

## **Liberals Lose Fight Against Children with Autism**

### **Court of Appeal Orders BC Government to Stop Discrimination and Start Providing Treatment**

VANCOUVER — Dealing a devastating blow to the provincial Liberal government, the BC Court of Appeals has unanimously reaffirmed the BC Government discriminates against children with autism spectrum disorder (ASD), and has ordered the province to fund medically necessary treatment for these children, regardless of their age. The Court has taken the unprecedented step of putting the Government on notice, that staff who continue to violate the rights of children with autism may be held in contempt of court, and punished accordingly.

The Court agreed with Justice Marion Allan of the BC Supreme Court that children with autism and ASD have a constitutionally-protected right to publicly-funded early intensive behavioural treatment, and that the BC Government policy towards children with autism is discriminatory. The Government appeal has been dismissed in its entirety, which means BC can no longer refuse to fund necessary treatment — a policy they have maintained for decades under Socred, NDP and Liberal rule, despite the fact that physicians were prescribing it. In this new landmark judgement, the Court of Appeal states that by refusing to fund or provide medically necessary autism treatment — also known as Intensive Behavioural Intervention or Lovaas-type autism treatment — the government is in violation of Canada’s constitution, and the Charter rights of children with autism.

[37] *“I accept as accurate her assessment of this treatment as necessary medical care.”*

[51] *“...the failure of the health care administrators of the Province to consider the individual needs of the infant complainants by funding treatment is a statement that their mental disability is less worthy of assistance than the transitory medical problems of others. It is to say that the community was less interested in their plight than the plight of other children needing medical care and adults needing mental health therapy. This is a socially constructed handicap...”*

The Court of Appeal also found that provincial staff have consistently and continually mishandled the legitimate treatment needs of children afflicted with autism.

[85] *“The Court has ordered this treatment because, under its more generic name, it is the only known form of effective treatment for children with autism or ASD...In this case, the apparent and regrettable intransigence on the issue of this therapy by those administering the province’s programs for children justifies an order beyond the usual Charter remedy of a mere declaration.”*

Following the landmark BC Supreme Court ‘Auton’ rulings of 2000-2001, the BC Children’s Ministry set up ineffective and extremely limited programs in an attempt to be accepted as complying with the court’s orders. All government autism policy since the Auton decision has centered on providing NO treatment for children over age five. The Court of Appeal has ruled that age restriction is a new violation of the rights of children with autism, and has banned the policy. British Columbia must now fund medically-necessary autism treatment, regardless of age. To enforce its ruling, the Court of Appeal has indicated it is prepared, if necessary, to find individual government civil servants in contempt of court.

**For more information, please call Dr. Sabrina Freeman at 604-534-6956**  
**Email: [skfreeman@featbc.org](mailto:skfreeman@featbc.org) | Website: <http://www.featbc.org>**  
**The full BC Court of Appeal decision is available at:**  
**<http://www.courts.gov.bc.ca/jdb-txt/ca/02/05/2002BCCA0538.htm>**