



A COVID-19 vaccine is administered at a "Kids and Families Vaccine Clinic" operated by Black Creek Community Health Centre in Toronto on Jan. 13, 2022. (The Canadian Press/Chris Young)

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Ontario Judge Rules in Favour of Mother Who Doesn't Want Her Children Vaccinated for COVID

Ruling can't be based on judicial notice of a 'moving target' such as COVID policies, judge says

By Isaac Teo March 1, 2022 Updated: March 2, 2022

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An Ontario judge has ruled in favour of a mother who does not want her two children to be vaccinated against [COVID-19](#), contrary to what her ex-husband wants, noting in his ruling that [government pandemic policies have changed over time](#).

In his [ruling](#), the first of its kind regarding pandemic-related litigation in Canada, Ontario Superior Court Justice Alex Pazaratz said [his decision was based on the best interests of the children and legitimate concerns from the mother that the COVID-19 shots could have side effects](#).

["It's very hard to fault a parent for being worried about such an ominous list of potentially very serious side effects,"](#) wrote Pazaratz in his ruling on Feb. 18, referring to an eight-page [fact sheet](#) issued by [Pfizer](#) last June on the possible risks associated with its COVID-19 vaccine, which was submitted by the mother in her affidavit.

Among the side effects identified in the fact sheet were severe allergic reaction, swelling of the face and throat, inflammation of the heart muscle (myocarditis), diarrhea, and vomiting. The document notes that there is only a

“remote chance” the vaccine will cause a severe allergic reaction and that incidences of myocarditis are “very low.”

The judge noted that the father had proposed the Pfizer vaccine as one of the choices his two children aged 12 and 10 could take to be vaccinated against the coronavirus.

Documents the 35-year-old father submitted in his affidavit to support his case included government information and fact sheets, such as those titled “[Vaccines for Children: COVID 19](#)” and “[The Facts About COVID-19 Vaccines](#).”

The mother, 34, submitted several articles including one from the U.S. Centers for Disease Control and Prevention, titled “[Clinical Considerations: Myocarditis and Pericarditis after Receipt of mRNA COVID-19 Vaccines Among Adolescents and Young Adults](#),” and another article by Dr. Robert Malone, the inventor of the mRNA vaccine, titled “[Are People Getting Full Facts on COVID Vaccine Risks?](#)”

Pazaratz said previous legal cases where COVID vaccinations were ordered by the court might be due to the objecting parent presenting materials that were “grossly deficient, unreliable and—at times—dubious.”

“This lack of an equally credible counter-point to government recommendations may well have been determinative in those earlier cases,” he wrote.

“But in this case, none of the materials presented by the mother are from fringe organizations or dubious authors. To the contrary, the mother quotes extensively from leaders in the medical and scientific community.”

In addition, Pazaratz cited a report by independent social worker Michelle Hayes, who was engaged by the parents to resolve their parenting disputes. Hayes, after interviewing the two children twice, said both of them made it clear that they didn’t want to be vaccinated. She added that there weren’t any concerns that either child had been manipulated or pressured by either parent.

“As in the original report, each of the children presented confidently and thoughtfully for both interviews. As they reviewed their thoughts, they each showed consistency in their views and preferences in each interview,” Hayes wrote in her summary.

Pazaratz said while he agreed with the father that the children may not be of age to make such decisions, he did not agree with the father’s position that their feelings on the matter were inconsequential.

“Rather than simplistically accept or reject what children say they want, the court must engage in a complex and sensitive analysis of the weight to be attributed to each child’s stated views,” he wrote.

‘Legitimate and Highly Complex Debate’

Pazaratz stressed the importance of hearing evidence from both sides before jumping to any judgement.

“What if the objecting parent presents evidence which potentially raises some serious questions or doubts about the necessity, benefits, or potential harm of COVID vaccines for children?” he asked.

“There are obvious public policy reasons to avoid recklessly undermining confidence in public health measures. But that has to be weighed against our unbridled obligation to leave no stone unturned when it comes to protecting children.”

Given that he was satisfied by the materials the mother submitted that a “legitimate and highly complex debate exists” with regard to COVID vaccines, Pazaratz said he wasn’t prepared to apply judicial notice as a method to resolve the case.

Judicial notice refers to recognizing certain facts as “so [notorious or generally accepted](#) as not to be the subject of debate among reasonable persons,” according to Canadian law when it comes to weighing evidence.

Pazaratz characterized the attempt to base a ruling on COVID-19 policies enacted by all levels of government as trying to make a judgement based on a “moving target.”

“How can you take judicial notice of a moving target? During the past two years of the pandemic, governments around the world—and within Canada—have constantly changed their health directives about what we should or shouldn’t be doing. What works and what doesn’t,” he wrote.

“And the changes and uncertainty are accelerating with each passing newscast. Not a day goes by that we don’t hear about COVID policies changing and restrictions being lifted.”

Pazaratz argued that government experts may not be experts after all in accessing the risks that come with COVID vaccines.

“Government experts sound so sure of themselves in recommending the current vaccines. But they were equally sure when they told us to line up for AstraZeneca. Now they don’t even mention that word,” he said.

“But how can judges take judicial notice of ‘facts’ where there’s no consensus or consistency?”