CITATION: J.W.T. v. S.E.T., 2023 ONSC 977
COURT FILE NO.: FC-20-1352-00
DATE: 20230208

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: J.W.T., Applicant

AND:

S.E.T., Respondent

BEFORE: The Honourable Justice R.T. Bennett

COUNSEL: Rachel Zweig, for the Applicant

Abba Katz, for the Respondent

HEARD: November 21, 2022

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ENDORSEMENT

1. The respondent mother S.E.G. (formerly S.E.T.) ("mother" or "respondent mother") brings a motion seeking an order that she may have the three children of the marriage, H.W.T. born in 2012, ("H.W.T."), C.R.T. born in 2017 ("C.R.T.") and Z.B.T. born in 2018 ("Z.B.T.") collectively known as "the children", vaccinated against COVID- 19 without the consent of the applicant father J.W.T. ("father" or "applicant father").

2. The children are ten, five and four years of age.

3. The children primarily reside with the mother during the school year.

4. This matter was put over for a long motion pursuant to the final order of Justice Jarvis dated May 13, 2022. At that time, it was contemplated that the long motion would be heard during the May 2022 trial sittings. However, due to the unavailability of counsel, when the motion was called, the motion was moved to the November 2022 trial sittings and was heard by the court November 21, 2022.

5. The parties to their credit entered into minutes of settlement dated April 18, 2021 (sic) 2022 which resolved virtually all parenting and support issues on a final basis.

6. The court will summarize those minutes of settlement so far as they relate to this motion as follows:

    - The parties agreed on the following major decisions with respect to the children and in particular: the schools that the children would attend.

- That the children's doctor shall be Dr. Sriskanda.

- That the mother would schedule and attend annual medical and dental appointments for the children providing the date of those appointments to the father and that she will provide him with a brief written summary of those appointments if the father is unable to attend.

- The parent caring for the children at the time will deal with any medical emergency.

- The father will arrange for communion and baptism for the children.

- Each party is at liberty to observe and follow their respective religious traditions while the children are in their care.

- **The children shall not be vaccinated against COVID-19 without a court order, as per Justice Himel's endorsement and order dated December 13, 2021. The mother will be at liberty to bring a motion in the May 2022 trial settings for an order that she obtain COVID-19 vaccinations for the children of the marriage (emphasis added).**

- In the event a parent proposes to change any of the already agreed upon items for the children listed above, or a parenting issue not listed above arises, that party shall communicate their proposal in writing to the other party along with the reasons for their position. The other party shall then have 14 days to respond. If the parties cannot resolve the issue, the mother will make the final decision and communicate the decision to the father (except as set out in paragraph 1(k) in the minutes of settlement with respect to the COVID-19 vaccine).

- H.W.T. will commence therapy immediately with Karen Guthrie-Douse and follow her usual practices. C.R.T. will attend therapy with Ms. Guthrie-Douse as needed. Counsel for the parties may arrange a joint telephone call with Ms. Guthrie-Douse to discuss the process. The father will pay for the therapy costs for him and the children. The mother will pay for the therapy costs for any session that she attends with Ms. Guthrie-Douse.

- Neither party will make disparaging comments related to the other to the children and will not discuss any aspect of this court proceeding where there is conflict between the parties with the children under any circumstances. Neither party will denigrate or disparage the other parent or members of their extended families with the children in their presence, nor shall they permit the children to be present if any other person is disparaging the other parent.

- The parties will ensure that the children are not exposed to any adult conflict, whether it is during their respective parenting time, exchanges or anytime they have contact.

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- During the school year, the children shall live primarily with the mother and the father shall have parenting time every Wednesday overnight and alternate weekends from pick up after school on Friday until drop off Monday morning.

- The minutes of settlement go on to essentially provide that the parties will have equal parenting time during holidays, summers and Christmas and March break vacations.

- The father is to pay child support in the amount of $1,999 per month based on his estimated annual income of $105,000 per year.

7. Those minutes of settlement were signed by the parties on April 19, 2022 and formed the basis of a final order.

Evidence tendered on the motion

8. The court confirmed with the parties and their counsel that it had received and reviewed the following prior to hearing submissions on the motion, namely:

    - The mother's notice of motion dated May 1, 2022.

    - The mother's affidavits dated May 1, 2022, May 25, 2022, November 14, 2022 and November 18, 2022.

    - The father's affidavits dated May 20, 2022, November 7, 2022 and November 16, 2022.

    - OCL report dated November 22, 2021.

    - Minutes of settlement erroneously dated April 18, 2021 but actually signed April 19, 2022.

    - The court also received and reviewed the mother's factum dated May 30, 2022 and her supplementary factum dated November 14, 2022 and the father's factum November 21, 2022.

9. As a preliminary matter, the father's counsel objected to certain aspects of the mother's materials namely, references to reunification therapy and ADHD diagnosis. Essentially, the objection to this was that the father did not have an opportunity to respond to allegations that were made and that the references were irrelevant to the issues before the court.

10. The father also objected to the court accepting as evidence, letters from doctors that had been tendered on behalf of the mother.

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11. Further, the father objected to reference being made to the OCL report. In particular, the father objected to the court making findings on a temporary motion based on recommendations made by an OCL investigator in their report.

12. The court rendered orally its rulings on each of these issues.

13. The court emphasized that the issue to be decided by it was a very narrow one.

14. The mother wished to tender two different letters from two different doctors.

15. The first letter was from a pediatrician who indicated in the letter that it was the mother who had brought the oldest child to all of the pediatric appointments.

16. The court found that this letter was not properly admissible for two reasons. Firstly, it was not in the form of an affidavit but secondly, and more importantly in the court's view, the issue of who had taken the child to pediatric appointments several years ago was in the court's finding totally irrelevant to the issue at hand being the vaccination issue.

17. The mother also wished to tender a letter from the children's current doctor (Dr. Sriskanda) indicating the doctor's recommendation with respect to vaccination. The court found this letter inadmissible in that it was not in the form of an affidavit. Secondly, even if the court had allowed the letter to form part of the evidence, the doctor was in the letter not expressing an opinion specifically with respect to these children but was in the court's view merely reciting and following the public health guidance and recommendations. As of that time, only the eldest child was eligible for vaccination. The doctor indicated that there were no medical exemptions or contraindications with respect to that child and therefore the doctor was recommending in accordance with public health guidelines that the child be vaccinated. The doctor further recommended that the younger children be vaccinated when the government deemed them eligible. Therefore, the letter was not of probative value in that it did not assist the court with the issue of these children specifically.

18. The mother wished to reference the OCL report and to utilize portions of that in her argument with respect to the vaccination issue. The court found that the OCL report, although very thorough, had little if any relevance to the issue before the court. The sole issue before the court was the issue of vaccination of the children. The OCL report did not address that matter specifically.

19. The court was not tasked with the decision as to who is the better parent or issues of parenting time with each parent or even general decision-making issues. The issue before the court was very specific; that being the issue of decision-making so far as it relates to the children receiving or not receiving the COVID-19 vaccination. Therefore, the OCL report was of minimal assistance to the court and minimal relevance to the issue before the court. In addition, the report and the investigator's findings had not been tested under cross examination.

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20. The remaining evidentiary issue was with respect to the statements in the mother's reply affidavit relating to the parties' involvement with Ms. Guthrie Douse. The father's objection to this evidence being before the court was that the father had no opportunity to respond to the allegations that he had not participated in that therapy and that the evidence was not proper reply evidence Once again, the court found that the issue of the therapy was not directly related to the issue before the court.

21. The court therefore ruled that the only evidence that was relevant for this motion was evidence that related to the vaccination issue.

22. The mother's position was that the court should rule in her favor and find that it was in the children's best interests that an order be made which would effectively give her decision-making over the issue of the children's vaccination and allow her to proceed to have the children vaccinated against COVID-19 without the consent of the father.

23. On a somewhat technical point, the court notes that the mother's motion is characterized as seeking a court order that the children be vaccinated. Technically, this is not appropriate, and the court has no authority to order children to be vaccinated. What the mother is really seeking, and the issue to be decided by the court, is whether or not that decision should be left with the mother without the necessity of consent from the father.

24. In response to a question from the court based on an item set out in the mother's factum, the court clarified that the mother was not asking the court to make a final decision on vaccination unless that decision was favourable to her. In other words, the court clarified that the mother was not asking the court to make an order regarding whether or not the children should be vaccinated but that she was asking the court to make an order to dispense with the father's consent to vaccination for the children.

25. The father's argument on the other hand and was that the court should not make any determination of the issue on a temporary basis and the court should require that issue to be determined at trial. The father's argument was that the court should not take judicial notice of government publications as requested by the mother but that the court should defer the matter to trial where expert evidence could be tendered.

Parenting decisions to be determined based on the best interests of the children

26. It is trite law but needs to be emphasized, that any decision involving the parenting of a child, is to be determined by the court based on the best interests of the specific child in question.

27. The court accepts that pursuant to section 16 of the *Divorce Act*, R.S.C. 1985, c 3 (2nd Supp) and pursuant to section 24 of the *Children's Law Reform Act*, R.S.O. 1990, c C.12 the court is to determine this issue based on the best interests of these specific three children.

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28. The court will return to that issue and base its decision on the criteria set out in the *Divorce Act*, the *Children's Law Reform Act*, case law and this court's interpretation of the same.

29. However, there is a much broader issue, and the court feels it appropriate to address that broader issue prior to dealing with the specificity of this case.

COVID-19 and vaccine cases

30. This court notes that there have been few issues if any within the last 50 years or more that have caused a greater polarization within society and more entrenched views than those that have been expressed relating to COVID-19 and to some extent the issue of vaccination.

31. This family unfortunately is no different to a plethora of families that find themselves in the same situation. These parents take different views as to what is in the best interests of the children and whether or not they should be concerned about any risk of the COVID-19 vaccines. A sub-category of that analysis is whether or not the risk of getting COVID-19 and the possible ramifications to the children are greater than the potential risks, both short and long term, of side effects from the vaccines.

32. The mother’s position in its simplest form is that governments have approved vaccines and governments are recommending that children of the respective ages of these children have the vaccine administered to them. The mother’s family doctor is recommending that public health protocol be followed. The conclusion that she comes to is that the public health recommendations should be followed and that the children should be vaccinated.

33. The mother accepts and reiterates, as does the children's doctor, the public health messaging that the vaccines are “safe and effective”.

34. The father's position is that the vaccine is different than other vaccines. He argues that the COVID-19 vaccine has been “rushed” and has not been the subject of typical clinical trials that other vaccines have been required to be put through prior to being approved for use by the general population. He cites that he believes that there are experts who would proffer an opinion as to the dangerous side effects of these vaccines and that this case should not be decided until a court has had the opportunity of hearing both sides of the argument and receiving evidence from experts on both sides of that argument.

35. The father relies on the fact that there are any number of ongoing studies that have not been completed and submits that the court simply does not have enough evidence before it at this time to be able to make a determination as to whether or not these vaccines are “safe and effective”.

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Interpretation of Judicial notice in previously decided COVID-19 vaccination cases

36. Whether this court should make a determination on a temporary motion or defer the matter to trial for expert evidence largely will be based on how this court interprets judicial notice and of what "facts" this court finds it should appropriately take judicial notice.

37. The Supreme Court of Canada in *R. v. Find*, 2001 SCC 32, [2001] 1 SCR 863, addressed the issue of judicial notice.

38. In that decision the court noted at para 48 that "Judicial notice dispenses with the need for proof of **facts that are clearly uncontroversial or beyond reasonable dispute**. Facts judicially noticed are not proved by evidence under oath. Nor are they tested by cross-examination. Therefore, the threshold for judicial notice is strict: a court may properly take judicial notice of facts that are either: (1) so notorious or generally accepted as to not be the subject of debate among reasonable persons; or (2) capable of immediate and accurate demonstration by resort to readily accessible sources of indisputable accuracy." This was referenced from an earlier case of *R v. Potts* (1982), 1982 CanLII 1751 in the Ontario Court of Appeal; and J. Sopinka, S.N. Lederman and A.W. Bryant on *The Law of Evidence in Canada*, (2nd ed. 1999), at p. 1055. (emphasis added)

39. As with many cases, courts interpret legal principles and precedent cases quite differently.

40. There have been a number of cases that have interpreted judicial notice so far as it relates to the issue of whether or not a parent's consent to their child's vaccination should be dispensed with.

41. In some of these cases, the issue of the child's views and preferences becomes more relevant when the child is somewhat older.

42. In some of these cases, on the issue of whether or not there has been a material change in circumstances is relevant since there is in place an existing order either final or temporary which provides one of the parents with decision-making authority.

43. The cases vary, in that in some cases, the parent with the decision-making authority is opposed to vaccination of the children and the other parent is seeking a court order "forcing" the child to be vaccinated. The issue then becomes whether or not the decision-making authority (at least for the vaccination issue) should changed to the other parent.

44. In other cases, it is the parent with the decision-making authority who is wishing to exercise that authority by having the child vaccinated and the court is asked to

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determine if the decision-making authority should be reversed so that the parent opposing the vaccination is in a position of "control".

45. This court has read what it believes to be all of the cases that have been decided to-date certainly in Ontario, relating to the issue of vaccination and dispensing with a parents consent to a child being vaccinated.

46. Since this issue is of such importance, and is so divisive, the court finds it appropriate to review cases which have been decided on this issue.

47. The court will in detail reference the cases referred to by each counsel but, as noted subsequently, has read what the court believes to be all of the cases decided on the issue to this point in time.

48. Before so doing, the court wishes to emphasize that the court respects that each justice decides the case as he or she finds appropriate based on the evidence before him or her and the court has no doubt that in each of these decisions, the case was decided based on the judge's interpretation of what is in the best interests of the particular child in front of them and based on the evidence put forward by each side.

49. Having reviewed all of the cases, however, the court finds it striking in terms of the variation in interpretation of what is judicial notice and of what "facts" are appropriate to be the subject of judicial notice.

50. The Ontario Court of Appeal has released a decision just as this court was about to release this decision. Reference to the Ontario Court of Appeal decision is made at the end of this decision.

A.M and C.D.

51. Justice Hackland rendered his judgment in *A.M. and C.D.* on March 9, 2022 [*A.M. v. C.D.*, 2022 CarswellOnt 3741, 2022 ONSC 1516, 2022 A.C.W.S. 412].

52. The basic facts of that case were that the court was faced with an urgent motion brought by the mother of a 7-year-old child seeking an order to have the child vaccinated against COVID-19 including any further booster shots approved by Health Canada. The child resided primarily with the mother. The father had final decision-making authority on the child's health.

53. The mother led evidence that the father had issues with the child being masked. The mother's evidence was that both she and the child had tested positive for COVID-19 about a month earlier and that the child's symptoms had improved rapidly and she returned to school after the quarantine period had passed.

54. The father had a scientific background and had been a representative for a pharmaceutical company. He was opposed to COVID-19 vaccinations at that point in

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time and wanted to take a "wait and see approach" until further vaccine study data had been available.

55. The father expressed views about the mRNA technology and he, although not an expert, expressed views on the potentially DNA altering vaccinations to a child which could be life altering.

56. The court in that case found that it was impressed with the father's balanced observations of his struggles in concluding whether or not it was a greater risk to have the child vaccinated or to remain unvaccinated.

57. Justice Hackland took judicial notice of the Health Canada advisories and commented on a then recent decision of this court by Justice Pazaratz.

58. Justice Hackland found that he disagreed that Health Canada advisories on the efficacy of vaccines "are a species of 'expert opinion' which cannot or ought not to be the subject of judicial notice."

59. In his decision, he quoted extensively Justice Jarvis's decision in *Dyquiangco Jr. v. Tipay*, 2022 ONSC 1441 (CanLII), upon which this court will comment subsequently.

60. Justice Hackland determined that a government health advisory could be judicially noted. It did not mean that it was determinative of the issue, but he agreed with Justice Jarvis that it may amount to a legal presumption, placing the onus on the objecting parent to rebut the presumption.

61. Justice Hackland commented on Justice Pazaratz's finding in *J.N. v. C.G.*, 2022 ONSC 1198, with respect to one of the mother's downloads in that case being that of Dr. Robert W. Malone.

62. Justice Hackland, in *A.M.* noted that "A Google search will, however, disclose that "Dr. Malone was barred by Twitter for violating the platforms coronavirus misinformation policy and that a recent Washington Post article stating that Dr. Malone's "claims and suggestions have been discredited and denounced by medical professionals as not only wrong, but also dangerous"."

63. He pointed out that Internet downloads are simply not reliable in many instances particularly when contrasted with public health advisories.

64. In conclusion, Justice Hackland took judicial notice of the efficacy of the vaccine.

65. He did, however, find that there were countervailing considerations in the case before him in that the objecting father was the ultimate decision-maker with respect to the child's health based on the existing court order. He also found that the father's interest in the well-being of his daughter appeared to be sincere and supported by "reasonably held factual assertions". He noted that "we are currently in a rapidly changing environment as the COVID-19 pandemic subsides and vaccine and masking mandates

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are being withdrawn. There appears to be particular scrutiny directed at the efficacy of the Pfizer vaccine for children in the 5 to 11 age group." [see *A.M.*, at para 29.]

66. Ultimately, Justice Hackland found that based on the interim motion he could not find that there had been a material change in circumstances sufficient to justify the change in the existing order that allowed the father to have the responsibility over the child's health care decisions.

67. He declined to make that determination on an interim basis and found that the vaccination issue could be examined in more depth and on a better record. On that basis he dismissed the applicant mother's motion without prejudice to further consideration.

A.C. and L.L.

68. This was one of the earliest decisions decided on the issue of COVID-19 vaccination of children. It was rendered October 1, 2021, by Justice Charney and has been cited in many decisions subsequently. [see *A.C. v. L.L.*, 2021 ONSC 6530]

69. In that case there were 14 year-old triplets. The father had taken the position that the children should not attend school in person until they had received their COVID-19 vaccine. His evidence was that two of the children wanted to attend to school in-person and wanted to be vaccinated, a position supported by the father but opposed by the mother.

70. Justice Charney in his decision at para 23 noted that "The safety and efficacy of the COVID-19 vaccine has been endorsed by all governments and public health agencies". He points to a Toronto Public Health directive to parents of school age children that as he highlights indicates "**Get vaccinated**".

71. Justice Charney also references an Ontario Ministry of Health website that states "the Pfizer-BioNTech vaccine has been proven to be safe in clinical trials and provided excellent efficacy in adolescents". [*A.C.* at para 25]

72. He found that those public pronouncements were admissible under the public documents exception to the hearsay rule: *A.P. v. L.K.*, 2021 ONSC 150, at paras 147-173.

73. Justice Charney notes that, "the responsible government authorities have concluded that the COVID-19 vaccination is safe and effective for children ages 12 to 17 to prevent severe illness from COVID-19 and have encouraged eligible children to get vaccinated. These government and public health authorities are in a better position than the courts to consider the health benefits and risks to children of receiving the Covid 19 vaccination. Absent compelling evidence to the contrary, it is in the best interest of an eligible child to be vaccinated." [*A.C.* at para 28]

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74. Justice Charney goes on to find "the question is whether it is in the best interests of the child. Given the government statements above, there can be no dispute that, as a general presumption, it is in the best interest of eligible children to get vaccinated before they attend school in person." [*A.C.* at para 30]

75. Justice Charney then goes on to an analysis of whether or not under the *Health Care Consent Act, 1996*, S.O. 1996, c. 2, Sch A, the mother's consent is even necessary for a 14-year-old child.

Saint-Phard and Saint-Phard

76. At about the same time, being October 5, 2021, Justice Mackinnon of this court was rendering a decision whereby the father in that case was seeking sole decision-making for a 14-year-old child. The parents had been sharing joint decision-making to that point in time. [*Saint-Phard v. Saint-Phard*, 2021 ONSC 6910]

77. The father was relying on governmental and public health recommendations and the recommendation of the child's physician. The child had until shortly before the motion, expressed consent to the vaccination. The mother opposed the vaccination and the child currently was stating that he did not wish to be vaccinated.

78. Justice Mackinnon found that notwithstanding the child's then expressed views that it was in the child's best interests to be vaccinated against COVID-19.

79. She concluded that the child's then expressed views were not independent and had been influenced not only by his mother but by a doctor that the mother had recently retained.

80. The father in that case relied on Dr. Tam, Chief Officer of Health for Canada, who had stated that for children between the ages of 12 and 17 "thorough testing has determined the vaccines to be safe and effective at preventing severe illness".

81. Justice Mackinnon also relied on Dr. Kieran Moore, Chief Medical Officer for Ontario whose recommendation was that all youth between ages 12 and 17 be vaccinated against COVID-19.

82. Justice Mackinnon concluded that based on the evidence before her and other cases including Justice Charney's case (*A.C. v. L.L.*) that "I find that the applicable government authorities have concluded that the COVID-19 vaccination is safe and effective for children ages 12 to 17".

83. The court in that case had received a letter from the child's family doctor, Dr. Tchen, who recommended that the child be vaccinated with two doses of the Pfizer vaccine.

84. A letter from another doctor, being Dr O'Connor, had been submitted on behalf of the respondent mother. That doctor opined that the child "should not be given the COVID-19 vaccine on account of having asthma." The doctor also wrote that "the vaccine is

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experimental, testing will continue to 2022/2023 thus we have no evidence yet of any benefits to children"." Dr. O'Connor had cited many adverse effects of the vaccine including "a huge incidence of myocarditis in young men". The same doctor noted that she had seen the child and discussed with him the present COVID-19 situation and the multiple adverse effects and that the child "does not want it".

85. Justice Mackinnon decided to accept the opinion of the father's doctor in preference to the mother's doctor. Justice Mackinnon found that the mother's doctor's (Dr. O'Connor) objections were "directly countered by the judicial notice taken that the vaccine is safe and effective and provides beneficial protection against the virus to those in this age group." [see para 12]

86. Justice Mackinnon found that the child had changed his mind based on the influence from the mother and the doctor to whom she had taken him. She also found, at para 17, that "The explanations he gave his lawyer and his father are based on wrong information and inadmissible anecdote. His current stated view to not have the vaccine is not based on an understanding of accurate medical information as to the benefits and risks of the vaccine. As such it is not a properly informed decision."

87. At para 18, Justice Mackinnon distinguished a 2001 Alberta Queens Bench case involving the issue of a child's capability of consenting. Justice Mackinnon concluded that the child in her case "did not have the requisite medical information on which to make an informed decision."

88. Justice Mackinnon further found that "the father should arrange for the child to be properly informed of the medical and scientific facts of the virus and the vaccine personally by Dr. Tchen prior to being taken for a vaccination."

89. Justice Mackinnon, at para 22, ordered that the child was "entitled to receive the COVID-19 vaccine and that the mother shall not tell or suggest to [the child] that the COVID-19 vaccines are untested, unsafe, ineffective or that he is particularly at risk from them. Nor may she permit any other person to have any such discussion or make any suggestion to the child, directly or indirectly. My order includes that she is prohibited from showing [the child] social media sites, websites, other online information, literature or any other material that calls into question the safety or efficacy of COVID-19 vaccines or permitting any other person to do so."

TRB and KWPB

90. In December 2021, Justice Kubik of the Alberta Court of Queens Bench issued a decision relating to children aged 12 and 10 [*TRB v. KWPG*, 2021 ABQB 997 (CanLII)]. The mother wished the children to be vaccinated; the father opposed. The parties until that time shared joint decision-making for the children.

91. The father had presented numerous Internet sites. The court found that his materials "illustrate the father's engagement with vaccine misinformation." [*TRB* at para 9.]

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92. The court found that, “By virtue of its approval by the regulatory authority responsible for testing and approval of drugs in Canada, the vaccine is not experimental. It is deemed safe and effective for use in children aged 5-11 and 12-17. While not mandatory in Alberta, vaccination of children aged 5-11 and 12-17 is recommended by the Chief Medical Officer of Health for Alberta.” [*TRB* at para 12.]

93. The court went on to note and to find, “Vaccination is prophylactic medical treatment. Its primary purpose is to prevent the vaccine recipient from contracting illness. Vaccination also serves the purpose of limiting the spread of illness by limiting its transmissibility.” [*TRB* at para 14.]

94. The court further found at para 14 that, “Vaccination like all medical treatment comes with risk” and that “illness from COVID-19 also comes with risk, including transitory flu-like symptoms, more serious pneumonia-like symptoms, and the need for hospitalization including mechanical ventilation, and in some cases long-term health consequences. Children in Canada have died from COVID-19.” (This court does not see any notation in the reported decision of verification of these statements).

95. In *TRB*, the court noted that the doctor made no recommendation as to whether or not the children should be vaccinated.

96. At para 30 the court found that the mother was “authorized to have the children vaccinated against COVID-19 without the consent of the father.”; and, at para 33, that “Vaccination will limit the risk of transmission and will allow the children to fully participate in school, extra curricular activities, social activities, and travel opportunities.”

97. The court found that the 10-year-old child’s vaccine anxiety was “directly related to the misinformation she received from her father as well as from her friends.”

98. That court directed that the father will not discuss or permit any third party to discuss the issue of COVID-19 vaccination or COVID-19 generally with the children or supply social media or other information about the vaccine or the disease to the children.”

Dyquiangco Jr. and Tipay

99. This is a March 2, 2022 decision of Justice Jarvis of this court [*Dyquiangco Jr. v. Tipay*, 2022 ONSC 1441 (CanLII)].

100. The decision was based on a motion by the father to have a 12-year-old daughter who primarily resided with him vaccinated over the objections of the mother to have the child vaccinated “at this time”.

101. The existing situation was that the parties shared joint decision-making.

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102. The mother's evidence was that she declined to consent to the vaccination because the child had recently recovered from the virus without hospitalization and that she had acquired natural immunity. As part of her evidence, the mother included Internet excerpts from Dr. Robert Malone who the court noted described as the reason(s) why parents should vaccinate their children as "a lie". [*Dyquiangco Jr.* at para 4]

103. The court noted that the mother objected to the child being vaccinated "at this time".

104. The court noted from the father's materials the excerpt from Health Canada which included, "People who have already had COVID-19 should be vaccinated for future protection. They may be offered 2 doses and a booster dose when eligible. COVID-19 vaccines help to prevent infection as well as complications. By helping prevent infection, vaccination can also prevent post COVID-19 condition. This condition refers to symptoms some individuals experience for weeks or month after being infected with COVID-19. Symptoms can be very different from those during the initial infection." [*Dyquiangco Jr.* at para 19]

105. In referencing the decision to which this court will subsequently refer being *R.S.P. v. H.L.C.*, 2021 ONSC 8362, Justice Jarvis made findings of what the court was prepared to take judicial notice. Among his findings Justice Jarvis, in his decision at para 22, took judicial notice of the following:

- There is no verifiable evidence of natural immunity to contracting the virus or any mutation a second or more times;
- Vaccines work; Vaccines are generally safe and have a low risk of harmful effects, especially in children;
- Vaccines do not prevent infection, reinfection or transmission, but they reduce the severity of symptoms and the risk of bad outcomes.

106. Justice Jarvis went on to comment, "This is not "fake science". It is not "fake medicine". Whether there is a drug company conspiracy callously or negligently promoting unsafe medicine (the "lie") in collusion with federal and provincial authorities this Court leaves to another day and to those who think Elvis is alive. He isn't. He left the building decades ago." [*Dyquiangco Jr.* at para 23]

107. Justice Jarvis then effectively found that an onus was placed on an objecting parent to demonstrate to the court that it is not in the child's best interest to be vaccinated given the government guidance.

Rashid and Avanesov

108. In April 2022, Justice Somji of this court issued a decision relating to a seven-year-old child. The decision related to not only the COVID-19 vaccines but also vaccination for

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measles, mumps and rubella ("MMR") wherein the mother wished to have the child vaccinated and the father opposed.

109. Her Honour in this court's view quite properly found that the court did not have authority to mandate a child to be vaccinated and that the issue to be decided was who should have that decision-making authority.

110. The father's argument was that the decision should not be made on and "interim" motion but should be left to trial. Similar to the argument before this court, his argument was that once vaccinated, the vaccination could not be "undone".

111. Justice Somji found that there was no need to defer the matter to trial and that she was prepared to make a decision based on the evidence before her.

112. In addition, in that case there was an issue of the father having given consent at least on a conditional basis and then having revoked that consent. That particular issue being the consent or revocation thereof, is not before this court.

113. The court will only reference this case so far as it relates to the COVID-19 vaccine.

114. Among other cases, Justice Somji cited the case of *McDonald v. Oates*, ONSC 2022 394 being a decision of Justice Van Melle wherein Her Honour decided that it was safe to vaccinate the parties' 10-year-old child.

115. Justice Somji did a thorough analysis of all of the cases that had been decided to that point in time.

116. Justice Somji also reviewed the evidence put forward by the father. Among that evidence was a recorded interview with Dr. Robert Malone who the court found was the "founder of the mRNA vaccine." In that interview, as noted in the case, Dr. Malone opined that the vaccine had not been adequately tested for children and that it would require at least five years of testing and research to fully understand the risks associated with this new technology.

117. Dr. Malone therefore concluded that given the low risk of harm to young children from COVID-19 the risk of short and long-term side effects for children far outweigh any benefit from obtaining the vaccine. He cited as risks including damage to vital organs and, as noted in that case found that by vaccinating a child:

> A viral gene will be injected into your parent cells. This gene will force your child's body to make toxic spike protein. These proteins often cause permanent damage in a child's critical vital organs. These organs include their brain and nervous system, their heart and blood vessels, including blood clots, their reproductive system, and most importantly this vaccine can trigger fundamental changes to their immune system. The most alarming point about this, is that once those damages have occurred, they are irreparable. They cannot be reversed. You can't fix

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> the lesion within their brains. You cannot repair heart tissue scarring. You cannot repair a genetically reset immune system. And this vaccine can cause reproductive damage that can affect future generations of your family
>
> … this novel technology has not been adequately tested. We need at least five years of testing and research before we can fully understand the risks associated with this new technology. The harms and risks of new medicine often become revealed many years later
>
> … there is no benefit for your children or your family… against the small risk from the virus, given the known health risks from the vaccine it is apparent you and your children may have to live with for the rest of their lives. The risk/benefit analysis is not even close with this vaccine for children.
>
> [*Rashid*, at para 79]

118. Justice Samji went on to quote *A.M. v. C.D.* being the decision earlier referenced of Justice Hackland and in which in that case Justice Hackland had noted that Dr. Malone had been barred from Twitter.

119. Justice Samji, went on to find that she, as others before her, had found that there was a presumption in favour of courts finding in favour of Canadian Health authorities. She found that the evidence from Dr. Malone as well as the remaining evidence from the father did not "displace the presumption".

120. While Justice Samji did find that there would be a temporary order allowing the mother to have decision-making authority over the child's health including vaccinations, she did require the mother to alert the child's health care provider to the concerns raised by the father. Justice Samji therefore did not simply categorically dismiss the concerns raised by the father. Similar to other cases, Her Honour did however issue a prohibition from the father discussing the issue of vaccines with the child.

D.E. and W.E.

121. On November 7, 2022, Justice Delaquis of the Court of King's Bench of New Brunswick released this decision [*D.E. v. W.E.*, 2022 NBKB 211]. The parties shared joint decision-making. The mother wished to have the children who were 10 and 12 years of age vaccinated, and the father opposed.

122. Among the cases cited by that court were many of the cases to which this court has referred but in addition was the Saskatchewan Court of Appeal case in *Inglis v. Inglis*, 2022 SKCA 82 (CanLII). The Saskatchewan Court of Appeal took note of the fact that there were many cases in which courts had taken judicial notice of the vaccines

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being safe and effective and only one case that had taken judicial notice of the risks of the COVID-19 vaccine.

123. The court concluded by taking judicial notice of, vaccines reducing the risk of contracting COVID-19, children being less likely to become really sick, and the endorsement by provincial and federal health authorities approving the vaccine. [*D.E.* at para 44]

124. The court also found that the "evidence" led by the father was not relevant and was unreliable hearsay, including someone's interpretation of the case successfully argued by Robert F Kennedy Jr. in the US Supreme Court relating to the Nuremberg Code and specifically Article 7 thereof.

125. The court varied the final divorce order to change sole decision-making to the mother including decisions with respect to allowing the children to be vaccinated.

K.D.B. and K.B.

126. In March 2022, Justice d'Entremont of the Queen's Bench of New Brunswick (as it then was) issued a decision on a motion to change by the mother changing decision-making to allow her to have a 10-year-old child vaccinated over the objection of the father. [*K.D.B. v. K.B.*, 2022 NBQB 74 (CanLII)]

127. The father's argument was that the child had already contracted COVID-19 and consequently the vaccines would not be beneficial to him. His argument was that there was reliable information that the risk of the vaccine to a child was greater than the benefit.

128. The mother had tendered a letter from the family doctor indicating that the child had no contraindications to receiving the vaccine and recommended that the child received a two-dose series of vaccines. Another argument was put forward by the mother that the child could not participate in hockey without being vaccinated and that because of federal mandates at the time, unvaccinated individuals could not board an airplane or a train.

129. As well, in that particular case, the child's great-grandmother (presumably maternal) was being transferred from a hospital to a nursing home and the New Brunswick restrictions at the time would have precluded the child from entering that nursing home and visiting the grandmother.

130. The father argued that the vaccines were experimental and that they had been authorized for emergency use only. He further argued that the evidence was that the vaccines did not prevent someone from contracting or transmitting COVID-19.

131. The father introduced a letter from a retired family doctor who had not met the child but who opined that nothing is known about the long-term effects of the vaccines and

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that there are reported adverse effects of vaccination such as myocarditis. The court gave "very little weight" to the opinion of that retired family doctor.

132. The father also provided as evidence, information relating to the warnings found on the Pfizer website itself.

133. The court took judicial notice of Health Canada's authorization of the Pfizer vaccine for children ages 5 to 11 in which Health Canada stated "after a thorough and independent scientific review of the evidence, the Department concluded that the benefits of the vaccine for children between 5 and 11 years of age outweighed the risks." [*K.D.B.* at para 35]

134. The court considered the case of *J.N. v. C.G.*, 2022 ONSC 1198 being the case decided by Justice Pazaratz of this Court (which this court will subsequently refer).

135. Justice d'Etremont found that, "With respect, I cannot follow the reasoning outlined in *J.N v. C.G.* While I appreciate that intelligent people may have different points of view regarding the COVID-19 vaccinations, the concept of judicial notice is still a recognized principle of law which may be challenged by compelling and reliable evidence to the contrary". [*K.D.B.* at para 56]

136. The court essentially found that there was a presumption in favour of the court accepting the recommendations of public health and that the father had not "provided compelling and reliable evidence to the contrary to challenge that which I have judicially noticed."

137. The court further noted that the State of Florida had recommended against vaccines for healthy children but found that to be at odds with the US Centre for Disease Control and Prevention (which the court presumably found to be more credible).

138. The court also considered, as have other cases, the interview done by Dr. Robert Malone the inventor of mRNA technology but found that it would be improper for the court to take judicial notice of the same.

139. The court then took judicial notice of Health Canada recommendations and made in order granting the mother sole decision-making with respect to the child's health and medical decisions including vaccinations.

140. As had other courts, that court also precluded the parent (this could have read the father alone presumably) from exposing the child to any social media or other online information that would call into question the safety or efficacy of COVID-19 vaccines.

Holden and Holden

141. This is a decision of the Alberta Court of Appeal [*Holden v. Holden*, 2022 ABCA 341] which relates to an application for the restoration of a fast-track appeal. The decision

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being appealed was against an order pronounced April 28, 2022 that gave the mother sole decision-making with respect to COVID-19 vaccines for the parties' children.

142. The decision obviously relates mainly to the restoration of that appeal. However, the court goes on to address the issue of judicial notice and COVID-19 vaccines.

143. The court noted at para 98 that, "An appeal court does not set aside original court orders in the absence of an error of law or a factual or mixed fact and law determination that is clearly wrong."

144. The court noted at para 108 that, "Common sense dictates the chambers judges, when considering which parent should have COVID-19 decision-making authority, should focus on the well-known positions adopted by Health Canada, Alberta Health Services, Canada's National Advisory Committee on Immunization, and the United States Advisory Committee on Immunization Practices…"

B.C.J.B. and E-R.R.R.

145. In June 2022, Justice O'Connell of the Ontario Court of Justice heard this case and released reasons for judgment October 31, 2022 [*B.C.J.B. v. E.-R.R.R.*, 2022 ONCJ 500].

146. The only issue before Her Honour in that case was which parent should have the responsibility for making vaccination related decisions including the COVID-19 vaccine for the parties than 11-year-old child

147. In that particular case, on September 28, 2020, Justice Finlayson of that court (as he then was) decided that the father should have temporary decision-making authority about the child's health but only as it related to administering the publicly funded vaccinations for children.

148. Justice Finlayson took judicial notice of, "1. Ontario's publicly funded vaccines are safe and effective at preventing vaccine preventable diseases. 2. Their widespread use has led to severe reductions or eradication of incidents of these diseases in our society. 3. The harm to a child, flowing from contracting a vaccine preventable disease, may even include death."

149. Justice Finlayson's order was made at a time prior to the existence of the COVID-19 vaccine.

150. The child had contracted COVID-19 in February 2022 but was now eligible to receive the COVID-19 vaccine.

151. In that case, the parties entered into final minutes of settlement which included the mother having sole decision-making authority for the child with the exception of decision-making regarding vaccinations which will be determined by the court.

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152. This case was decided at trial, not at a motion.

153. The father took the position that the child should be vaccinated, the mother took the position that in light of her own personal and family medical history and her research the child should not be vaccinated.

154. The mother took the position that a court should not remove decision-making about vaccines, particularly the COVD vaccine, from a parent who has always made responsible decisions about a child's health simply because the father has attempted to paint the mother as "disturbed", or "out of the mainstream" and unreasonable. [*B.C.J.B.* at para 24]

155. Somewhat ironically, this court notes that the child had contracted COVID-19 following a family day weekend with the father and members of his family.

156. The mother gave evidence as to other decisions that the father had made which appeared to be contrary to the child's best interest from a medical standpoint.

157. There was a Voice of the Child Report in this particular case. The child indicated to the clinical investigator (which report related to other childhood vaccinations and not the COVID-19 vaccine) when talking about vaccinations, "Dad says they're good. Mom says they can be good for some people but not for others".

158. The father sought to have Dr. Sharkawy, a medical doctor who is qualified as a specialist in infectious diseases and internal medicine in Ontario, qualified as an expert. That doctor's opinion was that an otherwise healthy 11-year-old should receive the COVID vaccine even if they had contracted COVID because it would give the child "optimal protection". The doctor found that they were two ways to acquire immunity from COVID-19: one being to survive the infection and the other being to receive the vaccine. [*B.C.J.B.* at paras 135 and 138]

159. Dr. Sharkawy's opinion was that children should receive the vaccine and that the risk of myocarditis from the vaccination was "usually short-lived". The doctor also rendered an opinion with respect to the possibility of 'Long Covid'.

160. The mother sought to have Dr. Bridle qualified as an expert. Dr. Bridle is an Associate Professor of Viral Immunology in the Department of Pathobiology associated with the Ontario Veterinary College at the University of Guelph.

161. That doctor was trained in the disciplines of immunology and virology. He had received a number of awards in recognition of his work as a teacher, a researcher, and a peer reviewer. He had published widely in that area according to his voluminous CV.

162. His evidence was that the risks associated to children of receiving the vaccines far outweigh the benefits of the vaccines.

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163. He testified that “a vaccine by definition is designed to confer immunity, such that a person who is vaccinated is protected from infection by the disease and cannot transmit that infection to other people. He explained that immunization equals vaccination, they are interchangeable terms” [*B.C.J.B.* at para 159]

164. The doctor then testified that “unlike traditional or routine childhood vaccines, which do confer immunity with a lifetime duration, the Covid-19 vaccines do not confer immunity or prevent transmission.”

165. He then went on to testify as to the difference between the technology of traditional vaccines such as for mom’smumps, measles, polio, etc. and the technology in COVID-19 vaccines being on mRNA which is a “spike protein.”

166. Dr. Bridle opined that “the Covid vaccine and the mRNA technology used has potentially far greater long-term risks for children and adolescents” and which in his view “are largely unknown because there has not been sufficient testing or clinical trials.” [*B.C.J.B.* at para 163]

167. The doctor also testified that typically, vaccine development takes a process of four to 10 years while the COVID-19 vaccines were developed in less than one year.

168. Dr. Bridle also testified that the duration of immunity from the Pfizer and the Moderna inoculations were “ridiculously short” and waning after only two months and gone by five months. This is why in less than one year, already many Canadians have received four doses and are starting on fifth doses. He compared this to traditional childhood immunizations which generally only need one and sometimes two shots to confer a lifetime immunity, with no booster shots necessary. [*B.C.J.B.*at para 169]

169. The doctor did not agree that the vaccines prevented severe illness leading to hospitalization or death. In fact, he stated that vaccinated people are at greater risk than unvaccinated people of contracting COVID.

170. He also opined that he did not believe the government data and that he felt that it was “highly manipulated data and the way that that it has been manipulated has not been disclosed”. This was in reference to the number of unvaccinated people who had purportedly died from COVID-19. According to his evidence, there were many people reported to have died from COVID-19 who had died from non-COVID-19 related reasons.

171. He described the number one risk of vaccines is myocarditis and that young males were at the greatest risk of developing myocarditis (heart inflammation). [*B.C.J.B.* at para 174]

172. Dr. Bridle noted that even the data provided by Pfizer showed that while they initially claimed that only one in 28,000 young males developed myocarditis, they now after further study found that number to be one in 10,000.

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173. When challenged that his views were not widely accepted and that there had been many members of his own university faculty who would sign a petition against him, Dr. Bridle testified that he had been one of the first scientists in Canada to sound the alarm bell with respect to AstraZeneca vaccines and that subsequently the Ontario government withdrew the AstraZeneca vaccine for general distribution when it was shown that there was a one in 55,000 chance of death from the vaccine. [*B.C.J.B.* at para 179]

174. Dr. Bridle further testified that the gold standard of immunity was the natural immunity one receives from the body's response to a pathogen. The child in that particular case had already had COVID-19.

175. He also noted that those vaccinated against the first form of the COVID-19 virus being the "Wuhan" variant fared quite poorly against the Delta and Omicron variants.

176. He testified that he had "'no problem'" with routine immunizations of children where the vaccinations did not use the mRNA technology.

177. Justice O'Connell then reviewed the law with respect to expert evidence and judicial notice.

178. Her Honour noted that neither party's expert had signed the Acknowledgement of Expert's Duty Form under the *Family Law Rules,* O. Reg. 114/99. She was satisfied, however that in response to questions, each expert seemed to understand their duties as an expert and she was satisfied that both experts took their duties seriously.

179. Justice O'Connell completely accepted Dr. Sharkawy's (the father's expert) evidence.

180. Justice O'Connell accepted that Dr. Bridle is an immunologist and vaccinologist and that he has expert knowledge in those fields.

181. Justice O'Connell however concluded that because Dr. Bridle's opinions were "so far removed from the mainstream and widely accepted views of the Canadian and international medical and scientific community that the court cannot accept Dr. Bridle's evidence on the Covid vaccine as reliable." [*B.C.J.B.* at para 250]

182. Justice O'Connell then concluded that she, having accepted the father's expert and not accepting the mother's expert, found that COVID-19 vaccines are safe and effective for children and that they reduce the risks of serious illness or death from COVID-19 infection.

183. She found that the mother's decision not to vaccinate her child was not responsible and therefore found that the father was to have sole authority to make decisions about all vaccinations including the COVID-19 vaccine.

M.P.D.S. and J.M.S.

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184. In March 2022, Justice Tobin of this court issued a decision relating to the vaccination of a five-year-old child. The parties at the time remained living within the matrimonial home. [*M.P.D.S. v. J.M.S.*, 2022 ONSC 1212 (CanLII)]

185. The facts in that case were that the father had apparently told the mother before they got married that he "did not believe in vaccines." The mother indicated that if he did not agree to vaccinate their children their relationship would be at an end. The father eventually agreed that any children they had would be vaccinated.

186. The father then, following the birth of the child did not want her to be vaccinated.

187. The court accepted the line of cases pursuant to which courts took judicial notice of public health declarations.

188. The court found that the government pronouncements with respect to vaccinations were public documents and therefore an exception to the hearsay rule [see *A.C. v. L.L., supra,* at para 26 relying upon *A.P. v. L.K.*, 2021 ONSC 150 at paras 147-173].

189. The court further found that by the father choosing not to be vaccinated against COVID-19 he was putting the children at risk of harm should they contract COVID-19.

190. The court therefore found that:

- the father's parenting time should be exercised at the matrimonial home or out-of-doors
- the father should be required to take a COVID-19 rapid test every Tuesday and to send the results by text message to the mother
- the father should not knowingly expose the children to any individual that he knows or believes is not vaccinated against COVID-19, and
- if he breached any of those conditions the mother could bring a motion on an urgent basis to suspend his in person parenting time. [*M.P.D.S.* at para 64]

C.M. and S.L.S.

191. In April 2022, Justice Sirivar of the Ontario Court of Justice released a decision with respect to a trial that had been heard in November and December 2021. [*C.M. v. S.L.S.*, 2022 ONCJ 206 (CanLII)]

192. The sole decision of that trial was who should be responsible for making decisions regarding the vaccination of the parties' only child who was then five years old.

193. There were issues of allegations by the mother of abuse by the father. The child primarily resided with the mother.

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194. The father relied on public health recommendations and assertions that vaccines were safe and effective. He also called to litigation experts.

195. The mother served a report of a doctor that she sought to qualify as an expert regarding the risk of vaccination of the child. In addition, the mother who is a Doctor of Chiropractic gave evidence about her research into the risks and benefits of vaccinations and opinions that she had received including that from a naturpathic doctor.

196. In that case, the child had a genetic variation which the mother positioned created a greater risk for this child being vaccinated.

197. She proffered Dr. Moskowitz, a retired physician who practiced homeopathic medicine for 53 years, and Dr. Shaw, a professor at the University of British Columbia in the areas of Ophthalmology and Visual Sciences, Neuroscience and Experimental Medicine and Pathology.

198. The mother also proffered a doctor who practiced integrative medicine as an expert. This doctor conducted risk assessments and treated children and adults who have experienced adverse reactions to vaccinations.

199. Dr. Sondheimer who holds a PhD in molecular genetics and cell biology was proffered as an expert by the father. The doctor's evidence was that the child did not have the MTHFR mutations but a variation. The mother did not object to this doctor being qualified as an expert.

200. Dr. Robinson who is the Director of Pediatric Infectious Diseases at the University of Alberta was also proffered by the father as an expert.

201. Her evidence was that routine childhood vaccinations that are recommended in Canada prevent infection and that common side effects of vaccines are low-grade fever and generally disappear within one to three days. Serious side effects such as anaphylaxis can be reversed with one dose of epinephrine. The doctor testified that she was not aware of any child dying from vaccine-induced anaphylaxis that the benefits of routine childhood vaccines far outweigh any serious harm and, that some vaccines do contain aluminum but the amount is very small and there is no evidence that it causes harm. [*C.M.* at para 46]

202. The mother did not object to Dr. Robinson being qualified as an expert but did raise some issue with her advising governments.

203. As mentioned, the mother proposed Dr. Richard Moskowitz who was a retired physician who had practiced for 53 years in homeopathic family medicine as an expert in the areas of family medicine risk assessment for vaccinations and the study of vaccination.

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204. His evidence was that the child was at minimal risk of contracting COVID-19, that vaccines can lead to chronic issues such as allergies, asthma and ADHD, that vaccine injury is the rule rather than the exception, that metal adjuvants in certain vaccines cause autism and, that the drug industry controls government agencies like the Centre for Disease Control. [*C.M.* at para 50]

205. The mother also proffered Dr. Christopher Shaw, who holds a PhD in Neurobiology and is a Professor at the University of British Columbia in the Department of Ophthalmology and Visual Sciences and who was cross appointed to the programs of Neuroscience and Experimental Medicine and the Department of Pathology, as an expert on the effects of aluminum adjuvanted vaccines. His evidence included opinions relating to his research on the analysis of the impact of aluminum on mice and that subjecting a child to a range of pediatric vaccines can have a significant adverse effect on neural development. [*C.M.* at para 59]

206. The mother also proffered Dr. James Neuenschwander as an expert in emergency medicine, integrative medicine, risk assessments for vaccination, including the pediatric COVID-19 vaccine, and the treatment of adverse reactions to vaccination. In addition to his medical degree, Dr. Neuenschwander holds a Bachelor of Arts in cellular and molecular biology and has 30 years of experience providing risk assessments for vaccination in treating patients who have experienced adverse reactions to vaccines. He had been called as an expert into other cases but the United States courts in Des Moines and Colorado had not accepted his opinion.

207. His evidence was that his methodology involved calculating the odds and specific risks of the child contracting the disease and comparing it to the risks of experiencing problems or adverse effects if the child did not receive the vaccine.

208. Dr. Neuenschwander considered the risks set out by the manufacturer of the vaccine and considered the child's genetics family history, neural development delay, and any allergy. His evidence was that the Pfizer COVID-19 vaccine for children was totally experimental and that for a healthy child the risks of contracting COVID-19 and suffering adverse effects are almost zero.

209. The court found that the mother did not have an issue with Dr. Sondheimer being involved in clinical trials for pharmaceutical companies including Moderna to develop novel therapies. Nor did she have an issue with the fact that the company paid the Hospital for Sick Children to fund the research.

210. The court did not have an issue either with Dr. Robinson having advised governments. The court did not find that this affected her impartiality.

211. The court then considered the issue of whether or not the mother's experts should be qualified as such. The court was not willing to qualify any of the mother's three experts as experts.

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212. The court concluded that the court was not making a finding as to whether or not the COVID-19 vaccine for children between the ages of five and 11 was safe or not safe.

213. The court found in favour of the father. Justice Sirivar found that his approach and following the recommendations of the child's treating physicians was child focused.

214. The court found that the mother overestimates her own abilities stemming from her being a Chiropractor and dismisses the mother's criticism of the father for not being willing to consider her research.

215. As a result, the court found that the father should have sole decision-making responsibility for the child relating to COVID-19 vaccination.

Soucy and Chan

216. In June 2022, Justice MacEachern of this court issued a decision relating to the vaccination of children aged six and nine [*Soucy v. Chan*, 2022 ONSC 3911]. The father wished the children to be vaccinated, the mother opposed.

217. The parties had in 2018 signed a separation agreement requiring them to jointly make decisions for the children including decisions involving vaccinations. Her Honour declined on a motion, to change that decision-making authority.

218. Justice MacEachern found that what she was being asked to do on an interim motion was to make a final decision without having the benefit of the OCL position or cross-examination on the affidavits.

219. The father relied on previous case law to ask the court to take judicial notice of the fact that the children should be vaccinated. The mother who had been vaccinated herself against COVID-19 had experienced side effects from the vaccine and was concerned about the risk of side effects to the children, balanced against what she perceived as a low risk to them having adverse outcomes if they remained unvaccinated. [*Soucy* at para 17]

220. The father had provided nine cases in support of judicial notice. The mother had provided several cases and in addition had provided articles downloaded from the Internet.

221. Justice MacEachern found that the "Covid-19 situation is rapidly changing and developing. This includes changing public health directives such as masking protocols and vaccine mandates, new variants with changing transmissibility and virulence to the vaccinated and unvaccinated. These changes mean that a situation that may have been generally accepted and time sensitive and September 2021 is not as generally accepted and time-sensitive in September of 2021 is not generally accepted and time-sensitive in May or June of 2022." [*Soucy* at para 22]

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222. Justice MacEachern also found that the mother's concerns about vaccinating the children were reasonably held and that she had weighed the risks and benefits of the children being vaccinated versus not being vaccinated. The father in that case was seeking to change a joint temporary decision-making order to allow him to have decision-making and thereafter to proceed with the vaccination of the children. Justice MacEachern declined to make that order.

J.N. and C.G.

223. (The father appealed this decision. The Court of Appeal as referenced in the section at the end of this decision allowed the father's appeal. This court has left the motion's judge's decision in the body of its decision but has addressed the Ontario Court of Appeal subsequently.)

224. In February 2022, four days after hearing a motion, Justice Pazaratz issued a 23 page, 94 paragraph decision relating to the vaccination of three children aged 14,12 and 10. [*J.N. v. C.G.*, 2022 ONSC 1198 (CanLII)]

225. There was a final order in place based on minutes of settlement signed only months before on October 5, 2021, that the father was to have sole decision-making with respect to the oldest child and the mother was to have sole decision-making with respect to the younger two children who were the subject of that motion.

226. When the parties signed the minutes of settlement, they already knew that they disagreed about the issue of vaccinations and the minutes are reflected that this was a "live issue and shall be determined at a later date".

227. They also agreed that the eldest child could make his own decision with respect to vaccination.

228. Earlier in the pandemic, the father went to court seeking an order that the children should be compelled to attend school in person for the 2020/2021 school year while the mother argued that the exposure to COVID-19 was too high and that they should have remote learning. That position was accepted by the court on an earlier motion.

229. The father was now bringing a motion claiming that the mother was not protective enough and that the younger two children should receive the COVID-19 vaccine and recommended booster vaccines.

230. The eldest child had been vaccinated, a decision supported by both parents, and had not exhibited any adverse effects.

231. The mother took the position that she was not an "anti-vaxxer" but that she had concerns about the current vaccines and worried that "once children are vaxxed, they can't be unvaxxed."

232. Both children had already had COVID-19 with minimal symptoms.

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233. In his materials, the father attacked the mother's political affiliations.

234. The court found that the children did not wish to be vaccinated. The court found those views to be independent. The court agreed with the father that the children were not old enough to decide on their own but disagreed that their opinions should be completely ignored.

235. In this case the court had received as part of the materials dozens of pages of Internet downloads.

236. The court found that information obtained from the Internet can be admissible if it is accompanied by indicia of reliability, including whether or not the information comes from an official website from a well-known organization; whether the information is capable being verified; and, whether the source is disclosed so that the objectivity of the person or organization posting the material can be assessed. Once the threshold of admissibility is met, it is then up to the trier of fact to weigh and assess the information. [*J.N.*, at paras 48 and 49]

237. The court noted that with respect to this type of evidence there is no opportunity for cross examination or testing.

238. The mother was asking the court to equally consider both sides of the story.

239. The court noted that in almost all of the other cases decided where COVID-19 vaccinations had been ordered, the court has found that the Internet materials presented by the objecting parent have been grossly deficient, unreliable and, at times, dubious.

240. The court then asks the somewhat rhetorical question, 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? [*J.N.*, at para 54]

241. The court notes that "there are obvious public policy reasons to avoid recklessly undermining confidence in public health measures".

242. The court then quotes from the mother's materials which include the side effects set out in the Pfizer fact sheet. The court notes that this is not some fringe website, this is what the manufacturer of the vaccine is indicating.

243. The court also quotes from an article submitted by the mother from Dr. Robert Malone the inventor of the mRNA vaccine. The court quotes from Dr. Malone's article as follows: "The suppression of information, discussion, and outright censorship concerning these current COVID vaccines which are based on gene therapy technologies cast a bad light on the entire vaccine enterprise. It is my opinion that the adult public can handle information and open discussion. Furthermore, we must fully

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disclose any and all risks associated with these experimental research products." [*J.N.*, at para 60]

244. The court at para 66 then went on to review the case law with respect to judicial notice and what courts had been willing to accept they would judicial notice and also noted the case of *R.S.P. v. H.L.C.*, 2021 ONSC 8362 (CanLII) being a decision to which this court will subsequently refer.

245. Justice Pazaratz then goes on to cite examples of where the courts in his opinion have been incorrect in taking judicial notice of certain "facts" that has resulted in significant harm to a significant number of individuals.

246. Justice Pazartaz goes on to quote the mother's statement that she believes "in personal choice, knowledge, understanding and informed consent". His Honour found that the mother went to extraordinary lengths to inform herself and to maintain an open mind and a balanced enlightened and dispassionate manner.

247. He commented that she was not a bad parent and that no one is a bad citizen simply by virtue of asking questions of the government.

248. The court found that the mother should have sole decision-making authority with respect to the administration of COVID vaccines for the two younger children.

M.M. and W.A.K.

249. In August 2022, Justice Corkery of this court released a decision with respect to motion that he heard February 25, 2022, relating to the vaccination of a 12-year-old daughter. [*M.M. v. W.A.K.*, 2022 ONSC 4580 (CanLII)]

250. The parties had separated in 2016 and since August 2021 the child had refused to see her father. A section 30 assessment had been completed in 2019 which recommended joint custody and shared 50-50 parenting time.

251. There was also a May 2021 Voice of the Child Report wherein the child said that she wanted to reside primarily with the mother. That report also opined that the child's views were not the result of parental influence.

252. The father's position was that it was presumptively in the child's best interest to be vaccinated against COVID-19 and that the decision should not be left up to the child.

253. The father submitted "Let the judge be the bad guy. Let the court be the bad guy." According to his logic, the parents can then step back and say the judge has ordered that the child be vaccinated.

254. The mother does not wish to force the child to be vaccinated against her will.

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255. The child has through an email three months before the motion was heard, told the mother's lawyer that she does not want to be vaccinated and that nothing will change her mind. She also sent an email to her father December 22, 2021 saying that she does not want anything to do with him and will note be showing up for Christmas, and that she does not want the COVID-19 vaccine and asks him not to contact her again.

256. The child further wrote a two-page note January 5, 2022 stating that she did not want the COVID-19 vaccine as that it has negative effects on children and that she believes she is mature enough to make her own decision and that she has read many articles based on the effects of vaccine on children she asserts that it is she and not her mother talking.

257. The child then writes another two-page note January 11, 2022 expressing her dislike for her father and her opposition to attempts to contact her and control her. She repeats that she wants her opinion on the COVID-19 vaccine respected and cites examples of her father's behaviour or signs of psychopathy. She indicates that she thinks she needs her own children's lawyer.

258. The father submitted a note from the child's doctor addressed "To whom it may concern" which confirms that "… it is highly suggested that the child be vaccinated with the Covid-19 vaccination. She has no known contraindications for the vaccine."

259. Justice Corkery then engages in a review of the case law with respect to vaccinations and judicial notice.

260. Justice Corkery concludes that he is not prepared to take judicial notice of any government information with respect to COVID-19 or the COVID-19 vaccines.

261. He states that even if he did take such judicial notice of the safety and efficacy of a vaccine he still had no basis for assessing what that means for this particular child.

262. Justice Corkery also takes into consideration the child's views and preferences and although being unable to determine the extent to which they may be influenced by a parent he is satisfied that the notes were written by the child and that she is able to reasonably form her own opinion. He therefore dismisses the father's motion.

R.S.P. and H.L.C.P.

263. In December 2021, Justice Breithaupt-Smith issued a decision (*R.S.P. v. H.L.C.*,2021 ONSC 8362 (CanLII)) relating to, among other things, reconciliation counselling between a mother and daughter.

264. Although this decision is not related to COVID-19 vaccinations, it is a recent decision with respect to the issue of judicial notice and a child's ability to provide informed consent to treatment.

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265. The facts of the case do not directly relate to the issue before this court but the court finds that the decision is relevant to the issues before this court.

266. Justice Breithaupt-Smith considers the conflict between the *Health Care Consent Act* and ordering a child to participate in reconciliation therapy despite the child's reluctance to do so.

267. The court then notes based on the decision of the Supreme Court of Canada in *R. v. Find*, "Expert evidence is by definition neither notorious nor capable of immediate and accurate demonstration. This is why it must be proved through an expert whose qualifications are accepted by the court and who is available for cross-examination" [*R.S.P.* at para 58]

268. Her Honour then goes on to conduct an analysis of judicial notice Being an analysis of which this court adopts.

Other cases considered by this court

269. The court has reviewed and considered the following cases in addition to those cases to which counsel referred this court.

270. Those decided by the Superior Court of Justice of Ontario being:

- *A.P. v. L.K.*, 2021 ONSC 150 (CanLII)
- *C. v. H.*, 2021 ONSC 5870 (also cited as *Campbell v. Heffern*) (CanLII)
- *A.G. v. M.A.* 2021 ONCJ 531 (CanLII)
- *McDonald v. Oates*, 2022 ONSC 394 (also cited as *L.M. v. C.O.*) (CanLII)
- *Warren v. Charlton* 2022 ONSC 1088 (CanLII)
- *Moore v. Moore*, 2022 ONSC 2378 (CanLII)

271. Those decided by the Ontario Court of Justice being:

- *Rouse v. Howard*, 2022 ONCJ 23 (CanLII)
- *Davies v. Todd*, 2022 ONCJ 178 (CanLII)

272. Those decided by courts in New Brunswick being *D.O. v. C.J.*, 2022 NBQB 19, *V.L.M. v. B.S.F.*, 2022 NBQB 23, *D.E. v. W.E.* 2022 NBKB 211, including the New Brunswick Court of Appeal decision *K.B v. K.D.B.* 2022, CanLII 49176 (N.B.C.A.) wherein judicial notice taken by a lower court was not overturned.

273. Cases decided by the Provincial Court of British Columbia being:

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- *R.S.L. v. A.C.L.*, 2022 BCPC 9 (CanLII)
- *T.K. v. J.W.*, 2022 BCPC 16 (CanLII)
- *G.W. v. C.M.*, 2022 BCPC 29 (CanLII)
- *J.F.P v. J.A.G.*, 2022 BCPC 44 (CanLII)
- *G.F. v. M.A..M*, 2022 BCPC 46 (CanLII)
- *A.T. v. C.H.*, 2022 BCPC 121 (CanLII)

274. A case decided by the Saskatchewan Court of Queens Bench being *K.M.S. v. K.B.S.* 2022 SKQB 57 (CanLII).

275. A case decided by the Supreme Court of British Columbia being *Steiner v. Mazzotta*, 2022 BCSC 827 (CanLII).

276. The court also considered the case of *Inglis v. Inglis*, 2022 SKCA 82 which is a case decided by the Saskatchewan Court of Appeal. The court notes however that that case specifically did not decide the issue of judicial notice as the appeal was decided for other reasons.

277. Most of the above referenced cases, have taken judicial notice of the public health messaging that COVID-19 vaccines are "safe and effective".

The evidence before the court

278. The mother's evidence is that the paternal grandmother had "tried to interfere with the children's health care since birth." The mother references the grandmother as allegedly berating her for the children receiving routine vaccinations.

279. The mother's evidence is that the separation occurred July 27, 2020 and that the separation was precipitated by "the applicant and his family stormed the house during intake visit with York Children's Aid Society whose involvement had been requested by me due to the applicant's mother's accosting me in front of the children due to my insistence on adhering to COVID-19 protocols."

280. Therefore, according to the mother, the issue of COVID-19 had been front and centre of the parties' dispute from the date of separation.

281. In the OCL report, there appears to be corroboration of issues between the paternal grandmother and the mother.

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282. The mother's evidence is that the father had never objected to the children receiving any vaccines until the parties separated.

283. The parties signed comprehensive minutes of settlement on April 19, 2022 in which they settled all issues on a final basis save and except the issue of the children's COVID-19 vaccination. Those minutes of settlement provided that the mother would have final decision-making on all other issues.

284. Part of the evidence from the mother was a letter from the child's family doctor. At the time the letter was written, the younger two children were not eligible to receive the vaccine as they were under the age of five. The family doctor recommended that the eldest child (and the others when they were eligible) receive their COVID-19 vaccine in accordance with the Public Health Ontario Guidelines and the Canadian Pediatric Society recommendations. Since the children had at that time just recently recovered from COVID-19, the recommendation pursuant to the Public Health Guidelines was that they wait three months to have their vaccination.

285. The family doctor then indicated that if in future Public Health Ontario and the Canadian Pediatric Society recommended COVID-19 vaccination for children of the younger children's age she would "fully support this".

286. In May 2022, when the mother's first affidavit was sworn (at that time it was anticipated that the motion would be heard in the May trial sittings) she was expecting her fourth child and her doctor had opined that she was at increased risk of a poor outcome from COVID-19 infection given that she was then pregnant.

287. At the time that the court heard this motion, she had already given birth to the fourth child.

288. In the mother's affidavit, she does not accept the father's belief that his sister-in-law's miscarriage was as a result of the COVID-19 vaccination. The mother indicates in her affidavit that CBC News has reported that a significant increase in stillbirths at Lion's Gate Hospital in British Columbia where the sister-in-law was living, did not occur.

289. The mother points out that the father is a heavy equipment operator with a grade 12 education and that she is currently enrolled in a social work program at the University of Waterloo.

290. She asserts, and the court accepts that neither of them have an education in medicine.

291. The father's position is that he wishes to wait until the COVID-19 vaccines have completed their medical trials prior to the parties making a decision with respect to whether or not their children should be vaccinated. He points out the obvious, that vaccination is an irreversible decision (one cannot be "unvaccinated").

292. He asserts that the oldest child, H.W.T., is a happy and healthy 10-year-old boy and that when he had COVID-19 in March 2022, along with his siblings and his mother, he

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experienced cold and flu like symptoms and recovered without any issue. He asserts that this results in H.W.T. having natural immunity to the virus.

293. His evidence is that H.W.T. is thriving, attending school, playing with his friends and playing basketball.

294. The father's belief is that the vaccine does not prevent the spread or transmission of the virus and that this has been confirmed, even by the pharmaceutical companies, who manufacture and distribute the vaccine.

295. He points out that initially, the government narrative was that the vaccine would prevent either contracting COVID-19 or transmitting COVID-19.

296. He asserts that now even the pharmaceutical companies have accepted this as not being true.

297. With respect to the younger two children, his evidence is that they, as well, are healthy and happy children and that they too experienced cold and flu like symptoms from COVID-19 and both of them recovered without any issue. They both attend ballet classes.

298. His evidence is that the maternal grandmother works at a men's shelter wherein she is exposed to COVID-19 on a daily basis and yet she still attended at the mother's home even while the mother was pregnant.

299. The father submits that while the mother objects to him taking the children to Mexico over March break 2023, the mother allowed the maternal grandfather to take the children to a Hallowe'en event that had 8,000 people in attendance.

300. He also submits that it is a double-standard in that the mother would not permit him to take the children to a friend's cottage but a week later allowed the maternal grandfather to take the eldest child to Grand Bend where they stayed in a hotel.

301. He points out that while the mother was fully vaccinated, it was she who got COVID-19 as did the children.

302. The father claims that he entered into the minutes of settlement in April 2022 as he could not afford to go to trial.

303. He points to studies that found that the infection fatality rate for children under the age of 19 was 3 in 10,000. He asserts that his research shows that the fatality rate for children from the vaccine is far higher.

304. In his material, he points to a statement from the College of Physicians and Surgeons of Ontario as follows "physicians must not make comments or provide advice that encourages the public to act contrary to public health orders and recommendations.

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Physicians who put the public at risk may face an investigation by the CPSO and disciplinary action when warranted."

305. The father references 12 of 294 current research studies pertaining to the COVID-19 vaccine and children, many of which are estimated not to be completed until mid-2023, 2024 or in one case 2025.

306. In his material, he references that there has been a Vaccine Adverse Event Reporting System (VAERS) established since 1990. This is co-managed by the Centre for Disease Control and Prevention (CDC) and the US Food and Drug Administration (FDA).

307. He points out that according to VAERS reporting system there have been the following reported as effects of vaccination regarding children between the ages of six months and 17 years:

- 163 deaths,
- 530 permanent disabilities,
- 1965 myocarditis,
- 270 Encephalitis,
- 231 Bell's Palsy,
- 1,657 severe allergic reactions and
- 103 Guillain Barre/Paralysis.

308. He submits that all of this is offered in support of his argument that it is better to wait for better evidence and to have the issue decided at trial rather than ordering vaccination at this point and time.

309. He suggests that changes have occurred in the recommendations of governments with respect to COVID-19 protocols.

- His "evidence" from Internet sites (Exhibit "E" of father's Affidavit dated November 7, 2022) is that some other countries are no longer recommending or have paused COVID-19 vaccination for children.

310. He cites the following list of countries being:

- Denmark… as of September 2022 children under the age of 18 will not the vaccinated

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- Sweden, vaccinations no longer recommended for children between the ages of five and 11 as the health agency indicates the risks outweigh the benefits

- United States, no differentiation between people who are vaccinated and not vaccinated based on general immunity due to either vaccination or previous COVID-19 infection

- Taiwan, suspension of administering second doses of Pfizer vaccine for children in the 12 to 17 age group based on concerns of increase of myocarditis

- United Kingdom public health warning with respect to possible myocarditis following vaccinations particularly after the second vaccination

- Florida health department indicates the benefit of vaccination is likely outweighed by the abnormally high risk of cardiac related death among men 18 to 39 years of age following mRNA a vaccination

- Finland paused the use of Moderna's COVID-19 vaccine for younger males due to reports of rare cardiovascular side effect.

311. As well, based on the same exhibit and Internet sites the father points out that cases of myocarditis have been reported in Ontario following immunization with the COVID-19 vaccine. Based on the referenced site. These cases have occurred more frequently in males under the age of 30 years and more commonly following their second dose. The Internet article indicates that there have been as of that date 21,717 adverse effects following immunization based on approximately 35 million doses administered as of that date.

312. The father in the same exhibit points to an Internet site being the Canadian Covid Care Alliance which claims that being exposed to the virus provides natural immunity which has been found to be "robust, appropriate, long lasting and complete".

313. He also alleges in the same exhibit that some information is being withheld from the public and points to articles that he claims substantiate that position.

314. The mother challenges the sources of the father's information, claiming that they are "biased and anti-vaccine/anti-mandate organization websites such as the Children's Defense Fund sic (Children's Health Defense) or Canadian Covid Care Alliance.

315. The mother accepts that the children are happy and healthy and that they recovered from COVID-19.

316. She challenges the father's belief that the children have natural immunity from COVID-19 as a result of having had COVID-19.

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317. Her evidence is that the children did not attend an event where 8,000 people were present all at once. She claims that there were 8,000 attendees over the course of a weekend event.

318. So far as her mother is concerned, she claims that her mother works at a homeless shelter in the kitchen taking two PCR tests per week and additional PCR tests if the shelter is in outbreak.

319. The mother recites travel advisories from the Canadian government with respect to unvaccinated travellers.

320. She points out that the OCL section 30 assessment (which did not specifically deal with the vaccination issue) recommended sole decision-making for the mother.

321. The mother claims, apparently based on government information, that the vaccine does not prevent infection or transmission but mitigates the risk to individuals in the community by reducing infection and transmission events and reduces the incidence of severe disease and hospitalization.

322. The mother challenges the father's evidence with respect to the COVID-19 vaccine. According to the report referenced by her, as of October 14, 2022 of the 91 million doses of COVID-19 vaccines administered nationwide there have been 10,501 serious adverse events reported or .011% which would represent 1.1 persons per ten thousand people administered.

323. The OCL report is a piece of evidence. The court notes that it has not been subjected to the scrutiny of cross-examination.

324. The court further notes, not unexpectedly, that the report did not address specifically the issue before this court, that being the issue of whether or not the children should be vaccinated against COVID-19.

325. The other issues that the parents appear to have, regarding the continued therapy before Ms. Guthrie Douse and the issue of the father seeking travel consent for March break vacation to Mexico, are not before this court and therefore the court will not address those issues. They need to be addressed at the next settlement conference that the parties have before the case management judge or a motion.

326. For those reasons, the OCL report is of very limited use to this court for purposes of the determination of the issue before this court.

327. What the OCL report does point out is that there is conflict between the parents and there is clearly conflict between the extended family on each side and the other parent.

Analysis and finding

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328. A fundamental tenet in law is that courts do not decide a case until we have given both sides the opportunity to present their argument.

329. In this case, the court has minimal evidence from either side with respect to the position that they are advancing.

330. The issue before the court is a very finite one. The issue to be decided is: At this motion should the court make an order allowing the mother to have sole decision-making with respect to the issue of COVID-19 vaccines for the children and thereby allowing her to have the children vaccinated? This would require the court to dispense with the necessity of the father's consent to those vaccinations.

331. Although it is a temporary motion, as the father quite rightly points out, vaccinations cannot be "undone" and therefore if the court were to grant the relief sought by the mother effectively it would be a final order

332. In essence, the position advanced on behalf of the mother is that she accepts the public health recommendations. She accepts that, as stated by the public health authorities the COVID-19 vaccines for children are "safe and effective".

333. In addition to the public health recommendations, she relies on the letter from the family doctor in which the family doctor supports those public health recommendations.

334. The father, on the other hand, takes the position that this decision should not be made based on the evidence that the court has before it. He points out that the court has no expert evidence before it. He asks that the issue be decided at trial where expert evidence can be called.

335. He further submits that the court should not take judicial notice of the vaccines being safe and effective based on statements made by various public health authorities.

336. The court has conducted a thorough review of all of the cases referred to by either side and has reviewed all the Canadian cases of which the court is aware that deal with this issue.

337. The court finds that the primary issue to be decided by the court is the issue of judicial notice. The court has referenced that in the review of the case law.

Judicial Notice and this Issue

338. As referenced previously, the law in Canada with respect to judicial notice is as set out by the Supreme Court of Canada in *R. v. Find*.

339. If there are facts which are **clearly uncontroversial or beyond reasonable dispute**, then a court may take judicial notice of those facts and does not require evidence before it to have those facts proven.

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340. If the facts are **not clearly uncontroversial or are capable of being disputed by reasonable people, then a court should and must require expert evidence of the same**. Expert evidence is an exception to the hearsay rule.

341. The mother in this case, who is asking that she be given decision-making authority so that she can have the children vaccinated, asks the court to find that it should take judicial notice of vaccines being "safe and effective"

342. As the court has noted, there have been in excess of 40 decisions wherein judges have been prepared to make that finding and to effectively order children to be vaccinated based on taking judicial notice of the vaccines being "safe and effective"

343. The court has gone through a detailed analysis of more than half of those decisions

344. Essentially, what those courts have found is that because public health authorities and governments who have given them mandates, have said that vaccines are safe and effective, the court is prepared to take judicial notice of that as a "fact".

345. Based on the Supreme Court of Canada's decision in *R. v. Find*, those courts have decided that this "fact" is clearly uncontroversial and not being capable of being disputed by reasonable people.

346. That is the only way that one gets to the conclusion that a court should take judicial notice of this "fact"

347. As this court has noted in those decisions, the "dissenting parent" has asked the court not to take judicial notice of the public health narrative.

348. The dissenting parents have brought forth "evidence" sometimes from the Internet, and sometimes by bringing forward doctors and scientists whom they have asked the court to find as an expert who proffers an opinion that is contrary to that of the public health messaging.

349. This court analyzes the mandate of judicial notice as set out in *R. v. Find* somewhat differently to the courts that have been willing to take judicial notice of the public health messaging.

350. The court comes back to the question which this court asks itself: Is the proposition that vaccines are "safe and effective" an uncontroversial proposition?

351. If the answer to that question is yes, then the court is entitled to take judicial notice of that "fact"

352. Stated differently, is it a proposition that is capable of being disputed by reasonable people?

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353. If the answer to this question is yes, then the “fact” is not uncontroversial and therefore the court should not take judicial notice but should require expert evidence to be tendered in order to make the determination

354. That leads this court to determine the issue of whether or not this proposition is controversial and whether or not the court has any evidence that “reasonable people” would dispute this “fact”.

355. What evidence does this court have before it in order to assist it in making that determination?

356. On the one hand, the court accepts, as have other courts, that the court can take as evidence what public health authorities have been saying.

357. This court does not dispute that public health authorities in Ontario, Canada and elsewhere and the governments who have appointed those public health authorities have clearly communicated to the public that the public health authorities and the governments are of the view that vaccines are “safe and effective”

358. What public health authorities have been saying is evidence simply of the fact that the public health authorities have been saying the vaccines are “safe and effective”

359. Based on *R. v. Find*, however, in order for the court to take judicial notice of the **fact** that the vaccines are “safe and effective” the court needs to go a major step beyond simply acknowledging that public health authorities are saying this.

360. The court must go the additional step and determine that what the public health authorities are saying is uncontroversial and that this proposition is not capable of being disputed by reasonable people

361. From the court's analysis of other cases, and the “evidence” produced by the father in this case, it can be seen, however, that there are those who do not accept that as a “fact” and who do not accept that as being uncontroversial.

362. In the case before the court, the father has cited Internet articles wherein the authors thereof do not accept the public health message as being uncontroversial.

363. The question then becomes, are these “dissenting” individuals reasonable people?

364. Prior to reviewing the issue with respect to vaccines, the court finds it appropriate to take a broader look at the issue of judicial notice and the issue of what constitutes a reasonable person.

365. The court starts with the fundamental tenet that courts are expected to be impartial and base decisions on the evidence before us.

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366. Judicial notice is an exception to the court requiring evidence before it and, as set out in *R. v. Find*, if the court finds that a "fact" is not uncontroversial to reasonable people then the court does not need evidence before it to prove that fact.

367. In order to make that determination, this court posits that it is reasonable for a court to not only take into account that which is put before it by the parties in a particular case but to take into account life experience.

368. The court finds something of which the court could take judicial notice is that the earth is not flat but is a sphere rotating on its own axis and revolving around the sun.

369. Daily life experience corroborates for this court that it has no difficulty taking judicial notice of the earth being spherical

370. Each day one can observe that the sun rises in the east and sets in the West.

371. Each 28 days, the moon can be seen to go through phases from a new moon to a full moon and back to a new moon. These phases and the observation of the shape of the Crescent moon are consistent with the earth being a sphere an inconsistent with it being flat.

372. From the prairies or from an airplane one can observe the curvature of the horizon. This is also consistent with the earth being spherical and not being flat.

373. In Canada, each year one experiences four seasons. This is consistent with the earth being tilted on its axis and rotating around the sun and inconsistent with the earth being flat.

374. If one travels closer to the equator one notices the difference in climate to that of Canada. This is also consistent with the earth being spherical and not flat.

375. It can be observed that a toilet flushes in a counter-clockwise direction, or in clockwise direction depending on whether or not one is in the northern or southern hemisphere.

376. All of these "life observations" are consistent with the proposition that the earth is a spinning sphere orbiting around the sun and inconsistent with the proposition that the earth is flat.

377. This court has not encountered any media outlets nor physicists nor any renowned scientists claiming that the earth is flat.

378. As indicated, the court has no doubt that of the eight billion people in the world there may be someone who still believes that the earth is flat. That however does not make that individual fit into the category of a "reasonable person".

379. How is all of this relevant to this case?

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380. This court is being asked to take judicial notice that COVID-19 vaccines are safe and effective for children and in particular for the three children in this case.

381. Is that proposition consistent with life experiences such that it should be accepted without the need for expert evidence?

382. Are there reasonable people who would disagree with that proposition?

383. What does it mean to be "uncontroversial to reasonable people"?

384. To phrase that question differently, if reasonable people have different opinions and have come to different conclusions with respect to an issue, this court would find that the "fact" is not "uncontroversial", or stated another way the "fact" is controversial.

385. Once the court has made that determination, the court should not take judicial notice of this as an "fact". The court would then require expert evidence to determine if this hypothesis should be accepted as a "fact".

386. To extrapolate further, the court would suggest that if reasonable people receive different information from different news sources, that would be an indicia of the fact not being uncontroversial.

387. If the "fact" is uncontroversial then one would assume that if one were to read different newspapers for example the Toronto Star versus a Post media newspaper such as the National Post, one would receive the same information. Similarly, if one were to listen to different television news outlets, presumably one would not be receiving different information. Therefore, if one listens to CNN or Fox News the information received if it were in fact "uncontroversial" should be the same.

388. .This would apply to Internet search engines as well so that if one were to search a "fact" on Google, DuckDuckGo or Brave or a different search engine, one should receive the same result for that "uncontroversial fact".

389. On the other hand, if the information that one is receiving is different based on the news source outlet and if reasonable and educated people come to different conclusions, then this court would find that the "fact" is not "uncontroversial" and is not one of which the court should take judicial notice.

390. The court has before it, the materials put forward by the father. These materials while not "expert evidence", certainly express an opinion different to that proffered by public health authorities.

391. As well, as the court has noted with respect to its analysis of the other cases, there are many others who would appear to have some expertise on the subject of vaccines who have an opinion different from that of the public health authorities.

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392. This then raises the question as to whether or not these "dissenting individuals" are reasonable people?

393. The court will embark on a detailed analysis in the following paragraphs.

394. The analysis that this court has conducted, leads this court to a conclusion that it cannot take judicial notice of vaccines being "safe and effective"

395. The vast majority of other courts that have considered this issue have come to a different conclusion.

396. It is not for this court to question the decisions made by other judges. However, when it comes to judicial notice, each court has to come to their own conclusion as to whether or not a proposition is "uncontroversial".

397. In the following paragraphs, this court cites many hypotheses.

398. This court recognizes that these are this court's personal hypotheses and may not be necessarily shared or accepted by others.

399. To be clear, this court is not suggesting that it has evidence before it to make findings based on these hypotheses.

400. However, the reason that this court is putting forward these hypotheses is to corroborate the rationale for this court as to why this court is not prepared to accept as "uncontroversial" and not capable of dispute by reasonable people the proposition that COVID-19 vaccines are safe and effective for the three children before this court.

401. Based on the Supreme Court of Canada, **being clearly uncontroversial** is the only basis on which a court should be accepting judicial notice without expert evidence to prove a "fact".

402. This court will now delve into its analysis of whether or not this court should accept judicial notice of the vaccines being "safe and effective".

Should the Court take judicial notice and accept that these vaccines are "effective" without expert evidence

403. This court will first examine the issue of whether or not these vaccines are "effective".

404. As other courts have previously indicated, the court can, as an exception to the hearsay rule, take note of recommendations made by public health authorities.

405. An examination of public health records discloses that the "messaging" of public health has changed over the three years that COVID-19 has been with us.

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406. Initially, for example, the heads of public health including those of the United States, Canada and Ontario were telling the public that masking was not effective because the size of the particles of the pathogen virus were so small that they would pass through any standard mask and therefore the mask offered little if any protection against the transmission or contracting of the virus.

407. That message changed over time and not only were masks encouraged but, based on the government giving public health the authority, masks were in fact mandated to be worn in various regions including Ontario, for a period of time in indoor public settings. People not wearing masks were banned from most indoor public settings.

408. That has now changed given that the mandates have been lifted.

409. One could question as to whether or not that change was based on a change in the public health analysis of the issue or was simply a political decision. This court has no evidence before it with respect to that issue and therefore will not engage in that analysis.

410. With respect to vaccines, the messaging has been changing as well.

411. The consistent messaging virtually from the outset of the COVID-19 outbreak was that vaccines were a panacea and they were essentially the answer to all of the problems related to this disease.

412. What has changed, is that prior to the vaccines being approved and "rolled out" for public use, the "refrain messaging" from public health was that the vaccines would prevent one from contracting COVID-19.

413. Up until the development of the COVID-19 "vaccines", as this court referenced from a previous case, the technology on which vaccines were based, in layman's terms, was essentially that a small amount of the pathogen was introduced into the human body through the vaccine. That triggered within the body the natural immune system and resulted in the individual developing an immunity to the disease for which they were vaccinated.

414. In virtually all cases, one dose of a vaccine was administered and the result was that the vaccinated individual had life-long immunity from that disease.

415. The COVID-19 vaccine however had different technology being the mRNA technology.

416. As referenced in other cases and in public health records, shortly after the COVID-19 vaccines had been approved and rolled out by various governments and people began taking the first dose of vaccine, it became evident that the claim that the vaccine would prevent individuals from getting COVID-19 was not correct.

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417. People who had been vaccinated were routinely getting COVID-19 despite the vaccination, contrary to what had been represented by public health would be the case before the vaccine rollout.

418. The public health and government messaging then changed again to claim that while you could get COVID-19 if you were vaccinated, you were at less risk of transmitting COVID-19 to others if you were vaccinated.

419. As time went on, and even after people were encouraged, and in some cases mandated as a requirement of their employment, or to go to a restaurant, or to travel, to get a second dose of the vaccine, it became evident that this representation by public health, that being that vaccinated people were less likely to transmit COVID-19, was also false.

420. All of these various iterations from public health authorities can be accessed by checking archival records of public health pronouncements at the time over the last three years.

421. The problem for this court in being asked to take judicial notice that the vaccines are "effective" is that what the court is being asked to take judicial notice of, is in fact a moving target.

422. What public health authorities say today, is totally different to what public health authorities were saying some months or a year ago.

423. One may argue that public health was faced with a crisis and new vaccines and they have been learning as they go along and they now have the "messaging" correct and that we as courts should take judicial notice of the current narrative messaging.

424. One of the individuals who has been cited in other cases and to whom other courts have decided of whom we should take judicial notice is Dr. Kieran Moore, the Chief Medical Officer for Ontario.

425. The court notes that at about the time that this court heard this motion, on a Monday, Dr. Moore held a press conference That was widely disseminated by the mainstream media in which he indicated that while masks were not being mandated, it was the strong recommendation of the Chief Medical Officer of Ontario ("Dr. Moore") that masks be worn at all times indoors in public settings when social distancing was not possible.

426. Once again, that was a public health pronouncement and is documented in public records.

427. The court notes however that it was widely reported by the media based on reports from eyewitnesses who were present, and by individuals who took pictures at the event, that a mere three days (72 hours) later, on a Thursday evening, the same Dr. Moore who had that very week made the pronouncement and recommendation with

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respect to masks was seen at a public event indoors over a significant period of time not wearing a mask when he clearly was not social distancing.

428. So far as this court is aware, Dr. Moore has never publicly denied that the pictures of him at that event displayed in the media are in fact accurate pictures.

429. That leaves this court with the question of which Dr. Moore this court should be expected to take judicial notice? The "Monday Dr. Moore" who strongly encourages the use of masks while indoors or the "Thursday Dr. Moore" who apparently either does not believe his own recommendation or does not see fit to follow his own recommendation.?

430. As the cited cases have pointed out, and as the literature to which the applicant in this action has directed the court, there are others who would appear to have significant credentials and expertise in the area who would proffer an opinion that the vaccines are not "effective." Those individuals totally disagree with the public health and government messaging that the vaccines are "effective".

431. This court does not have expert evidence on the subject of the effectiveness or ineffectiveness of vaccines and is therefore not concluding that the vaccines are not effective.

432. However, this court does not put all of those who question the effectiveness of the COVID-19 vaccines in the same category as individuals who would continue to claim that the earth is flat.

433. The court finds that there are "reasonable people" who have appear to have some considerable degree of expertise who have an opinion different to that of the public health authorities as to the effectiveness of the vaccines.

434. In fact, this court finds that the effectiveness of vaccines can be called into question by public health pronouncements alone.

435. Initially, public health was recommending a single dose of a vaccine. Public health then began to recommend a second dose of the vaccine.

436. Public health recommendations have now further evolved such that booster shots are being recommended to be taken every three to six months. For many individuals, public health has now recommended up to five doses of the vaccine. Once again, all of this is the subject of public record.

437. This court is not prepared to take judicial notice based on public health pronouncements, and based on that which is set out above, that simply because public health is continuing with the messaging that the vaccines are "effective" that judicial notice should be taken of this and that this "fact" should be accepted as clearly uncontroversial or beyond reasonable dispute.

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438. The Supreme Court of Canada in *R. v. Find* made it clear that in order to take judicial notice of a "fact" the court must find that **facts are clearly uncontroversial or beyond reasonable dispute.**

439. This court has pointed out that "the facts" as represented by public health authorities have changed and have been a moving target over the past three years.

440. As well, this court has pointed out that at least some of the public health authorities upon whom this court is being asked to take judicial notice have not even acted in accordance with their own recommendations 72 hours after making those recommendations.

441. Dr. Moore. is certainly not alone based on public health representatives and government representatives who have, based on media reports, not followed their own recommendations.

442. Further as referenced through the analysis of other cases, this court has pointed out that people who appear to have expertise including an individual who is recognized as being the "inventor" or the "founder" of the very vaccine that this court is being asked to take judicial notice is "effective" have now been quoted as saying that they do not agree that it is effective.

443. This court finds that it would be illogical to ignore that the inventor of the vaccine is taking a position contrary to the public health messaging and to take judicial notice of the public health messaging.

444. One would have to conclude that it is not controversial to have the inventor of the vaccine take a position contrary to that of public health authorities.

445. Further, the court would have to conclude that Dr. Robert Malone, who has been recognized by other courts as the inventor or founder of the mRNA vaccine is not a "reasonable person" when it comes to the issue of him taking a position that is different to the public health messaging of which this court is being asked to take judicial notice.

446. To be clear, this court is not finding that Dr. Malone is the inventor of the mRNA vaccine nor is the court finding that the statements attributed to him are "facts". The court does find that these are issues that court be determined based on expert evidence at a trial. The court does find that when individuals who appear to be "*prima facie* experts" in a field are questioning the very premise of which a court being asked to take judicial notice that the court should at least consider this in the analysis of judicial notice.

447. This court finds to ignore this would be totally illogical and not remotely in accordance with the Supreme Court of Canada's definition of what is required in order for courts to take judicial notice.

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448. Therefore, this court is not prepared to take judicial notice of the vaccines as being "effective".

Should the court take judicial notice that these vaccines are "safe" without expert evidence

449. Having determined that this court is not prepared to take judicial notice of the vaccines being "effective", it could be argued that this court need not move on to the issue of whether or not judicial notice should be taken as to whether or not they are "safe".

450. However, for this court, that issue is even more deeply concerning and something which the court believes needs to be analysed.

451. It is trite law that the court, in making decisions relating to the parenting of children, is governed by the best interests of the child or children. The *Divorce Act*, R.S.C. 1985, c 3 (2nd Supp), and the *Children's Law Reform Act*, R.S.O. 1990, c C. 12, require the court to do so.

452. This court therefore should not be issuing any order that requires a child to be vaccinated or an order that gives decision-making authority to a parent knowing that by doing so, that parent is going to have the child vaccinated, where, there is a concern which could be held by reasonable people, that the vaccine is either not safe in the short term or that the vaccine either does or could possibly or likely have long term negative side effects.

453. As with the issue of whether or not the vaccines are "effective" there have been as cited, multiple courts that were prepared to take judicial notice of the fact that the vaccines are "safe" because that is what public health is telling us.

454. Those courts were prepared to take judicial notice of the "safety" of the vaccine as a "fact" without the requirement of expert evidence.

455. This court finds that in making any decision, we need to know what we know but equally importantly, we need to know what we don't know.

456. These vaccines, at the time that the court heard this motion, with children in particular, had only been administered for a relatively short period of time, and to younger children, for only a few months and to older children for approximately one year.

457. It is therefore impossible to know what the long-term side effects are of these vaccines as there are no children to whom the vaccine has been administered for more than approximately one year.

458. The pharmaceutical companies, the public health authorities, the government, and the mainstream media are all telling us that these vaccines are "safe".

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459. Many courts have been willing to accept and take judicial notice that because public health is telling us they are "safe" that should be found as a "fact" as to the truth of that statement. Courts have thereby effectively mandated the vaccination of children over the objection of a dissenting parent.

460. Continuing on with what we don't know, because of the passage of time or lack thereof, no one can say with certainty what the long-term effects are of these vaccines on children as no child has been vaccinated with the COVID-19 vaccine for long enough to have any ability to tell for certain based on a sample size of individuals who could be studied.

461. Public health is asking us to rely on their opinion and predictions that these vaccines are "safe".

462. This court asks the question that is "clearly uncontroversial or beyond reasonable dispute." [*R. v. Find*, at para 48]

463. The court has no evidence before it as to the basis on which public health authorities have concluded that COVID-19 vaccines for children are "safe".

464. We know that anyone who claims (including public health authorities) that the vaccines are safe, is clearly speculating certainly based on any possible long-term negative side effects.

465. The question then becomes, is it reasonable to take judicial notice of such speculation where public health authorities are claiming that the vaccines are "safe"?

466. This court could find simply that it is not prepared to take judicial notice of a "fact" based on what is clearly speculation.

467. However, the court finds that there are additional reasons why this court should not take judicial notice of the public health authorities' pronouncements that the vaccine is "safe".

468. As this court pointed out earlier, simply because there is someone who still believes that the earth is flat, does not mean that is a "reasonable dispute".

469. As has been pointed out in other cases, governments have been wrong before in a number of areas and when it comes to public health recommendations.

470. For example, the government belief and "messaging" at the time, with respect to the drug Thalidomide, was clearly wrong.

471. This was later proven to have been wrong and unfortunately because many pregnant women relied on the advice that they were receiving at the time from public health authorities, it resulted in a number of children being born with deformities.

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472. We cannot lose sight, however, of the fact that public health at the time and the government of the day was promoting a drug which ultimately was proven to have had very serious and detrimental side effects.

473. As has been noted in other cases, there are many individuals who are "sounding the alarm bells" with respect to both the short-term and long-term possible side effects of COVID-19 vaccines, particularly the administration of those vaccines to children.

474. The court has cited other cases where the dissenting parent has called experts to testify that they find the vaccines are not safe. Even though those courts have not accepted the evidence, nor even accepted them as experts this court finds they are still relevant for the determination of judicial notice.

475. If the proposition is controversial or challenged by reasonable people, the court should not take judicial notice of that as a "fact".

476. The court find that these "experts" cannot be dismissed into the same category as those who still believe the earth is flat.

477. Other cases have referenced the VAERS system, which is a system set up for compensation for victims of vaccine related injuries. The system was established at the same time that legislation was passed which precluded civil claims against pharmaceutical companies for vaccine related injuries.

478. An examination of public records will disclose that there is legislation in place in most countries pursuant to which the pharmaceutical companies have such an immunity when it comes to vaccines.

479. Unlike other drugs that they sell where they have the risk of lawsuits, the best that someone can receive as a "vaccine victim" is compensation from a fund established to provide some compensation for such injuries or death.

480. There are laws in place that preclude an individual from claiming damages against a pharmaceutical company even where they are able to prove that they were injured as a result of taking the vaccine manufactured by that pharmaceutical company.

481. The court finds this as another concern as to why the court should exercise extreme caution in being asked to take judicial notice of vaccines as being "safe" when it appears that the uncontradicted evidence is that the mRNA vaccine is different to "conventional vaccines" and that the timeline in their "invention" and testing was far shorter than with other vaccines.

482. For all of the above reasons, the court is not prepared to take judicial notice of any pronouncements from pharmaceutical companies claiming that the vaccine is "safe".

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483. This court acknowledges that most of the decisions cited by this court have come to a different conclusion, and they were prepared to simply accept the "government messaging" on this issue.

484. Clearly, courts are independent of the government and courts routinely render decisions that are contrary to the positions taken by various governments. For example, criminal legislation is often set aside by the court for a variety of reasons.

485. However, when it comes to the issue of government messaging and COVID-19 vaccines, it would appear that most courts have not questioned the messaging of governments.

486. History has taught us that governments and the media does not always act in a manner that promotes public health.

487. It was not that long ago that the media depended on tobacco companies and companies selling wine, spirits and beer for advertising revenue.

488. At a time when there were a number of experts opining that tobacco caused lung cancer and other experts opining that alcoholic products could cause cirrhosis of the liver, among other diseases, the media and governments continued to allow those companies to advertise and continue to rely on those companies for advertising revenue.

489. Once those advertising revenues were no longer available to mainstream media, were those advertisers to a large extent replaced with advertisements paid by large pharmaceutical companies?

490. For those reasons among others, this court is not prepared to take judicial notice of any "messaging" from mainstream media.

491. So far as governments are concerned, as is referenced in the material filed on behalf of the father, there was a time when there were virtually no governments in the world that challenged the messaging of the vaccines being "safe and effective".

492. However, the articles referenced by the father in this case indicate that there are now some countries, including Finland and Denmark that have banned or are no longer recommending the distribution and administration of vaccines to children. This would appear to be based on a conclusion by those governments that they are no longer certain that the vaccines are "safe and effective".

493. What about family doctors? Should their opinions be accepted as being totally independent?

494. The letter that the court received from a family doctor in this case, is similar to the letters that were tendered apparently in other cases cited by this court. Essentially, the letter before this court and the letters before other courts, are written in very similar

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language. The doctor is simply parroting the narrative and messaging that has been passed down from public health authorities.

495. There is no evidence before this court, that the doctor in this case, or for that matter in the other cases, has done any independent research in order to form their own opinion as to what are the risks of the COVID-19 vaccination.

496. In fact, what they merely stated is that public health recommends vaccination of children against COVID-19, except in cases where there is evidence that a particular child is at higher risk.

497. Dissenting parents in other cases and the father in this case before this court, have questioned whether or not doctors in Ontario are free to give opinions that are contrary to public health edicts without having any professional consequences.

498. There have been cases cited in the media whereby doctors have been disciplined by their governing bodies where the doctor has issued letters of exemption to patients from the vaccines or where the doctors have prescribed medications which the public health authorities have not been recommending for the use with respect to COVID-19.

499. Can the courts therefore take judicial notice of the fact that family doctors issuing a letter, are doing so totally independent of any concerns from sanctions from their governing bodies?

500. This court finds that one cannot and should not take judicial notice of that fact.

501. Courts in other cases have discounted Dr. Malone, for among other reasons, because he was banned from Twitter (when Twitter was under previous ownership) for spreading “misinformation”.

502. By determining that a position taken by someone is “misinformation” simply because Twitter, Facebook, Google, or some other social media platform bans someone for declaring what they are saying as “misinformation” is by extension taking judicial notice of the “fact” that the owners or “regulators” of these platforms are independent and have made a determination has to what are “facts” and what is “misinformation”. Further it presumes that this determination is uncontroversial.

503. The court does not find that we should be taking judicial notice of a determination by an owner of one of these platforms as to what is “misinformation”.

504. This court does not find that simply because a social media platform bans someone from it or declares their statements to be “misinformation”, as a valid reason to reject an opinion rendered by the individual, particularly when that individual is the one who invented the mRNA technology.

505. The court does raise the question however why is it that Twitter (at least while under previous ownership) Facebook and other social media platforms and the search engine

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Google finds it appropriate and necessary to ban anyone who dares to challenge the public health messaging on the issue of vaccines?

506. The argument presumably is that these platforms are doing so to "protect the public".

507. This court has difficulty accepting that argument, however, when there are all kinds of things on the Google search engine or social media platforms that would appear to clearly be something from which the public or at least a portion of the public needs to be protected.

508. Simple examples of this are that of gratuitous violence, or a "recipe" on how to make a homemade bomb appear not to be of concern to the individuals censoring "vaccine misinformation".

509. These organisations do not see any need to protect the public from such information being distributed through their social media or internet vehicle.

510. If the opinions of individuals who dared challenge public health are not credible, what is the danger of allowing them to be put out on the Internet?

511. Surely, intelligent people will be able to decide for themselves and determine that these opinions should not be accepted over those of the public health authorities.

512. It is not only the censorship by social media and Internet search engines, that cause this court concern but also the mainstream media.

513. Is the proposition that there is censorship within mainstream and social media platforms simply mere fantasy of "conspiracy theorists"?

514. The dissenting parent in this case, cites as a reason for concern about the safety of the vaccines, a personal story in which his sister had a miscarriage and the family believes that this may be connected to her having been vaccinated. He notes that in the BC hospital where she was being treated, there were an alarming number of stillbirths or miscarriages among pregnant women who had been vaccinated.

515. The mother, who is asking the court to take judicial notice of public health and to give her decision-making authority so that she can have the children vaccinated, points out that Canada's publicly funded broadcaster, the CBC, reported that the concern raised by the respondent father in this case with respect to this BC hospital, simply did not happen.

516. This leads the court to another concern that the court has with respect to the mainstream media.

517. Does the mainstream media have a "narrative" that they promote?

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518. One wonders why some stories in the news are, “front-page headlines” for each news cycle for a number of days and for some cases weeks and months, while on the other hand, other stories, which arguably are also very newsworthy, are either not reported at all or are buried in the middle of one newscast and not repeated thereafter.

519. This court is not prepared to take judicial notice that simply because the CBC or any other mainstream media outlet reports something as being “untrue” that the court accepts that as being something of which the court will take judicial notice.

520. For all of the above reasons, this court is not prepared to take judicial notice of the public health claim of that these vaccines are “safe”.

521. To be clear, the court is not taking judicial notice of any of the representation set out in the father’s materials are in fact accurate or are “facts”.

522. The court is merely stating that since it finds that it cannot take judicial notice, by extension expert evidence is required for the court to make a finding of fact.

Informed consent

523. Another issue that these vaccine cases and the case before this court raises is the issue of informed consent.

524. The *Health Care Consent Act* requires that an individual be given an opportunity to give an informed consent prior to undergoing any medical procedure and that a healthcare provider ensure that the consent and by the patient to that procedure is informed prior to administering that procedure.

525. The dissenting father in this case, and the dissenting parents in the other cases cited, all state that they have done sufficient research to satisfy themselves that they have valid reasons for not consenting to the vaccination of their child.

526. Courts have, as cited in this decision, not been willing to consider the objections of the parent who has done their research and has come to a conclusion for their child, that is contrary to the public health narrative and has determined that the child should not be vaccinated against COVID-19.

527. In fact, some courts, as cited herein, have even taken away decision-making authority from a parent who they find is the better parent generally to have that authority. The decision-making authority has been taken away from them simply because they dared to question the public health messaging.

528. Doing so, raises huge concerns for this court based on the “slippery slope argument”.

529. If courts are prepared to take away decision-making authority from an otherwise capable parent simply because, based on their research, they have concerns about public health narrative and subjecting their child to a vaccination, this causes concern

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for this court not only in those cases but also in what this court considers the next logical steps in that determination.

530. Next, are courts going to, through child protection legislation, take away either decision-making authority or take away children altogether from parents in intact families who collectively determine to challenge public health narrative or as in this case to come to a conclusion that is not in their child or children's best interest to be vaccinated?

531. Following this logic further, the media has reported other cases where individuals who would otherwise be eligible for organ transplants, for example, have been denied those transplants simply because they made the decision based on what they believe to be informed consent that they are not prepared to be vaccinated.

532. Does this logic continue to a case where courts will be mandating vaccinations for those who object and disagree with public health recommendations?

533. No doubt some will argue this is a far-fetched possibility, but is it?

534. For all of the above reasons, this court is not prepared to take judicial notice of the "fact" that COVID-19 vaccines for children are "safe".

Censorship of Dissenters

535. In this case, this court has made reference to censorship of those who dare challenge the public health messaging with respect to vaccines in the mainstream media and in search engines such as Google and apps such as Twitter.

536. However, as can be seen from some of the cases cited here in, courts have also been prepared to make orders censoring parents who have a dissenting opinion.

537. Orders have been made precluding those parents from sharing any such opinions with their children or allowing their children to view any such dissenting opinions either on the Internet or otherwise.

538. The court well understands, as is ordered typically in family law cases that the courts discourage, as does this court, parents from involving their children in adult disputes.

539. However, issuing an order which precludes a parent from allowing their teenage child to view something that is contrary to the public health narrative is deeply concerning to this court. Hasn't the education system particularly since the 1960s, encouraged and promoted children to be critical thinkers?

540. Yet it would appear that any time anyone challenges the mainstream "narrative" they are immediately tarnished with a brush as putting forward "misinformation".

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541. There are countries where the courts follow the government narrative and do not permit the dissemination of opinions that vary from that government narrative. This court would expect that one could take judicial notice of the "fact" that Canada should not be such a country.

542. The hallmark of justice is that courts must be viewed to be independent and impartial triers of fact.

543. We are expected to be gatekeepers and to protect the rights of individuals and groups.

The Court as a Gate Keeper

544. Courts are expected to be "gatekeepers" and to protect the interests of those who need the protection of the courts such as children.

545. In performing this role, it is important to look at as was earlier referenced, what we know and what we don't know.

546. We know that the COVID-19 vaccine is based on new technology and that it has been "invented" approximately two years ago.

547. This court is therefore prepared to take judicial notice of the fact that it is impossible to know the long-term effects of the vaccines simply because of the newness of the vaccines.

548. We further know that governments were promoting, but are no longer promoting, vaccines that have been manufactured by Astra Zeneca.

549. Public health authorities are promoting vaccines and are telling the public that vaccines are "safe and effective".

550. Based on the review of other cases, we know that there are others, whom this court would deem to be reasonable people, who disagree with the public health, big pharma, and government "messaging" that the vaccines are in fact "safe and effective".

551. Courts, as gatekeepers, have over the years in utilizing that role, promoted the rights of individuals and groups who, at that point in time did not have any such rights and whose rights were not being protected at the time by governments or by mainstream media.

552. It was the court, that for example, based on rulings, gave women many rights that they had not had up until that point in time. Similarly, it was courts that gave rights to non-heterosexual groups who previously had not had those rights. A prime example that comes to mind is the right to same sex marriage.

553. This court views its obligation to protect the rights of children who are before the court.

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554. Within those rights, this court has referenced, the right to be protected from the administration of a procedure (in this case a vaccine) without the court having assurances that the administration of such a vaccine is, at least on a minimum of a cost benefit analysis, more beneficial to the child than the risk that the child faces in not being vaccinated.

555. This court finds that it has an obligation to protect the rights of an individual under the *Health Care Consent Act* to be able to make an informed consent and, where the individual or the parent of a child who was not of sufficient age to make that decision for themselves, has concluded that they do not want to take the risk of having a vaccine administered to them, that the court has an obligation to protect their rights to make an informed consent by not taking the vaccine certainly without being satisfied that the concern of the individual is not that of a "reasonable person".

Finding in this case

556. Having determined, that the court is not prepared to take judicial notice of the fact that the COVID-19 vaccines for children are safe, and effective, this court is left with little if any probative evidence on which it could order that the respondent mother have decision-making authority on the issue of COVID-19 vaccinations and make the order that she is requesting.

557. The evidence before the court is that each of the three children had COVID-19, appeared to have had mild symptoms, and recovered from it. The uncontradicted evidence is that all three children are currently healthy and happy.

558. The applicant father's position has been that the decision as to whether or not the children should be vaccinated is one that should be deferred, and that if the parties are unable to come to a consensus based on further research and empirical data that becomes available, then the issue would have to be decided at a trial where each party could call expert evidence.

559. The court concurs with that submission.

560. This court has raised many questions which this court believes need to be addressed by expert evidence before certainly this court would be willing to mandate a child to be vaccinated contrary to their, or their parents' belief based on informed consent that such vaccination may pose a greater risk than benefit to the individual.

561. While this court is not taking judicial notice of the fact that vaccines are "safe and effective", the court wishes to be very clear that it is not taking judicial notice either of the other propositions and questions posed by this court. The court simply raised those questions and propositions as the rationale for this court not taking judicial notice of the proposition that vaccines are "safe and effective". This court has raised many questions based on media reports and on findings from other cases where doctors and

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scientists have an opinion different from that of public health and government on the issue of whether or not vaccines are safe and effective.

562. This court does not have any evidence before it on which it can make any findings with respect to these "dissenting opinions".

563. The *Family Law Rules*, and specifically Rules 20.1, 20.2 and 20.3 set out criteria for the tendering of expert evidence. The court does not have that type of expert evidence before it and the father is asking for an opportunity to proffer that evidence at trial.

564. To be very clear, this court is not taking judicial notice of these dissenting opinions as being "fact".

565. This court finds that these dissenting opinions do create a situation pursuant to which the court finds that the messaging of public health, government, the pharmaceutical companies who manufacture and distribute and profit from these vaccines, the mainstream media and social media platforms all of which have the messaging that the vaccines are "safe and effective" for children is a proposition that to this court is far from uncontroversial and is something that this court finds is being challenged by reasonable people.

566. Courts are required to be impartial adjudicators of the facts before them.

567. Save and except for the issue of whether or not to take judicial notice, courts should not be making determinations except based on the evidence before them.

568. Judicial notice is an exception to that rule. We as courts, may take judicial notice of something that is uncontroversial and not subject to dispute by reasonable people.

569. This court posits that a court, in determining whether or not to take judicial notice cannot nor should it be oblivious to the court's experiences generally in life and the information that the court receives in day-to-day life from sources such as the media.

570. The court has used the analogy of a flat versus a spherical earth and has noted that all of this court's life observations are consistent with the earth being a sphere rotating on its axis and revolving around the sun.

571. Therefore, as noted the court would have no difficulty taking judicial notice of that "fact".

572. In addition to the material put forward by the father in this case and in addition to the information ascertained from its review of other cases, this court finds that it cannot ignore events of which it is aware that are possibly inconsistent with the proposition that these vaccines are "safe and effective".

573. Millions of viewers have seen television broadcasts of live sporting events where athletes who appeared to be in top physical condition and in the prime of their life

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have collapsed, and in some cases died of myocardial incidents. Based on other widespread media reports, the court notes that most professional sports leagues required players to be vaccinated.

574. Is it possible that there may be a correlation between these players being vaccinated and these incidents?

575. Of course, the court has no evidence before it on which to make this finding.

576. However, the observation of these incidents certainly is not evidence that is supportive of finding that the court should take judicial notice of proposition that vaccines are safe and effective.

577. That is just another rationale for this court to find that it requires expert evidence before making any determination that would require or result in these children being vaccinated.

578. The court well appreciates that it is extremely expensive to have expert evidence put forward at a trial.

579. Having said that, should courts be prepared to take a risk with a child's life based on simply following public health messaging because that is an efficient way of operating?

580. To this court the answer is clearly no. While it may be expensive and inconvenient, this court finds that it is a necessary exercise in order for courts to be assured that we are not requiring something that is potentially harmful to a child.

581. History has taught us, as set out in some of the examples herein, that mistakes have been made in the past which have been extremely detrimental to individuals upon whom the results have been imposed.

582. Governments and public health authorities have been wrong before. The court has cited the example of Thalidomide.

583. The media is promoting a message that is based on representations by public health, the government and pharmaceutical companies who manufacture these vaccines. Therefore, if any of them are wrong, then the media message is by nature also wrong.

584. Courts as well have been wrong before. The Mother Risk inquiry taught us that simply because many courts have been willing to accept a certain “fact” does not mean that well-meaning courts cannot be wrong in their assumptions.

585. This court finds that we should learn from history and to the greatest extent possible not replicate mistakes that have been made in the past.

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586. The court has posed many hypotheses in this decision which this court well realizes are extremely controversial. The court wishes to emphasize that the court is not suggesting that it has evidence to support that any of these hypotheses are true. This court's decision is not based on the assumption that any are in fact true.

587. The whole purpose of this court raising these hypotheses is to demonstrate that the proposition of public health authorities that the vaccines are “safe and effective” is to this court extremely controversial and one of which according to the criteria set out by the Supreme Court of Canada can be challenged by reasonable people and therefore this court should not be taking judicial notice of that proposition as being true.

588. If there is a presumption that public health directives are presumed to be true, and therefore courts should take judicial notice of the same unless the court is satisfied that the presumption has been rebutted this court finds that the applicant father should be entitled to have that addressed at trial wherein he could call expert evidence.

589. The respondent mother’s motion is therefore dismissed and this case will be referred to the trial coordinator to schedule a further settlement conference before the trial management judge.

590. The applicant father has raised an issue in his materials about consent to a vacation in Mexico for March break 2023. That is only a few weeks away. Should the parties not be able to resolve that issue, leave is given to the applicant father to bring a motion with respect to the same prior to the scheduling of any settlement conference.

591. In this particular case, the court had not heard or received evidence of the views and preferences of the children. The eldest child is now 10 years of age. The court has no evidence as to his level of maturity and whether or not the parents would agree that he is or is not mature enough to form an informed decision on the topic.

592. The concern that the court has, is that it does not wish to create a situation pursuant to which either or both parents feel that it is appropriate to attempt to influence the child one way or the other.

593. The court has seen many cases in which parents attempt to do so, and one of the cases that was cited by the court heard evidence that the child felt that she was on a pizza which was being pulled in opposite directions by each parent. That is clearly not in the child’s best interest.

594. The court would implore the parents to not “pressure” the child to come to a decision in accordance with the parent’s belief.

595. In many disputes, and in particular in many family law situations, parents are not willing to open mindedly consider the position taken by the other parent.

596. As with any family law case, often the most damaging impact to the children is the conflict between the parents.

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597. The court would encourage the parents to open mindedly consider all of the research available to each of them.

598. Knowledge is a powerful tool.

599. Perhaps it is naive of this court to believe that it is possible, but the court would encourage each side to share with the other all of the information that they have researched and would encourage the other parent to open mindedly read and listen to that information and to open mindedly do their own research.

600. Better than having a trial on the issue, would be a situation whereby the parents could come to a consensus thereafter.

601. The court has absolutely no doubt each of the parents loves the children and wants to do what they believe to be in the children's best interest. Simply because parents disagree on what is in the children's best interest, does not make the dissenting parent a "bad parent", even if that parent's opinion is contrary to public health recommendations.

Ontario Court of Appeal Decision: *J.N. v. C.G.*, 2023 ONCA 77

602. This court had completed its final draft of this decision and was literally about to release it when the court learned of the release by the Court of Appeal of Ontario of a decision in *J.N. v. C.G.*

603. This court obviously respects the authority of the Court of Appeal and understands that it is bound by rulings of that court.

604. On first review, it may appear that the situations faced by this court and by the Superior Court in that case were very similar in that they both involve a decision in which a parent is seeking decision-making authority to allow them to have children vaccinated over the objections of a dissenting parent.

605. It may therefore appear that this court would be bound to change its entire decision as a result of the Court of Appeal decision.

606. However, this court finds that there are three reasons why, through the distinguishing of the case before the Court of Appeal and based on the date of the decision that was appealed, that this court is not bound to do so.

607. This court finds that there is a major difference between the issue before this court and the issue before the Superior Court in *J.N v. C.G.*

608. The difference is in what the dissenting parent in this case is asking the court to do, that being to allow him to present expert evidence at trial.

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609. In the case of *J.N. v. C.G.*, the father, who was wishing to have the two younger children vaccinated brought a motion seeking a change in decision-making authority to allow him to do so. The mother had to that point in time, decision-making authority for those two children which, would have included decision-making authority over vaccinations.

610. In the case before this court, it was the mother, who brought a motion seeking decision-making authority specifically with respect to the issue of vaccinations.

611. In *J.N. v. C.G.*, pursuant to the parties' minutes of settlement, they agreed to have that issue decided by the court.

612. The father however in the case before this court was not asking that decision-making be given to him as a result of the motion (which decision presumably would have been not to vaccinate the children).

613. The father in the case before this court was asking that the matter be deferred to a trial to allow him the opportunity to present expert evidence in order to support the position that he was taking that being that the COVID-19 vaccines were not "safe and effective" as had been messaged by public health authorities.

614. The second major difference between the decision in *J.N. v. C.G.*, at the Superior Court level and the decision reached by this court relates to the conclusions that each of us has found.

615. In *J.N. v. C.G.*, the motions judge found that the Internet articles proffered by the mother who was objecting to the child being vaccinated, should be accepted as evidence.

616. The motions judge therefore found that based on the evidence that was before him, that the father's motion seeking to change decision-making authority was dismissed.

617. The Court of Appeal has upheld the father's appeal of that decision finding that the "evidence" before that court was not "proper evidence".

618. However, this court finds that the Court of Appeal decision can be distinguished from the findings of this court.

619. This court has not utilized any of the evidence produced by the dissenting father defined as a fact with respect to the truth of the contents of those representations.

620. What this court has found is that the issues raised by the father are sufficient to cause this court to find that it should not take judicial notice of the proclamations of public health authorities that the vaccines are "safe and effective".

621. The court notes that the Ontario Court of Appeal found that it allowed the appeal based on the first ground of appeal that being, "Did the motion judge err by accepting

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and relying on the respondent's online resources as expert evidence and by finding that they raised legitimate concerns about the safety, efficacy and need for the COVID-19 vaccine?"

622. The court found that the motions judge had in fact erred by accepting the respondent's resources as expert evidence and making a finding based thereon.

623. The second ground of appeal was, "Did the motion judge err by finding that the appellant's evidence (from public health authorities and other well-known sources) was credibly disputed?"

624. The Court of Appeal noted that, "While taking judicial notice of a fact is highly discretionary, I note that several courts have already taken notice of the safety, efficacy and importance of the pediatric COVID-19 vaccines." The Court of Appeal then quotes many of the same decisions that this court has quoted.

625. However, this court notes that it is not bound by any of those other decisions either referenced by this court or referenced by the Court of Appeal. They are for the most part decisions of a court of coordinate jurisdiction.

626. The Court of Appeal further stated, "I need not decide whether judicial notice should be taken of the public health and government information adduced by the appellant, as the motions judge fell into error in other respects including by treating government approval of the vaccine as irrelevant."

627. This court would hope it is clear from its decision, that this court has not treated the public health and government information as "irrelevant".

628. The Court of Appeal went on to review section 25 of the *Ontario Evidence Act*, R.S.O. 1990, c. E.23.

629. As noted earlier, this court has accepted pursuant to s. 25 of the *Evidence Act* that evidence is not required to prove the proclamations of government have been made.

630. So that there can be no doubt of this court's finding, this court accepts that public health authorities are saying what the respondent mother claims that they are saying in that these vaccines are "safe and effective".

631. In paragraph 26 of their decision, the Court of Appeal in speaking of the public health document exception to the hearsay rule states, "While this speaks only to admissibility, and not to what weight a judge must ultimately assign to it, it is important to understand why s. 25 exists..."

632. In paragraph 28, the Court of Appeal continues by saying, "Again, this does not compel a judge to give the evidence any weight, but given the purposes behind s. 25 and the public document exception, there is at least an obligation to explain why materials like those filed by the appellant are not trustworthy, which the motion

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judge’s reference to some of Canada's historical misdeeds - all false equivalencies - fails to achieve.”

633. Once again, in this decision, the applicant father was not asking this court to decide, nor is this court deciding, that the public health documents are not trustworthy; he simply ask that he be given an opportunity to call expert evidence to challenge that.

634. This court's decision is that the applicant father on behalf of the children should be afforded an opportunity at trial to produce expert evidence to challenge the trustworthiness of the proclamations made by public health authorities.

635. Again, this court finds that that is a major distinction between the case that this court faces and the decision that it has rendered, and the decision of the motions judge in *J.N. v. C.G.*

636. In the third question -posed by the court relating to the children's views and preferences, the court finds that this ground for appeal, is not relevant in the case before this court as there is no evidence before this court as to the children's views and preferences with respect to the issue of vaccination. The court therefore finds it need not address that issue.

637. The fourth ground for appeal was, “Did the motion judge err by placing the onus on the appellant to show that the children should be vaccinated?”

638. The Court of Appeal allowed the appeal on this ground as well.

639. The Court of Appeal at para 38 notes, as has this court, that “most family court decisions related to the pandemic, at least to this point, have deferred to the government recommendation that people, including children, get vaccinated against COVID-19.”

640. This court has clearly noted that by a ratio of 20:1, courts in fact made that finding.

641. The Court of Appeal noted at para 41 that while the motions judge was “not obliged to adopt the reasoning in a court of coordinate jurisdiction, it was important for the motion judge to cogently explain why he was departing from decisions that had already addressed health- related parenting decisions in this same context.”

642. This court believes that it has thoroughly explained the rationale why this court is rendering a decision that runs contrary to those other decisions of courts of coordinate jurisdiction.

643. The Court of Appeal in paragraph 44 then recalls the two primary rationales for public documents exception to the hearsay rule. The first is the impracticality of traditional modes of proof.

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644. In the event that this court has left any ambiguity, this court is not suggesting and not finding, that the applicant mother would be required to call expert evidence by *viva voce* evidence to prove what the public health authorities are saying.

645. This court has found, that it is prepared to accept as a fact that public health authorities are issuing proclamations that the COVID-19 vaccines are "safe and effective".

646. The Court of Appeal at para 45 finds that "judicial notice should be taken of regulatory approval, and regulatory approval is a strong indicator of safety and effectiveness. That being the case, where one party seeks to have a child treated by Health Canada-approved medication, the onus is on the objecting party to show why the child should not receive that medication. The motion judge erred by reversing that onus."

647. That is a finding made by the Court of Appeal.

648. That finding however does not preclude the dissenting parent from having an opportunity to have their day in court and having an opportunity at a trial to call expert evidence that may rebut that presumption.

649. This court indicated that there are three reasons why it finds that the Court of Appeal decision does not result in a requirement that this court change its decision.

650. In this decision, this court has referenced "we need to know what we know and equally importantly we need to know what we do not know."

651. The decision rendered by the motions judge in *J.N. v. C.G.* was rendered in February 2022, one year ago.

652. The Court of Appeal makes no reference to any "fresh evidence" being called before it and therefore this court assumes that none was called. That results in an assumption that the Court of Appeal based its decision solely on the evidence that was before the motions judge one year ago.

653. As referenced earlier in this decision, this court finds that no one can say with certainty what the long-term effects are of these vaccines given that these vaccines have not been administered to any child for a sufficient length of time in order to have empirical evidence on which to base that finding.

654. The Court of Appeal has found that public health proclamations create an onus on the dissenting party to rebut a presumption.

655. This court has noted that public health proclamations have been a moving target over the last three years.

656. Public health records will show that they continue to be a moving target.

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657. Public health proclamations have changed over the last three years and, if history is a predictor of the future, they will continue to change over the next months and years.

658. The court addressing a trial in this issue will be faced with the public health proclamations that exist at the time of trial which may be different to those that exist today.

659. This court has made reference to the fact that in taking judicial notice, any court cannot be oblivious to what has transpired in the world and what has been broadly reported in the media.

660. The father before this court, is asking that the court not decide the issue of the vaccination of his children based on the public health proclamations on the one side and the "Internet evidence" that he has put forward on the other side. He is asking the court to defer the matter to a trial so that he would be given an opportunity to put forward expert evidence which he believes would demonstrate to a court that the vaccines are not "safe and effective".

661. This court is well aware of its obligations pursuant to Rule 2(3) of the *Family Law Rules* which require the court to among other things consider when making a decision the resources available to the court and the pressures on the court of other cases.

662. This court would posit that judges in the GTA and in particular, those in the burgeoning population of Central East and Central West Regions know better than anyone the pressures that are on the courts. Statistics will show that the family court in which this justice sits, is probably one of the busiest in the province if not the country.

663. This court does not routinely put matters over for trial where the matter can be addressed in a more expeditious manner such as a motion, a summary judgment motion or a judicial dispute resolution process.

664. However, when it comes to the protection of children, the court finds that court efficiencies should not result in courts rendering decisions which by their nature involve the very lives of the children who were before them.

665. The dissenting father in this case has expressed concerns that he questions the safety of the vaccine and is concerned that the parties' children's health could be put at risk if the vaccine was administered to them. He seeks to be permitted to have a trial and to call expert evidence so that a court has the best possible evidence before it prior to deciding the issue.

666. The *Charter of Rights* ensures that accused persons have the right to a fair trial. This court finds that innocent children should and do have that same right.

667. For all of the above reasons, the court finds that the respondent mother's motion is dismissed and as stated earlier, this matter should be scheduled for trial to afford the parties to put forward expert evidence.

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Costs

668. So far as the issue of costs are concerned, this court wishes to state the following.

669. Based on the affidavits and submissions made on behalf of the parties, the court has no doubt that each parent loves their children and that each parent was motivated in this motion by a genuine belief that what they were seeking is in the best interests of their children.

670. The court has made a determination which is obviously favorable to the applicant father.

671. However, particularly given the decisions that had been rendered prior to this motion being heard the court does not find that the respondent mother was being unreasonable in bringing this motion.

672. Therefore, while the court is not precluding the applicant father from seeking costs, the court wishes to communicate that unless counsels' submissions convince the court otherwise, this court does not anticipate that costs would be awarded.

673. So far as the issue of costs is concerned, if the parties cannot agree on that issue, then the respondent mother shall submit cost submissions, not exceeding three pages in length and not including offers to settle and bills of costs. Those submissions shall be served and filed no later than February 28, 2023. The applicant father's responding submissions of the same length shall be served and filed no later than March 15, 2023, and the reply submissions if any by March 22, 2023. If no cost submissions are filed by February 28, 2023, then there will be no order as to costs.

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Justice R.T. Bennett

Date: February 8, 2023

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