

Divisional Court to Review Special Education Tribunal's Decision to Place a Student with Autism in a Special Education Class

On Monday April 26, 2010 the Divisional Court will hear oral arguments in *Kozak vs. Toronto District School Board et. al.*; a judicial review of the Special Education Tribunal's decision to uphold the Toronto District School Board's placement of Jared Kozak in an unidentified special education class.

The applicant, Jared Kozak, is a 10 year old boy who has autism and requires Applied Behavioural Analysis as an accommodation in his classroom as mandated by the Ministry of Education's Policy/Program Memorandum 140. In December 2009, the Tribunal heard an appeal brought by Jared's mother requesting that he be placed in a regular class with appropriate accommodation. The main argument on appeal was that the Tribunal has a duty to assume that the accommodations required by law are being made when rendering placement decisions.

On Monday, counsel to Ms. Kozak, David Baker, will argue that the Tribunal's decision was unreasonable because it failed to take into account the TDSB's duty to accommodate, it failed to consider whether Jared could succeed in a regular class with *appropriate accommodation*, and the Tribunal erred in law when it made a placement decision not knowing which special education class/services/program the TDSB was proposing. This case will address fundamental issues addressing the extent to which school boards and the Tribunal are bound by human rights and equality law with respect to the accommodation of autistic children within the educational context.

The Ministry of the Attorney General has indicated that it will be presenting arguments on the legal standard that is to be applied to the Tribunal when making its decisions.

Date: Monday April 26, 2010
Time: 10am
Location: Osgoode Hall, Courtroom 3
130 Queen Street West, Toronto
Osgoode Hall is located on the northeast corner of University Avenue and Queen Street. The closest subway stop is Osgoode.

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