

On the front page of the Globe:

Ontario discriminates against parents, students with autism, judge rules

By KIRK MAKIN

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JUSTICE REPORTER

Ontario has violated the constitutional rights and "human dignity" of autistic schoolchildren by denying them treatment they desperately need in order to cope and thrive, an Ontario Superior Court judge has ruled.

Madam Justice Frances Kiteley found discrimination based on age and disability, bringing a dramatic end to a lawsuit launched by 29 groups of parents whose autistic children were denied autism treatment in the education system at the age of 6.

"I find that the age cutoff reflects and reinforces the stereotype that children with autism over age 6 are virtually unredeemable," Judge Kiteley said. "To deny the plaintiff children the opportunity to have [treatment] after the age of 5 is to stereotype them, to prejudice them and to create a disadvantage for them."

She awarded the litigants damages that will run into the millions of dollars for past and future treatment. She also refused the province's request for a grace period in which to repair its delivery of autism programs, saying it has had ample time to fix the problem.

Coming several months after the Supreme Court ruled that provinces had no obligation to provide such treatment under the health-care system, the ruling opens the door for hundreds of parents of autistic children to secure similar treatment within the education system and could have implications across the country. In an exhaustive 217-page decision, Judge Kiteley said the province broke an explicit promise in the Education Act to meet the needs of disabled children, and then failed abysmally to evaluate its existing programs.

Without treatment, Judge Kiteley said, "the plaintiff children are deprived of the skills they need for full membership in the human community. That child's isolation and lack of skills mean that s/he cannot participate in society and cannot exercise the rights and freedoms to which all Canadians are entitled.

"The absence of ABA/IBI means that children with autism are excluded from the opportunity to access learning with the consequential deprivation of skills, the likelihood of isolation from society and the loss of the ability to exercise the rights and freedoms to which all Canadians are entitled."

Judge Kiteley refused to let the Ministry of Education slough off its responsibility onto individual school boards. "The challenges faced by parents demonstrate that when left to individual school boards, parents are constantly reinventing the wheel," she said.

Mary Eberts, a lawyer for the families, said provincial school boards must now deliver autism treatment known as ABA/IBI to eligible children -- as has been done in the United States for years.

"The pressure is really on the government now," Ms. Eberts said in an interview. "This is quite a breakthrough decision. I think that every single parent with an autistic child should be on somebody's doorstep saying, 'Get going.' Whether they are part of our law case or not, I think parents with an autistic child should take this decision to their school board on Monday morning and say, 'Start giving us what my child needs now.' "

"I feel very vindicated," said Tammy Starr, a litigant with two autistic children. "Parents have been saying all of this for years, but the government -- especially the Education Ministry -- treated us with disdain. Now that a judge has said it, they have to listen.

"It's unfortunate that we had to go the courts to get heard," Ms. Starr said. "We just want our kids to be able to function in society the way other kids do."

The much anticipated ruling was set for release today. However, a computer error led to it being sent to the lawyers on Friday. Judge Kiteley tried repeatedly to persuade them to keep it confidential, but Ms. Eberts said it was her duty to inform her clients of the result.

Autism affects from two to six children in every 1,000. Behaviour can include a fixation on moving objects, self-injurious conduct, an inability to concentrate or process information and great difficulty engaging in normal social interaction.

The therapy of choice for autistic children is referred to interchangeably as ABA or IBI. Therapists break down language and mental and physical tasks into components that are repeated until an autistic child masters them.

While the most intensive form of the treatment requires considerable supervision and can cost up to \$60,000 a year for each child, many authorities consider it the difference between a child growing up to be relatively normal and one who is doomed to a highly dysfunctional life.

Judge Kiteley said the special needs of autistic children are no less dramatic than those of blind or deaf children -- who are well accommodated in the school system. She said there has been a stubborn refusal by education officials at all levels -- apart from a few "open-minded" principals or teachers -- to recognize ABA/IBI as an education tool rather than a medical therapy.

"Unfortunately, there is no glimmer of immediate or early progress in the Ministry of Education in responding to the needs of pupils with autism," she said.

ABA/IBI treatment must begin early and continue as long as it is effective, Judge Kiteley said. "I find that a systematic ineligibility criterion of age 6 cannot be responsive to the needs of the child."

She described the case histories of the litigants as "heartbreaking," and flatly disagreed with government claims that ABA/IBI is simply an experimental, emergent therapy. She said it "undermines the integrity of the government" that it has

adopted inconsistent positions on the usefulness of ABA/IBI, and that it has sunk millions of dollars into evaluating a therapy it continues to claim is 'emergent.'

Still, Judge Kiteley praised the province for creating the autism program "with alacrity" in the first place. She said that where it erred was in failing to recognize by 2002 that its school boards were not administering or monitoring the program properly.