THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Anderson et al. v. Attorney General of British Columbia ,

2003 BCSC 1299

Date: 20030822

Docket: L030566

Registry: Vancouver

In the Matter of the *Judicial Review Procedure Act* , R.S.B.C. 1996, c. 241 and

In the Matter of the Decision of the Provincial Government of British Columbia ,

As Represented by the Attorney General of British Columbia with respect to the Claims of the Adult Petitioners for Funding for Autism Treatment for the Infant Petitioners

Between:

Ryan Anderson, an infant, by his Guardian ad Litem , the said Judy Anderson in her personal capacity; Ryan Anthony, an infant, by his Guardian ad Litem , Karen Anthony, and the said Karen Anthony in her personal capacity; Christian Aquilini , an infant, by his Guardian ad Litem , Paolo Aquilini , and the said Paolo Aquilini in his personal capacity; Cameron Bridges, an infant, by his Guardian ad Litem , David Bridges, and the said David Bridges in his personal capacity; Pearson Chan, an infant, by his Guardian ad Litem , David Chan, and the said David Chan in his personal capacity; Lawrence Dabbagh , an infant, by his Guardian ad Litem , Anita Dabbagh , and the said Anita Dabbagh in her personal capacity; R.D., an infant, by his Guardian ad Litem , Y.D., and the said Y.D. in her personal capacity; Hayden Ewing, an infant, by his Guardian ad Litem ,Arleene Ewing, and the said Arleene Ewing in her personal capacity; Nicholas Frank, an infant, by his Guardian ad Litem ,Debbra Mackie, and the said Debbra Mackie in her personal capacity; P.G., an infant, and J.G, an infant, both by their Guardian ad Litem , R.G., and the said R.G. in her personal capacity; Gary Matthew Groenke , an infant, by his Guardian ad Litem , Gary Groenke , and the said Gary Groenke in his personal capacity; Clinton Kam ,

an infant, and Brendan Kam , an infant, both by their Guardian ad Litem ,Janny Kam , and the said Janny Kam in her personal capacity; Aaron Lewis, an infant, by his Guardian ad Litem , Jean Lewis, and the said Jean Lewis in her personal capacity; Matt Rowan, an infant, by his Guardian ad Litem , Mark Rowan, and the said Mark Rowan in his personal capacity; Allison Marshall, an infant, by her Guardian ad Litem , Beverley Sharpe, and the said Beverley Sharpe in her personal capacity; Alexander McLeod, an infant, by his Guardian ad Litem , Barbara McLeod, and the said Barbara McLeod in her personal capacity, Derek Paciejewski , an infant, by his Guardian ad Litem , Barbara Paciejewski , and the said Barbara Paciejewski in her personal capacity; Tessa Spiller, an infant, by her Guardian ad Litem , Franca Pastro , and the said Franca Pastro in her personal capacity; Kyle Pike, an infant, by his Guardian ad Litem , Kim Pike, and the said Kim Pike in her personal capacity; McKenzie Querns, an infant, and Nolan Querns, an infant, both by their Guardian ad Litem , Douglas Querns, and the said Douglas Querns in his personal capacity; Ariel Raskin , an infant, by her Guardian ad Litem , Avery Raskin , and the said Avery Raskin in his personal capacity; Adam Schertzer , an infant, by his Guardian ad Litem , Ruth Wingerin , and the said Ruth Wingerin in her personal capacity, and John Lyons Walter, an infant, by his Guardian ad Litem , Robert Walter,

and the said Robert Walter in his personal capacity

Petitioners

And

The Attorney General of British Columbia

Respondent

Before: The Honourable Mr. Justice Pitfield

Reasons for Judgment

Counsel for the Petitioners:

C.E. Hinkson , Q.C.

Counsel for the Respondent:

L. Mrozinski ,

L. Greathead

Date and Place of Hearing:

June 17-18, 2003

Vancouver , B.C.

Introduction

[1] Ryan Anderson and the 22 other infants named in this petition are affected by autism or autism spectrum disorder. They, and their guardians, have failed in their attempts to obtain public funding for intensive behavioural autism treatment based on the Lovaas Autism Treatment method. The petitioners now seek relief under s. 24(1) of the *Charter* in respect of a breach of their s. 15 equality rights.

[2] The relief claimed is the same as that provided by Allan J. to petitioners in the matter of *Auton et al v. Attorney General of British Columbia* , 2001 BCSC 220, as varied by the Court of Appeal: see 2002 BCCA 538. Although the petitioners now before me were part of a group of families that instructed counsel in the *Auton* litigation, they were excluded from it when the application to certify the *Auton* proceeding as a class action was dismissed: see [1999] B.C.J. No. 718.

Background

[3] The *Auton* litigation began with the filing of a writ of summons, a statement of claim, and an application for certification of the action as a class proceeding under the *Class Proceedings Act* , R.S.B.C. 1996, c. 50. The action sought a declaration that the denial of funding of Lovaas treatment discriminated, on the basis of mental disability, against those who had been diagnosed with autism and an indemnity for the cost of such treatment was claimed.

[4] As I have stated, the certification application was dismissed. Allan J. concluded that the essential character of the relief sought was mandamus in respect of which she said the following at para . 20:

[20] The Statement of Claim expressly seeks orders in the nature of mandamus directing the defendant Ministers of Health, Education, and Children and Families to pay for Lovaas Autism Treatment. Alternative claims for orders that the defendant Ministers pay damages covering the cost of Lovaas Autism Treatment

are, in essence, claims for orders of mandamus. No tort or breach of contract is alleged as the basis for damages; the plaintiffs' claims are based on the alleged failure of the Ministers to comply with their statutory duty. Alternative claims for orders pursuant to s. 24(1) of the Charter directing the Ministers to indemnify the plaintiffs for the cost of past and future Lovaas Autism Treatment are also, in substance, attempts to compel the Ministers to comply with alleged public law duties. Hence, the essential character of that relief sought is mandamus which must be brought by way of judicial review under s. 2 of the JRPA. The Court has no discretion to permit a claim of mandamus to proceed by way of an action.

[5] Allan J. expressed the opinion that there was a reasonable chance that a declaration of unconstitutionality in favour of one or more of the *Auton* petitioners would effect a significant change in government policy. The court said the following at paras . 44 and 48:

[44] In my opinion, there is a reasonable chance that a declaration in favour of one or more of the plaintiffs in this case would effect a significant change in government policy.

[48] In this case, if the present plaintiffs (who may be joined by others) obtain the declaration they seek, it will be applicable to all of the members of the group whose s. 15 rights have been violated. If the Government does not institute the appropriate remedy, then the individual plaintiffs would have to pursue judicial review remedies regardless of whether the declaration was obtained by way of a class proceeding action or a judicial review.

[6] Allan J. concluded that the common issues, as framed, could be "formulated in terms of a declaration that the defendants' failure to fund Lovaas Autism Treatment is a violation of the plaintiffs' s. 15 *Charter* rights and they are entitled to funding and an order of mandamus compelling the defendant Ministers to provide that funding". My colleague held that a mandamus action which must proceed by petition under the *Judicial Review Procedure Act,* was not a proceeding to which the *Class Proceedings Act* applied. Allan J. agreed that the statement of claim that had been filed "[would] stand in place of the petition" and directed that other plaintiffs could be added "to broaden the declaration sought to include children suffering from [autism spectrum disorder] as well as autism".

[7] Three additional petitioners were added and the petition was heard in due course. In reasons dated July 26, 2000 , (2000 BCSC 1142), Allan J. ruled that the petitioners were entitled to a declaration that the Crown had violated their s. 15 *Charter* rights. The order was settled in the following terms:

This court orders that:

1. The petitioners be granted a declaration that the Crown has violated the infant petitioners' rights under s. 15(1) of the *Canadian Charter of Rights and Freedoms* by failing to provide them with effective treatment for their medical condition of autism or autism spectrum disorder in the form of early intensive behavioural intervention and that the violation is not a reasonable limit under s. 1 of the *Canadian Charter of Rights and Freedoms* .

[8] Allan J. instructed counsel as follows at para . 161:

[161] Counsel may set down a further application in chambers to make submissions which I expect will address the following issues:

(a) the specific terms of a declaration and/or an order of mandamus;

(b) whether the petitioners are entitled to be indemnified for monies expended to date on Lovaas Autism Treatment or for future ABA treatment;

(c) whether the petitioners are entitled to additional damages;

(d) costs ; and

(e) any other issues properly arising from these reasons for judgment.

[9] Having heard the submissions of counsel on damages, on February 6, 2001 , (2001 BCSC 220), Allan J. ruled as follows:

[65] An 'appropriate and just' remedy must be determined by the particular circumstances of the case under consideration. I conclude that the petitioners are entitled to the following relief:

* There will be a declaration that the Crown's failure to provide the infant petitioners with effective treatment for their medical condition of autism constitutes a denial of their rights under s. 15(1) Charter.

* There will also be a direction that the Crown fund early intensive behavioural therapy for children with autism, including autism spectrum disorder. It is presumed that the Government will act in good faith in implementing the appropriate policies to meet its constitutional obligations.

* The adult petitioners are each entitled to an award of $20,000 for monetary damages.

[10] An order was subsequently entered in relation to damages in the following terms:

THIS COURT ORDERS THAT

1. the Crown is directed to fund early intensive behavioural therapy for children with autism or autism spectrum disorder;

2. the adult Petitioners are each awarded $20,000 for monetary damages; ...

[11] The Attorney General appealed. The petitioners cross-appealed. By order dated October 9, 2002 , the Court of Appeal “modified” the order of Allan J. to provide as follows:

(a) disputes concerning the duration of treatment of autistic children other than the infant petitioners shall be decided through an appropriate dispute resolution process, or, in the absence of such a process, in the Supreme Court of British Columbia.

(b) the four infant respondent/appellants on cross-appeal are each entitled to government funded treatment in the nature of that which they have or had been receiving provided that such treatment should still be useful.

(c) the Crown is required to fund such treatment for the four infant respondents/appellants on cross-appeal from July 26, 2000, provided that the respondents establish usefulness of treatment by a written opinion from a physician supported by a written opinion from a qualified paediatrician or psychologist, such treatment to continue until the medical view is that no further significant benefit in alleviating the autistic condition can reasonably be expected from continuation of treatment.

(d) the Crown may challenge the efficacy, intensity and duration of treatment of any of the four infant petitioners by a process reached by consent of the parties, or failing agreement, through a hearing in the Supreme Court of British Columbia.

[12] The Attorney General applied for leave to appeal to the Supreme Court of Canada. Leave was granted. Counsel advise that the appeal will likely be heard early in 2004.

Position of Petitioners and Respondent

[13] The petitioners claim that in the course of the *Auton* certification proceeding the Attorney General represented to them and the court that they would be treated in the same manner as the four named litigants in *Auton* . They say the Attorney General is estopped from denying the relief now claimed. In any event, they say that there is no basis on which to deny them the benefit of the general declaration of a *Charter* violation or the remedy afforded others in like circumstances under s. 24(1) of the *Charter*.

[14] Counsel for the respondent states the Attorney General's position as follows:

The Respondent, Attorney General of British Columbia ("AGBC"), opposes the applications by the Petitioners. To the extent that the petitioners seek the relief set out above on the grounds that the order of the Court of Appeal dated October 9, 2002 , applies to them as if they were named petitioners, the AGBC says that the order cannot sustain such an interpretation. While certain aspects of the order of the Court of Appeal, and the orders of Allan J. dated July 26, 2000 and February 6, 2001, do apply generally, it is not the case that the Court of Appeal has ordered the province of British Columbia to fund the past and future costs of the therapy of choice for all persons in British Columbia whose children are diagnosed with autism or autism spectrum disorder. The orders of Allan J. dated February 6, 2002 , awarding the adult petitioners in that case symbolic damages in the amount of $20,000.00, and the modification of that order by the Court of Appeal, are, with the exception of the order regarding the duration of treatment for children other than the four petitioners, applicable only to the four petitioners.

By way of contrast, the declaration of right granted by Allan J. by order dated July 26, 2000 , applies generally to all persons in the province who can bring themselves within the parameters of that declaration. The subsequent direction by Allan J. dated February 6, 2001, that the Crown is directed to fund early intensive behavioural therapy for children with autism or autism spectrum disorder, also applies generally to all persons in British Columbia entitled to such therapy.

The direction by Allan J. by order dated February 6, 2001 , that the adult Petitioners (in that case) are each awarded $20,000.00 for monetary damages, does not apply generally. It's application is limited to the four adult Petitioners in Auton . To the extent that the Anderson Petitioners seek an order compelling the Crown to compensate them in the amount of $20,000.00, the AGBC denies that the submissions of Crown Counsel in Auton #1 amount to a representation that such damages would be payable to them. In addition, the Crown denies that such an application is appropriately brought as a judicial review proceeding.

Analysis

[15] I do not propose to describe the petitioners' circumstances. For present purposes it is sufficient to find, as I do by reference to all of the affidavit evidence, that the circumstances surrounding the health of the infants are the same as those described by Allan J. in relation to the infants in *Auton* . The Attorney General does not dispute that aspect of the claim.

[16] I do not accept the petitioners' claim that the Attorney General is estopped from denying them the relief they claim because of representations made to the court by counsel on his behalf in *Auton* . The question of the impact and application of the eventual ruling in *Auton* were the subject of submissions and discussion in the course of the certification proceeding. The submissions were not unique to the facts of the particular case. Rather, they were a statement of the general law subsequently endorsed by this court and the Court of Appeal as evidenced by the form of universal declaration that emerged, now accepted by the Attorney General. The submissions of counsel in the course of the certification application were not representations with respect to quantum, nor could they be having regard for varying individual circumstances.

[17] If counsel for the Attorney General could be said to have made commitments, which in my view he could not, one of the requirements of estoppel was missing in any event. Detriment to the party who asserts the benefit of the doctrine must be demonstrated. In this case, the petitioners say they acted to their detriment as they did not seek to have their names added as petitioners in the *Auton* proceeding. Their conduct did not result from a representation to the

petitioners by the Attorney General. It resulted from the court's ruling that the matter would proceed as a judicial review to which only so many persons would be party as was necessary to ensure that the court could address the issue of appropriate care for, and treatment of, autism in all its forms. No real detriment was suffered by the petitioners because they are able to proceed with this petition, as they have chosen to do, in pursuit of relief.

[18] At the same time, I am persuaded that the Attorney General should not be permitted to re-litigate the issue of its treatment of autistic children. In a case such as this, there are numerous potential claimants. There is a single respondent. The principal issues are common in all cases. They were fully explored in *Auton* and, subject to revision on appeal to the Supreme Court of Canada, must stand . It should not be necessary to litigate the same issues time after time on the basis that the claimants are different.

[19] In this regard, the case of *Bjarnason et al. v. Manitoba* (1987), 21 C.P.C. (2d) 302 (Man.C.A .) is of assistance. The Court of Queen's Bench struck portions of a statement of defence denying liability when the question of liability in the relevant context had been determined in a proceeding involving another plaintiff. Although there was no mutuality of parties, a precondition to the application of issue estoppel , the chambers judge said the following at p. 311:

In these times of aviation or common carrier disasters, chemical waste spills, or pharmaceutical accidents, when it is tragically quite common to have multiple litigants with the same cause of action against the same defendant, and where a determination of the common issue impacts equally upon those litigants, the law would be well served by such a fair and sensible legal doctrine. A doctrine that would not only tend to bring finality to at least a portion of the litigation, but also would assist in protecting litigants from the additional costs they otherwise would incur if they were required to re-litigate issues already decided when the only real issue remaining would be quantum of damage.

[20] The Court of Appeal endorsed the reasoning of the chambers judge and dismissed the appeal saying that it would be an abuse of the court's process to let the matter proceed, impliedly endorsing the view that issue estoppel would not apply because of the lack of mutuality of parties.

[21] I do not accept the submissions on behalf of the Attorney General that the assertion of this kind of challenge to refusal to act requires a proceeding initiated by writ and statement of claim on the basis of contract. The subject matter has not changed. The relief claimed is in the nature of mandamus coupled with an associated claim for *Charter* relief as permitted by s. 24(1). *Charter* relief may be claimed by way of application. Under the Rules of Court, a statutory application must be brought by petition where an action is not otherwise involved. This proceeding by petition is the appropriate course.

[22] It follows that the petitioners will enjoy the benefits of the prior litigation

in respect of the Crown's wrongdoing unless, for some reason, affording them those benefits should be considered inappropriate and unjust in the circumstances. In that regard, s. 24(1) of the *Charter* , provides as follows:

24.(1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

[23] The ultimate issue is whether there is a reason why the present petitioners should be denied any of the relief granted the *Auton* petitioners. The Attorney General phrases the issues in this manner:

Is the provincial Crown required, by the order of the Court of Appeal dated October 9, 2002, to fund the past and future costs of the therapy of choice for all children in British Columbia diagnosed with autism or autism spectrum disorder?

Are the petitioners entitled to damages as requested pursuant to s. 24(1) of the *Charter* ?

[24] In this regard, I first observe that no consolidated order was entered in the Court of Appeal on completion of the *Auton* appeal. I must attempt a consolidation in order to appropriately consider that which should flow from the order of Allan J. as "modified" by the Court of Appeal. The starting point must be the reasons of Saunders J.A. at paras . 90, 91 and 92 as follows:

[90] The order made does not incorporate an age limitation, although the passage above show[s] that Madam Justice Allan considered and rejected a submission that the order expressly direct treatment not be discontinued at age 6. In terms of the order in its general application, she was correct, in my view, to avoid particularizing details of the program that must be funded. She correctly referred to the thrust of the case, and the evidence she accepted, as revealing a window of opportunity, and she correctly, in my view, held back from opining on appropriate programming once the children are past the age of that window, as it was described, and of school age. While I accept that the efficacy of treatment is unlikely to end at the crisp attainment of school age, issues of funding programs for children of school age may involve additional considerations not before the Court, either in evidence or submissions. As the duration of treatment is not amenable, in my view, to a broad direction applicable to all autistic children, I would direct that disputes concerning the duration of treatment should be decided through an appropriate dispute resolution process, or in the absence of such a process, in proceedings before the Supreme Court of British Columbia.

[91] This is, however, not of particular help to these four infant petitioners who have succeeded in establishing a breach of their right to equality, but who have all, now, reached school age. The treatment of one child, C.A. , was discontinued for lack of financial resources, and the evidence is that his behaviour has deteriorated. Two children, age 12 and 6 at the time of trial, were continuing with treatment and one child was said to no longer require treatment.

[92] Section 24 of the Charter provides, in my view, ample scope for an order to address the wrong done these children: New Brunswick (Minister of Health) v. G.(J.), supra; Operation Dismantle v. R. (1985), [1985] 1 S.C.R. 441, 18 D.L.R. (4th) 481. I would modify the order to direct that the four infant petitioners are each entitled to government funded treatment in the nature of that which they have been receiving (or in the case of a petitioner whose treatment has been discontinued, to the intensity of that which the petitioner has in the past received), if such treatment should still be useful to them. I would modify the order to direct that the Crown fund such treatment, from the time of the order declaring a breach of the Charter rights of the infant petitioners (Auton No. 2), provided that the petitioners establish the requisite usefulness by a written opinion from the child's family physician supported by a written opinion from an appropriately qualified paediatrician or psychologist, to continue until the medical view is that no further significant benefit in alleviating the autistic condition can reasonably be expected from a continuation of the treatment. The Crown, being responsible for funding the treatment, must have an opportunity to challenge its efficacy, intensity and duration. In my view that should best be addressed by a process worked out by consent, or failing agreement, through a hearing in the Supreme Court of British Columbia.

[25] The next point of importance is that the directions made by the Court of Appeal were recited in an entered order: *supra* , at para . 11. Having regard for the reasons and the entered order, I am of the opinion that a consolidated order resulting from the *Auton* proceeding would be stated as follows:

1. The petitioners be granted a declaration that the Crown has violated the infant petitioners' rights under s. 15(1) of the *Canadian Charter of Rights and Freedoms* by failing to provide them with effective treatment for their medical condition of autism or autism spectrum disorder in the form of early intensive behavioural intervention and that the violation is not a reasonable limit under s. 1 of the *Canadian Charter of Rights and Freedoms* .

2. The Crown is directed to fund early intensive behavioural therapy for children with autism or autism spectrum disorder.

3. Disputes concerning the duration of treatment of autistic children other than the infant petitioners shall be decided through an appropriate dispute resolution process, or, in the absence of such a process, in the Supreme Court of British Columbia.

4. The four infant [petitioners] are each entitled to government funded treatment in the nature of that which they have or had been receiving provided that such treatment should still be useful.

5. The Crown is required to fund such treatment for the four infant [petitioners] from July 26, 2000, provided that the respondents establish usefulness of treatment by a written opinion from a physician supported by a written opinion from a qualified paediatrician or psychologist, such treatment to continue until the medical view is that no further significant benefit in alleviating the autistic condition can reasonably be expected from continuation of treatment.

6. The Crown may challenge the efficacy, intensity and duration of treatment of any of the four infant petitioners by a process reached by consent of the parties, or failing agreement, through a hearing in the Supreme Court of British Columbia.

7. The adult petitioners are each awarded $20,000 for monetary damages.

[26] Although the declaration of contravention of equality rights in paragraph 1 was specific to the petitioners, the Attorney General properly admits that it "applies generally to all persons in the province who can bring themselves with the parameters of that declaration". I see no reason to repeat the declaration in any order I make except to leave no doubt that the breach of the equality rights of the petitioners before me was declared on July 26, 2000 .

[27] Clause 2 is not petitioner-specific. The Attorney General admits that the order that the Crown is directed to fund early intensive behavioural therapy for children with autism or autism spectrum disorder, also applies generally to all persons in British Columbia entitled to such therapy. The Attorney General endorses the reasoning of Allan J., 2001 BCSC 220, para . 25, as follows:

...However, as I have stated above, it remains within the competence of Government, not this Court, to determine, upon appropriate professional advice,

the nature and extent of the [early intervention behavioural therapy] it will provide. Nor can the Court direct that Government provide [early intervention behavioural therapy] when it is recommended by a physician or psychologist, rather than by a multi-disciplinary diagnostic team.

[28] The conclusion reached by Allan J. was not endorsed by the Court of Appeal which considered directions about the extent of treatment to be salutary.

[29] I must confess to difficulty in understanding why the Court of Appeal concluded it could include clause 3 which would apply to the detriment of persons not before it. The origin of the term is not explained. The directions in respect of the *Auton* petitioners include a court-ordered requirement that the government incur a certain level of cost in respect of the petitioners. Much of the Attorney General's submission before me was directed to challenging the efficacy of an order that states, in effect, that the Lovaas therapy which had been provided the *Auton* petitioners should be continued and its cost reimbursed. That is an issue for the Supreme Court of Canada where the Attorney General's objections to the Court of Appeal ruling can be fully discussed. Until varied or set aside, I am bound by the direction and my only concern is whether there is any reason why similar relief is not appropriate and just in the circumstances of the petitioners before me.

[30] The nature of the constraints under which a court must operate when fixing a remedy under s. 24(1) of the *Charter* is not defined. One should expect that where one crafts a remedy in relation to the violation of equality rights of specific members of a group comprised of many individuals, one can reasonably anticipate that others in the group will justifiably say "me too". That is the case presently. In so far as the care requirements of these petitioners are concerned, I see no reason why the petitioners before me should be entitled to anything less than the Court of Appeal has afforded the *Auton* petitioners. Nothing that I can discern from the majority reasons of the Court of Appeal identifies a characteristic that sets the *Auton* petitioners apart from those before me. Affording any lesser relief would further the discrimination and inequality that have been associated with the treatment of autism and autism spectrum disorder.

[31] The monetary damage award of $20,000 to each adult petitioner requires different considerations. Allan J. described that award as a symbol reflecting the fact that the petitioners carried the torch in the judicial review on behalf of all autistic children. The reasoning was not challenged by the Court of Appeal. I see nothing in my colleague's reasons to suggest that if there had been 27 petitioners before the court, she would have awarded $20,000 to each of them for a total of $540,000 as monetary damages.

[32] The petitioners say the Attorney General should be penalized for his defence of this petition. In my opinion, the Attorney General's concern about this petition is justified. There is a legitimate dispute regarding the combined effect of the Supreme Court and Court of Appeal orders and the ripple effect of extending it to other autistic children.

[33] I do not consider that an award of monetary damages of $20,000, or any other amount to the adult guardians, would be just or appropriate. Those petitioners are the beneficiaries of the prior litigation.

[34] The application for monetary of damages in the amount of $20,000 per adult petitioner is dismissed.

[35] An order is granted in the following terms:

1. The Crown has violated the infant petitioners' rights under s. 15(1) of the *Charter of Rights and Freedoms* from and after July 26, 2000 .

2. Each infant petitioner is entitled to government funded treatment in the nature of that which they have or had been receiving provided that such treatment should still be useful.

3. The Crown is required to fund such treatment for each infant petitioner from July 26, 2000, provided that the infant petitioner establishes usefulness of treatment by a written opinion from a physician supported by a written opinion from a qualified paediatrician or psychologist, such treatment to continue until the medical view is that no further significant benefit in alleviating the autistic condition can reasonably be expected from continuation of treatment.

4. The Crown may challenge the efficacy, intensity and duration of treatment of any of the infant petitioners by a process reached by consent of the parties, or failing agreement, through a hearing in the Supreme Court of British Columbia.

5. Except as provided in this order, the claims of all petitioners are dismissed.

6. The petitioners are entitled to costs at Scale 3.

"I.H. Pitfield , J."
The Honourable Mr. Justice I.H. Pitfield