

BC Government Violates Rights of Children with Autism **BC Supreme Court Declares Denied Treatment is Medically Necessary**

The BC Government actively discriminates against children with autism:

[132] “The petitioners are the victims of the government’s failure to accommodate them by failing to provide treatment to ameliorate their mental disability. That failure constitutes direct discrimination. Further, the petitioner’s disadvantaged position stems from the government’s failure to provide effective health treatment to them...”

The BC Government violates the Canadian Constitutional rights of children with autism as guaranteed in the Charter of Rights:

[156] “The Crown discriminates against the petitioners contrary to s. 15(1) by failing to accommodate their disadvantaged position by providing effective treatment for autism. It is beyond debate that the appropriate treatment is ABA or early intensive behavioural intervention.”

The BC Government is obligated to provide treatment for children with autism — treatment they have steadfastly refused to provide and still refuse to provide:

[139] “I find that the petitioners have established that their s. 15 rights have been infringed...That unequal treatment, which is based on the enumerated ground of mental disability, is discriminatory. Here the only accommodation possible is funding for effective treatment.”

These are the facts as declared late yesterday in BC Supreme Court, in the 66-page judgment of the Honourable Madam Justice Allan, in the case of four children with autism and their parents versus the BC Government:

[102] “On the basis of expert evidence introduced by both parties, I find that early intensive behavioural treatment is a medically necessary service.”

For the parents of these and countless other children with this tragic condition, the battle is for the only scientifically proven medical treatment in existence, Applied Behavioral Analysis (ABA) as developed by Dr. Ivar Lovaas at the University of California at Los Angeles. Decades of research data has proven the effectiveness of Lovaas-ABA in treating children with autism, data the BC Government chose to ignore in refusing any effective treatment for these afflicted children.

[66] “It is ironic that the very limited treatment services provided by the Crown not only fail to meet the gold standard of scientific methodology; they are positively discredited by one of the Crown’s own expert witnesses.”

[52] “The expert witnesses agree that the most effective behavioural therapies are those based on principles of ABA. There are no effective competing treatments.”

[151] “The exclusion of effective treatment for autistic children undermines the primary objective of the medicare legislation, which is to provide universal health care.”

The case against the Government began two years ago. It was started by a group of parents long frustrated by the burden of not only trying to help their suffering children, but doubly hampered by a bureaucracy that not only would not help them, but actively made getting needed treatment for their children even more difficult.

[108] “Given that autism is defined in DSM-IV as a mental disorder, it is difficult to understand the reluctance of the government to provide ABA treatment that has been widely endorsed by medical practitioners and academics throughout the world.”

One of the parents involved in the case, and also an expert witness for the petitioners, is Dr. Sabrina Freeman. The head of the volunteer parents’ group Families for Early Autism Treatment of BC said today, “We are thrilled that the Supreme Court of BC has placed children with autism on an equal footing with other children with medical disabilities. So many children whose parents could never afford proper medically necessary treatment will get the help they need thanks to Justice Allan.”

[127] “The absence of treatment programmes for autistic children must consciously or unconsciously be based on the premise that one cannot effectively treat autistic children. The extensive evidence in this case shows that assumption to be a misconceived stereotype. The stigma attached to mental illness is historical and widespread. Only effective treatment can reduce the marginalization of autistic children and their exclusion from the mainstream of society.”

In the 161-paragraph judgment, Justice Allan rejected many of the Crown’s arguments against providing effective treatment for children with autism, including the Government’s most energetic defence, that they cannot afford to do it:

[147] - “In a broad sense, it is apparent that the costs incurred in paying for effective treatment of autism may well be offset by the savings achieved by assisting autistic children to develop their educational and societal potential rather than dooming them to a life of isolation and institutionalization.”

Justice Allan also rejected the Government stance autistic children receive equality of medical care since they can see a doctor for any problem other than their autism:

[134] “...the Crown submits that if an autistic child gets cancer, he or she will receive treatment for cancer. That justification is misguided as well as unfortunate. It ignores the fact that autism is a medical disability just as cancer is and that both require treatment.”

Still to be decided by Justice Allan are the extent of damages and remedies the Government must make to right the wrongs committed against children with autism. For more information or interviews, please contact Dr. Sabrina Freeman at FEAT of BC — 534-6956.

**Highlights of the Judgment of BC Supreme Court Justice Allan
in the case of Auton et al v. Attorney General of British Columbia and the Medical Services
Commission of British Columbia:**

(Please note: Quotes are verbatim from the Court’s judgment; abbreviations are expanded following each quotation in parentheses).

P.24 [48] “The BCHOTA Report exhibits an obvious bias towards supporting the Crown’s position in this litigation. That detracts significantly from its usefulness.”
(BCHOTA — BC Office of Health Technology Assessment at UBC)

P.25 [52] “The expert witnesses agree that the most effective behavioural therapies are those based on principles of ABA. There are no effective competing treatments.”
(ABA — Applied Behavioural Analysis)

P.30 [66] “It is ironic that the very limited treatment services provided by the Crown not only fail to meet the gold standard of scientific methodology; they are positively discredited by one of the Crown’s own expert witnesses.”

P.42 [102] “On the basis of expert evidence introduced by both parties, I find that early intensive behavioural treatment is a medically necessary service.”

P.44 [108] “Given that autism is defined in DSM-IV as a mental disorder, it is difficult to understand the reluctance of the government to provide ABA treatment that has been widely endorsed by medical practitioners and academics throughout the world.”
(DSM-IV — Diagnostic and Statistical Manual of Mental Disorders, 4th Edition)

P.52 [126] “In failing to make appropriate accommodation for their health care needs, the Crown has discriminated against them. It is not the medicare legislation that is discriminatory or defective but the Crown’s overly narrow interpretation of it.”

P.52 [127] “The absence of treatment programmes for autistic children must consciously or unconsciously be based on the premise that one cannot effectively treat autistic children. The extensive evidence in this case shows that assumption to be a misconceived stereotype. The stigma attached to mental illness is historical and widespread. Only effective treatment can reduce the marginalization of autistic children and their exclusion from the mainstream of society.”

P.54 [132] “The petitioners are the victims of the government’s failure to accommodate them by failing to provide treatment to ameliorate their mental disability. That failure constitutes direct discrimination. Further, the petitioners’ disadvantaged position stems from the government’s failure to provide effective health treatment to them...”

P.55 [134] “...the Crown submits that if an autistic child gets cancer, he or she will receive treatment for cancer. That justification is misguided as well as unfortunate. It ignores the fact that autism is a medical disability just as cancer is and that both require treatment.”

P.57 [139] “I find that the petitioners have established that their s. 15 rights have been infringed...That unequal treatment, which is based on the enumerated ground of mental disability, is discriminatory. Here the only accommodation possible is funding for effective treatment.”

(s. 15 — Section 15 of the Charter of Rights)

P.61 [147] “In a broad sense, it is apparent that the costs incurred in paying for effective treatment of autism may well be offset by the savings achieved by assisting autistic children to develop their educational and societal potential rather than dooming them to a life of isolation and institutionalization.”

P.62 [151] “The exclusion of effective treatment for autistic children undermines the primary objective of the medicare legislation, which is to provide universal health care.”

P.63 [153] “The inability of the petitioners to access that treatment is primarily an issue of health care, not education or social services.”

P.63 [154] “The Crown, and specifically the Ministry of Health, provides no effective treatment for the medical disability of autism...It is for the Crown to determine the measures it will take to comply with its constitutional obligations.”

P.64 [156] “The Crown discriminates against the petitioners contrary to s. 15(1) by failing to accommodate their disadvantaged position by providing effective treatment for autism. It is beyond debate that the appropriate treatment is ABA or early intensive behavioural intervention.”

P.64 [158] “The infant petitioners are entitled to a declaration that the Crown has violated their section 15(1) *Charter* rights.”