. You're the last -

5 A. I hope I've been able to be helpful.

6 Q. You are the last witness that we have  
7 scheduled in this part of our inquiry into  
8 this complaint.

9 Before we do adjourn, I just do want to  
10 take the opportunity to recognize the work  
11 of all those that contributed to the manner  
12 in which we've been able to facilitate a  
13 more accessible hearing. I'd like to  
14 recognize our ASL interpreters and  
15 unfortunately some of them have already gone  
16 back to their homes, but I want to recognize  
17 them, as well as the IT folks at the back of  
18 the room who've tried to explain to me how  
19 one video stream was going into another and  
20 closed captioning was being arranged. I  
21 don't understand it. You've done a great  
22 job.

23 And I want to recognize those that have  
24 been involved in the closed captioning. The  
25 hiccups that we had early on are certainly

1 not attributed to the people who are  
2 involved and the people who have been  
3 involved in our closed captioning system  
4 have done an excellent job.

5 And although the Human Rights  
6 Commission itself has a role as a party to  
7 these proceedings, they also have an active  
8 role in supporting the way in which our  
9 hearings are supported administratively and  
10 they've done quite a job in organizing these  
11 services so that we could deliver this  
12 unique hearing model. So, I just want to  
13 take the opportunity to recognize those  
14 efforts before we adjourn this portion of  
15 the hearing.

16 I understand that this proceeding is  
17 being livestreamed and being watched by a  
18 number of people who are not familiar with  
19 the Human Rights Inquiry process. Although  
20 the matter ends today, this portion of the  
21 hearing will be over, the parties are going  
22 to have the opportunity to submit further  
23 written submissions afterwards and then  
24 there's going to be a period of deliberation  
25 before there's a decision on this matter.

1                   But, for today, we're going to adjourn our  
2                   proceedings and move on to that next phase.

3                   Thank you.

4   MATTER ADJOURNED AT 5:22 P.M.

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CERTIFICATE

I, Cindy Sooley, hereby certify that the foregoing is a true and correct transcript of a hearing of the NL Human Rights Inquiry heard by Adjudicator, Mr. Brodie Gallant, on the 9<sup>th</sup> day of September, 2022 at the Holiday Inn in St. John's, NL, and was transcribed by me to the best of my ability by means of a sound apparatus.

Dated at St. John's, Newfoundland and Labrador  
This 19<sup>th</sup> day of September, 2022

Cindy Sooley  
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