

Most Negative Treatment: Not followed

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2022 ONSC 1198
Ontario Superior Court of Justice

J.N. v. C.G.

2022 CarswellOnt 2062, 2022 ONSC 1198, 2022 A.C.W.S. 178, 67 R.F.L. (8th) 277

J.N. (Applicant) and C.G. (Respondent)

A. Pazaratz J.

Heard: February 18, 2022

Judgment: February 22, 2022

Docket: 987/18

Counsel: Applicant, for herself
Jesse Herman, for Respondent

Subject: Contracts; Evidence; Family

Related Abridgment Classifications

Family law

X Custody and access

 X.9 Terms of custody order

 X.9.d Healthcare decisions

Headnote

Family law --- Custody and access — Terms of custody order — Healthcare decisions

Parties were married for seven years, and they had three children — Oldest child primarily resided with father and he had sole decision-making authority, while two younger children primarily resided with mother and she had sole decision-making authority, but parties were required to consult with each other prior to making major decisions for children — Father wanted two younger children to receive COVID vaccinations, but mother was opposed — Oldest child elected to be vaccinated, but younger children did not want to be vaccinated — Father brought motion requesting that two younger children receive COVID vaccine and recommended boosters — Motion dismissed — Younger children were not old enough to decide complicated issue for themselves, but court should not completely ignore how they felt — Children had sufficient age, intelligence, maturity and independence to understand issue and formulate their own views; they held views very strongly and for extended period of time; and they outlined very specific reasons for decision which did not appear to be frivolous — There was no evidence that mother inappropriately influenced children — Father embarked on relentless campaign to dismiss mother as lunatic, while mother presented her evidence and made submissions in calm, mature, articulate, analytical, researched and entirely child-focused manner — Father came across as intolerant, and he focused more on discrediting mother's ideas than explaining his own — Mother quoted extensively from leaders in medical and scientific community — Children's physical, emotional and psychological safety, security and well-being, as well as their views and preferences, required that significant weight be given to each child's stated views and requests — Mother's position was more reasonable as she invited discussion and exploration of both sides of story, while father inaccurately and unfairly characterized mother's position and her evidence — Mother had gone to extraordinary lengths to inform herself, maintain open mind and discuss issue with children in balanced, enlightened and dispassionate manner — Court could not say that either side was necessarily correct — Legitimate and highly complex debate existed on efficacy and utilization of COVID vaccines — Mother's request for cautious approach was compelling, and

was reinforced by children's legitimate views which deserved respect — Mother consistently made excellent, informed and child-focused decisions, she was exemplary parent, she raised legitimate concerns, and she was to have sole decision-making authority with respect to administering COVID vaccines for two younger children.

Table of Authorities

Cases considered by A. Pazaratz J.:

Decaen v. Decaen (2013), 2013 ONCA 218, 2013 CarswellOnt 3922, 303 O.A.C. 261 (Ont. C.A.) — considered
E.M.B. v. M.F.B. (2021), 2021 ONSC 4264, 2021 CarswellOnt 8802 (Ont. S.C.J.) — considered
ITV Technologies Inc. v. WIC Television Ltd. (2003), 2003 FC 1056, 2003 CarswellNat 2744, 29 C.P.R. (4th) 182, 2003 CF 1056, 2003 CarswellNat 4812, 239 F.T.R. 203 (F.C.) — referred to
McDonald v. Oates (2022), 2022 ONSC 394, 2022 CarswellOnt 320 (Ont. S.C.J.) — considered
Pierre v. Pierre (2021), 2021 ONSC 5650, 2021 CarswellOnt 11991 (Ont. S.C.J.) — referred to
R.S.P. v. H.L.C. (2021), 2021 ONSC 8362, 2021 CarswellOnt 19424 (Ont. S.C.J.) — considered
Rouse v. Howard (2022), 2022 ONCJ 23, 2022 CarswellOnt 631 (Ont. C.J.) — considered
Saint-Phard v. Saint-Phard (2021), 2021 ONSC 6910, 2021 CarswellOnt 14390, 63 R.F.L. (8th) 92 (Ont. S.C.J.) — considered
Sutton v. Ramos (2017), 2017 ONSC 3181, 2017 CarswellOnt 7799 (Ont. S.C.J.) — referred to

Statutes considered:

Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11

Generally — referred to

Children's Law Reform Act, R.S.O. 1990, c. C.12

Generally — referred to

Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.)

Generally — considered

s. 16(1) — referred to

s. 16(2) — referred to

s. 16(3) — referred to

s. 16(3)(e) — considered

MOTION by father requesting that two younger children receive COVID vaccine.

A. Pazaratz J.:

- 1 When did it become illegal to ask questions? *Especially in the courtroom?*
- 2 And when did it become unfashionable for judges to receive answers? *Especially when children's lives are at stake?*
- 3 How did we lower our guard and let the words "unacceptable beliefs" get paired together? *In a democracy? On the Scales of Justice?*
- 4 Should judges sit back as the concept of "Judicial Notice" gets hijacked from a *rule* of evidence to a *substitute* for evidence
- 5 And is "misinformation" even a real word? Or has it become a crass, self-serving tool to pre-empt scrutiny and discredit your opponent? To de-legitimize questions and strategically avoid giving answers. Blanket denials are almost never acceptable in our adversarial system. Each party always has the onus to prove their case and yet "misinformation" has crept into the court lexicon. A childish - but sinister - way of saying *"You're so wrong, I don't even have to explain why you're wrong."*
- 6 What does *any* of this have to do with family court? Sadly, these days it has *everything* to do with family court.

7 Because when society demonizes and punishes anyone who disagrees - or even dares to ask really important questions - the resulting polarization, disrespect, and simmering anger can have devastating consequences for the mothers, fathers and children I deal with on a daily basis.

8 It's becoming harder for family court judges to turn enemies into friends — when governments are so recklessly turning friends into enemies.

9 The motion before me is a typical - and frightening - example of how far we are drifting from cherished values.

10 The father wants two children ages 12 and 10 to receive COVID vaccinations. The mother is opposed.

11 Now, answer honestly. Did the previous paragraph give you enough information to form an opinion about how this case should turn out?

12 We're all weary. We all wish COVID would just go away. But pandemic fatigue is no excuse for short-cuts and lowering our standards. We all have to guard against the unconscious bias of thinking "*Why won't these people just do what the government tells them to do?*"

13 We have to decide on the basis of the best interests of each particular child in each particular fact situation.

14 We have to rely on - and insist upon - evidence.

15 In this case the evidence provided more questions than answers.

a. The father filed two affidavits.

b. The mother filed one.

c. They both relied extensively on unsworn "exhibits", which were basically internet downloads.

d. In addition, the father relied on numerous downloads from the mother's social media accounts.

e. They both consented to my receiving these materials, to demonstrate the sources of information which each of them is relying on in formulating their respective parenting position.

16 The basic facts are not disputed:

a. The mother is 34 years old. The father is 35.

b. They were married on November 24, 2007 and separated on June 1, 2014.

c. They have three children, a 14 year old son C.B.G.; a 12 year old daughter L.E.G.; and a ten year old son M.D.G..

d. C.B.G. resides primarily with the father. L.E.G. and M.D.G. reside primarily with the mother.

e. Pursuant to final order based on minutes of settlement signed October 5, 2021, the father has sole decision-making authority with respect to the oldest child. The mother has sole decision-making authority with respect to the two children who are the subject of this motion. The order requires the parties to consult with each other prior to making major decisions for the children.

f. When the parties signed the minutes of settlement, they already knew that they disagreed about the issue of vaccinations. The minutes of settlement specified: "*The issue of the children L.E.G. and M.D.G. receiving a COVID-19 vaccine shall remain a live issue and shall be determined at a later date. The child C.B.G. can determine whether or not he wants to be vaccinated now.*"

g. In fact, earlier in the pandemic the father went to court complaining the mother was being *too protective* of the children when it came to COVID. In August 2020 the father brought a motion trying to compel the children to attend school in person for the 2020-2021 school year. The mother argued that the risk of COVID exposure was too high; she was particularly concerned about the oldest child's medical vulnerability as a result of his history of asthma; and she proposed remote learning for the children until the pandemic risk subsided. On September 23, 2020 Justice Bale issued a lengthy endorsement dismissing the father's motion, and confirming that the mother's position was appropriate and in the best interests of the children.

h. In 2020 the father alleged the mother was being *too protective* about COVID. Now he's saying she's not protective enough. He brought a motion dated January 25, 2022 requesting that L.E.G. and M.D.G. receive the COVID vaccine and all recommended booster vaccines. He also asks that he be permitted to arrange the vaccinations and attend with the children, because he doesn't trust that the mother will comply even if she is ordered to do so.

i. Meanwhile, soon after the parties signed Minutes in October 2021 the older child C.B.G. elected to be vaccinated. Both parents supported his decision. He's had two shots, and the parents agree he has exhibited no adverse effects.

j. The mother insists the father is misrepresenting her position. She is not opposed to vaccines. She is offended by the pejorative term "anti-vaxxer". She has always ensured that the three children received all of their regular immunizations. She says she's open minded to vaccinating both younger children if safety concerns can be better addressed. But she says her extensive research has left her with well-founded concerns that the potential benefit of the current COVID vaccines for L.E.G. and M.D.G. is outweighed by the serious potential risks. She says there are too many unknowns, and she worries that "once children are vaxed, they can't be unvaxed."

k. The mother notes that both children have already had COVID - with minimal symptoms - and they have recovered completely. She refers to medical research which says that since they have already recovered from COVID, the children now have greater protection from future infection.

l. Both parents agree L.E.G. and M.D.G. are in excellent health, with no special medical needs or vulnerabilities.

m. Neither parent provided any evidence from a medical professional about any potential positive or negative considerations with respect to *these* children receiving COVID vaccines.

17 The mother's evidence focused entirely on the medical and scientific issues.

18 In contrast, the father focussed extensively on labelling and discrediting the mother as a person, in a dismissive attempt to argue that her views aren't worthy of consideration.

a. This odious trend is rapidly corrupting modern social discourse: Ridicule and stigmatize your opponent as a person, rather than dealing with the ideas they want to talk about.

b. It seems to be working for politicians.

c. But is this really something we want to tolerate in a court system where parental conduct and beliefs are irrelevant except as they impact on a parent's ability to meet the needs of a child?

19 For example, the father's affidavits included the following:

a. "I am aware that the Applicant has political affiliations with the People's Party of Canada. The Applicant is entitled to her personal beliefs and ideologies, but I am very fearful that it is having a direct, negative impact on the children, especially when it comes to this vaccine issue."

- b. "I searched the Applicant's recent Facebook postings and was alarmed to see just how involved the Applicant is at perpetuating COVID-related conspiracy theories and vaccine hesitancy."
- c. He attached "a collection of some of the Applicant's Facebook postings which I believe are indicative of her personal views."
- d. "The Applicant is a self-proclaimed 'PPC founding member'. In my opinion, she is openly promoting very dangerous beliefs. Surely, these thoughts and feelings are also being promoted in her household, which is where L.E.G. and M.D.G. primarily reside."
- e. "I looked up what the PPC stance is on the COVID-19 vaccine and was not surprised to read under its website's "FACTS" section that "lockdowns, mask mandates, school closures and other authoritarian sanitary measures have not had any noticeable effect on the course of the pandemic." Unfortunately, no facts are actually provided."
- f. He attaches a copy of the PPC's COVID Policy taken from its website.
- g. "I am alarmed that the children are being exposed to the Applicant's unsupported views on the issue of the pandemic, and in particular the efficacy of the available and Government-recommended vaccines."
- h. "The Applicant's anti-vaccination stance is much more severe than that of a regular concerned parent, who is unsure whether or not she wants the children to receive a relatively new vaccine. Rather, the Applicant is leading the charge, attending anti-vaccine rallies and refusing to follow COVID protocols."
- i. He attaches a Facebook posting of the mother not wearing a mask "in a crowd of 10,000 people at a rally."
- j. He makes other references to the mother's Facebook account, and attaches numerous pictures of her social media pages.
- k. He attaches photographs of PPC leader Maxime Bernier addressing an audience.

20 Where to begin.

- a. How is any of this relevant?
- b. Have we reached the stage where parental rights are going to be decided based on what political party you belong to?
- c. Is being seen with Maxime Bernier - or anyone, for that matter - the kiss of death, as far as your court case is concerned?
- d. Can you simply utter the words "conspiracy theorist" and do a mic drop?
- e. If you allege that someone is "openly promoting very dangerous beliefs", shouldn't you provide a few details. A bit of proof, maybe?
- f. And if you presume that a parent believes things they shouldn't believe - can you go one step further and also presume that the parent must be poisoning their children's minds with these horrible unspecified ideas? ("*Surely, these thoughts and feelings are also being promoted in her household...*")
- g. The father criticizes the mother for something she didn't say. He presumes she doubts the effectiveness of school closures, and then criticizes her for providing no evidence. But on this motion she didn't raise the issue. And back in 2020 *she* was the one who wanted to keep the children out of school, and *he* fought (unsuccessfully) for them to attend. As with other allegations, the father provides no evidence of his own, and fails to address the fact that vigorous community debate led to school closures being abandoned.

h. How far are we willing to take "guilt by association"? If you visit a website, read a book, or attend a meeting — are you permanently tarnished by something someone else wrote or said? At what point do the "thought police" move in?

i. And really, how fine is the line between "vaccine hesitancy" and "not taking any chances with your kid"? All of the caselaw says judges have to act with the utmost caution and consider all relevant evidence in determining the best interests of the child. How can we then impose a lesser standard on a demonstrably excellent parent?

21 It is of little consequence that an individual litigant chooses to advance such dubious and offensive arguments. Even though the father may not admit it, this is still a free country and people can say what they want. *Including him.*

22 But there's a bigger problem here. An uglier problem.

23 We're seeing more and more of this type of intolerance, vilification and dismissive character assassination in family court. Presumably we're seeing it inside the courtroom because it's rampant outside the courtroom. It now appears to be socially acceptable to denounce, punish and banish anyone who doesn't agree with you.

24 A chilling example: I recently had a case where a mother tried to cut off an equal-time father's contact with his children, primarily because he was "promoting anti-government beliefs." And in Communist China, that request would likely have been granted.

25 But this is Canada and our judicial system has an obligation to keep it Canada.

26 I won't belabor the point, because I still have to get to my real job: determining what's in the best interests of these two children. But the word needs to get out that while the court system won't *punish* intolerance, it certainly won't reward it either.

27 All parenting issues - including health issues - must be determined based upon the best interests of the child. Last year's amendments to the *Divorce Act* (applicable in this case) and the *Children's Law Reform Act* make it mandatory for the court to include consideration of a child's views and preferences to the extent that those views can be ascertained.

28 As Justice Mandhane stated in *E.M.B. v. M.F.B.*, 2021 ONSC 4264 (SCJ):

60. The requirement in s. 16(3)(e) to consider the "child's views and preferences" is new and is consistent with Article 12 of the *Child Rights Convention*. In the Legislative Background to the *Divorce Act* amendments, the Department of Justice explains that:

Under Article 12 of the United Nations *Convention on the Rights of the Child*, children who are capable of forming their own views have the right to participate in a meaningful way in decisions that affect their lives, and parenting decisions made by judges and parents affect child directly. The weight to be given to children's views will generally increase with their age and maturity. However, in some cases, it may not be appropriate to involve the children, for example if they are too young to meaningfully participate.

See also: *Official Report of Debates (Hansard)*, 42nd Parl., 1st Sess., No. 326 (26 September 2018) at p. 21866 (Hon. Jody Wilson-Raybould).

61. A human rights-based approach fundamentally recognizes children as subjects of law rather than objects of their parents. Making children more visible in legal proceedings that affect their rights is fundamentally important in Canada because children are not guaranteed legal representation in family law proceedings. Therefore, in my view, even where there is no direct evidence about the child's views and preferences, s. 16(3)(e) still requires the court should make a reasonable effort to glean and articulate the child's views and preferences wherever possible, considering the child's age and maturity and all the other evidence before it.

29 In this case, the children's views have been *independently* ascertained — *they both don't want to receive the COVID vaccines* - but the father is asking me to ignore how they feel and force them to be vaccinated against their will. The background:

a. In 2021, in an effort to resolve parenting issues, the parties enlisted a well-respected local social worker, Michelle Hayes, to prepare a "Voice of the Child Report". The father filed Hayes' comprehensive seven-page report dated June 22, 2021.

b. For purposes of that report the children were each interviewed twice - once in the care of each parent.

c. During the interview period the mother and father had clearly identified their respective positions on vaccination. The report specifically addressed each child's views on the topic.

d. L.E.G. advised that she had discussed vaccinations with each parent privately. She knew her father favoured getting the shot and her mother didn't. L.E.G. specifically explained to Hayes the reasons why she didn't want to receive the COVID vaccines. She explained herself in some detail.

e. Similarly, M.D.G. had discussed vaccinations with each parent privately. He also knew his father promoted vaccination and his mother didn't. M.D.G. not only told Hayes he didn't want to be vaccinated, but he said he was "fearful that his father would make him." Indeed, M.D.G. told Hayes that "he wanted the judge to know his thoughts about his parenting schedule as well as the vaccine."

f. The mother says her children are mature and intelligent, and that they have come to their own conclusions without being pressured by either parent. She feels it is important to respect their clear wishes, comfort level and anxieties. She says she adopted the same position for her older son C.B.G., and when he decided he wanted to be vaccinated she was fully supportive.

g. The father says at ages 12 and 10 the children are too young to make an informed decision about this. He admits both children have expressed fear of the COVID vaccine. He suggests the younger child's views are wavering. But he's opposed to either child being interviewed again. No matter what the children say, he doesn't think the court should listen, because he feels the mother has planted these ideas in their minds. But he offered no proof of any coaching, manipulation or inappropriate statement by the mother.

h. Hayes' June 22, 2021 report was actually a follow-up to an earlier report she prepared on March 3, 2020. She has worked with the family for a long time and got to know the children quite well. The social worker expressed no concerns or suspicions about either child being manipulated or pressured by either parent. In her summary she stated: *"As in the original report, each of the children presented confidently and thoughtfully for both interviews. As they reviewed their thoughts, they each showed consistency in their views and preferences in each interview."*

30 While I agree with the father that these two children are not old enough to decide this complicated issue for themselves, I disagree with his suggestion that we should completely ignore how they feel about what they experience and what their bodies are subjected to. Rather than simplistically accept or reject what children say they want, the court must engage in a complex and sensitive analysis of the weight to be attributed to each child's stated views.

31 In *Decaen v. Decaen*, 2013 ONCA 218 the Court of Appeal set out the factors to consider when assessing a child's wishes:

a. Whether both parents are able to provide adequate care;

b. How clear and unambivalent the wishes are;

c. How informed the expression is;

d. The age of the child;

e. The maturity level;

- f. The strength of the wish;
- g. The length of time the preference has been expressed;
- h. Practicalities;
- i. The influence of the parent(s) on the expressed wish or preference;
- j. The overall context; and
- k. The circumstances of the preferences from the child's point of view.

32 With respect to L.E.G. and M.D.G.:

- a. They have received all their regular immunizations. At ages 12 and 10 they understand the experience of getting needles. And they understand the purpose of vaccinations is to create a long-term medical consequence in their body.
- b. They understand the magnitude of the COVID pandemic, and the personal and community health issues involved.
- c. They understand the extended and ongoing discussion about the COVID vaccine.
- d. They have both clearly and consistently stated their objection to receiving the COVID vaccine.
- e. They have both outlined very specific reasons for their decision. Those reasons do not appear to be frivolous, superficial or poorly thought out.
- f. Both children have sufficient age, intelligence, maturity and independence of thought to understand the issue and formulate their own views, feelings, comfort level, questions, *and fears* about what should or should not happen to their bodies.
- g. They hold these views very strongly.
- h. They have maintained these views for an extended period of time.
- i. Despite the father's speculation, there is no evidence that the mother has inappropriately drawn the children into any sort of personal or political agenda. *Both* parents have equally engaged in appropriate and necessary discussions with the children about the many aspects of the pandemic - including vaccinations. Both parents have answered the children's questions, provided information, and stated their own beliefs. The social worker's report gives no suggestion that either parent has pressured, manipulated, or unduly influenced either child. Nor did Hayes express any concern about internal inconsistencies or ambiguities with respect to either child's strongly stated views.

33 For the past two years *all* children have been bombarded with all sorts of information about the pandemic. It has become an inescapable, oppressive part of their daily lives. Mental health experts regularly warn us that we need to be mindful of the emotional impact of this scary new world on the young mind.

34 In this case, the father doesn't like what the children are saying, so he submits their views aren't worthy of consideration - just as he submits the mother's views aren't worthy of consideration. *There's a bit of a pattern here.*

35 But when a ten-year-old child says he's afraid he'll be forced to take the vaccine - *and he specifically wants the judge to know it* - I don't think that's something the court can or should ignore.

36 Children may not have wisdom. But they have [Charter](#) rights and undeniable emotions.

37 Any best interests analysis must take into account all relevant factors, including the impact on a child's mental health if their legitimate and powerful feelings and anxieties are ignored; and if they perceive they are being violated.

38 A number of recent court decisions have grappled with this new "COVID vaccine" issue, and in particular with the issue of the weight to be given to children's views on the subject. In most of those cases the children were younger than L.E.G. and M.D.G., so "views and preferences" were either unascertainable or less relevant because of the child's lack of maturity.

39 In *McDonald v. Oates*, 2022 ONSC 394 (SCJ) the court disregarded a ten-year-old's views, concluding that the child was unable to make an informed choice due to the contradictory information the child was receiving from his parents.

a. But unlike the situation with 10-year-old M.D.G., in *McDonald* there was no independent information as to the nature or strength of the child's views, and the court declined to order a Voice of the Child Report, to avoid delay.

b. Here I had the benefit of a thorough and highly informative Voice of the Child Report.

c. And unlike *McDonald*, as discussed below, I find that the objecting parent's concerns cannot be dismissed as frivolous or uninformed.

d. More to the point I find that there is no evidence that either M.D.G. or L.E.G. have been unduly influenced by either their pro-vaccine or anti-vaccine parent. I am satisfied that they came to their own conclusions, for understandable reasons.

40 In *Saint-Phard v. Saint-Phard*, 2021 ONSC 6910 (SCJ) the court overruled a 13-year-old's opposition to vaccinations, as conveyed through the child's lawyer.

a. Again, the child's situation was quite different from L.E.G. and M.D.G..

b. In *Saint-Phard* the child had made inconsistent and ambiguous statements; he had been misinformed by a physician; and the court concluded he was incapable of making an informed decision.

41 In *Rouse v. Howard*, 2022 ONCJ 23 (OCJ) Justice Hilliard provided a thoughtful analysis of facts more similar to the case at bar - even though the child in question was only nine.

17 Although Fiona is only 9, there is evidence before me that she is, at present, opposed to receiving the COVID-19 vaccine. In *A.C. v. L.L.*, [2021] O.J. No. 4992, Justice Charney considered section 4 of the Health Care Consent Act, 1996, S.O. 1996, c. 2 (HCCA), in his analysis as to whether the mother's consent was even required for the children to be vaccinated. Justice Charney noted that the HCCA does not provide any minimum age for capacity to make medical treatment decisions. That finding accords with the Supreme Court of Canada's decision in *A.C. v Manitoba (Director of Child and Family Services)*, 2009 SCC 30, wherein Justice Abella explained the common law "mature minor" doctrine at paragraph 47:

The doctrine addresses the concern that young people should not automatically be deprived of the right to make decisions affecting their medical treatment. It provides instead that the right to make those decisions varies in accordance with the young person's level of maturity, with the degree to which maturity is scrutinized intensifying in accordance with the severity of the potential consequences of the treatment or of its refusal.

18 Unlike in *A.C.*, where the children wanted to be vaccinated, and *Saint-Phard* where the child only expressed opposition to being vaccinated after the influence of the mother and her doctor, Fiona's views about vaccination appear to be long-standing and in accordance with her mother's beliefs about vaccines in general. An order granting Mr. Rouse decision-making authority would result in Mr. Rouse having the ability to override Fiona's right to withhold her consent to vaccination which may have negative emotional and/or psychological consequences.

42 The determination of any child's best interests is a fact-specific exercise, based on the evidence presented - *and tested* - in each case. As stated, an important - but not determinative - part of the analysis consideration of each child's views and preferences.

a. In each of the recent cases where a child's stated opposition to being vaccinated was overridden, the court made unfavourable findings with respect to the objecting parent's rationale and their inappropriate influence over the child.

b. The court concluded that the pro-vaccine parent had presented more reasonable information to the child, and more compelling arguments to the court in relation to the science.

c. In each case the court was left with more confidence in the pro-vaccine parent's parental judgment and insight on the issue of vaccinations.

43 But that's not at all what I'm dealing with in this case.

a. Despite the father's relentless campaign to dismiss the mother as some sort of lunatic, the reality is that the mother presented all her evidence and made all her oral submissions in a calm, mature, articulate, analytical, extensively researched, and entirely child-focussed manner. She is to be commended for her skillful and professional presentation as a self-represented party.

b. In contrast, the father came across as somewhat dogmatic, intolerant and paternalistic. He focussed more on discrediting the mother's ideas rather than explaining his own. And his shameless efforts to vilify the mother by ridiculing her personal beliefs bordered on hysterical.

c. I mention this to further explain why I have confidence that the mother has not inappropriately influenced the children to adopt their current views.

d. If the mother explained herself to the children the way she explained herself to me...and if the father explained himself to the children the way he explained himself to me...then I have absolutely no doubt about which of the parents communicated with the children in a more responsible manner.

44 Finally, we have the other "evidence" filed by the parents. And here we have to think carefully about what constitutes proper or sufficient evidence - and how we should apply it.

45 As with all the other recent COVID vaccine cases, the mother and the father attached dozens of pages of internet downloads to their affidavits. The fact that they both consented to my receiving all this unsworn material doesn't make it properly admissible. But at the very least, it informs me as to the type and quality of research each parent conducted in formulating their respective positions.

46 Included among the father's downloads from the internet:

a. A November 23, 2021 seven page "Position Statement" from the Canadian Paediatric Society.

b. A January 2022 five page "Caring for Kids" information sheet from the Canadian Paediatric Society.

c. A December 17, 2021 nine-page "Vaccines for Children: COVID 19" information sheet from the Government of Canada.

d. A September 24, 2021 five-page "Post COVID-19 Condition" information sheet from the Government of Canada.

e. A May 18, 2021 seven-page "Vaccines for children: Deciding to Vaccinate" information sheet from the Government of Canada.

f. A May 6, 2021 three-page "The Facts About COVID-19 Vaccines" information sheet from the Government of Canada.

g. A January 20, 2022 four-page article entitled "Vaccinated kids half as likely to get Omicron but protection fades fast" from The Times of Israel.

h. A January 14, 2022 five page article entitled "COVID-19 Cases and Hospitalizations Surge Among Children" from the Canada Communicable Disease Report.

47 Included among the mother's downloads from the internet:

a. A June 25, 2021 eight-page "Fact Sheet" issued by Pfizer, the manufacturer of one of the vaccines being proposed by the father.

b. An August 26, 2021 three-page article from the journal "Science" entitled "Having SARS-CoV-2 once confers much greater immunity than a vaccine - but vaccination remains vital."

c. A January 31, 2012 13-page PLOS One peer-reviewed article entitled "Immunization with SARS Coronavirus Vaccines Leads to Pulmonary Immunopathology on Challenge with the SARS virus."

d. A July 10, 2021 five-page article in the medical journal "Total Health" entitled "Are people getting full facts on COVID vaccine risks?"

e. A September 26, 2018 15 page article in the medical journal "Contagion Live" entitled "High Rates of Adverse Events Linked with 2009 H1N1 Pandemic vaccine".

f. A May 28, 2021 two-page article from the Centers for Disease Control and Prevention (CDC) entitled "Clinical Considerations: Myocarditis and Pericarditis after Receipt of mRNA COVID-19 Vaccines Among Adolescents and Young Adults."

g. An August 1, 2020 29 page research paper published by eClinicalMedicine entitled "A country level analysis measuring the impact of government actions, country preparedness and socioeconomic factors on COVID -19 mortality and related health outcomes."

h. A June 9, 2021 10 page open letter from The Evidence-Based Medicine Consultancy Ltd. research organization entitled "Urgent Preliminary report of Yellow Card data up to May 26, 2021".

i. A June 22, 2021 14 page article from the World Health Organization entitled "COVID-19 advise for the public: Get vaccinated".

48 Information obtained from the internet can be admissible if it is accompanied by indicia of reliability, including, but not limited to:

a. Whether the information comes from an official website from a well-known organization;

b. Whether the information is capable of being verified;

c. Whether the source is disclosed so that the objectivity of the person or organization posting the material can be assessed.

ITV Technologies Inc. v. WIC Television Ltd., 2003 FC 1056; *Sutton v. Ramos*, 2017 ONSC 3181 (SCJ)

49 Where the threshold of "admissibility" is met, it is still up to the trier of fact to weigh and assess the information to determine the relevance, if any, with respect to the issues to be decided.

50 And since this is a motion proceeding by affidavit, we have the further limitation that even to the extent that the internet downloads are admissible, there is no opportunity for cross-examination or testing.

51 To simplify matters, the mother does not deny the authenticity or integrity of the website information submitted by the father.

a. It's mostly statements by the Government of Canada and the Canadian Pediatric Society recommending that children should receive COVID vaccinations.

b. These are the same types of downloads which courts have considered in other recent COVID vaccine cases.

c. The mother doesn't deny that these are reputable organizations. Nor does she deny that the statements and information have been prepared by qualified persons in a responsible, professional manner.

d. She doesn't deny that the father has accurately presented *one side of the story*.

e. All she asks is that the court equally consider the other side of the story. That the court allow both sides of the story to be equally presented, tested and considered. Before making an irreversible decision for her children.

52 *Evidence and both sides of the story*. We're in deep trouble if those become antiquated concepts.

53 In almost all cases where COVID vaccinations have been ordered the court has made a finding that, on the face of it, the internet materials presented by the objecting parent have been grossly deficient, unreliable and - at times - dubious. This lack of an equally credible counter-point to government recommendations may well have been determinative in those earlier cases.

54 But 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?

a. Clearly we shouldn't be too quick to embrace the naysayers.

b. But should we banish them? Without hearing from them?

c. Should we stifle and forbid a reasonable opportunity to present and test evidence, and make submissions?

d. There are obvious public policy reasons to avoid recklessly undermining confidence in public health measures.

e. But that has to be weighed against our unbridled obligation to leave no stone unturned, when it comes to protecting children.

55 For example, the mother presented a detailed fact sheet from Pfizer. This isn't one of the fringe websites dismissed in the other cases. *It's Pfizer!* The people who make the vaccine.

56 Under the heading "What Are The Risks of the Pfizer-BioNTech COVID-19 Vaccine", the company says:

There is a remote chance that the Pfizer-BioNTech COVID-19 Vaccine could cause a severe allergic reaction. A severe allergic reaction would usually occur within a few minutes to one hour after getting a dose of the Pfizer-BioNTech COVID-19 Vaccine. For this reason, your vaccination provider may ask you to stay at the place where you received your vaccine for monitoring after vaccination. Signs of a severe allergic reaction can include:

- Difficulty breathing
- Swelling of your face and throat
- A fast heartbeat
- A bad rash all over your body

- Dizziness and weakness

Myocarditis (inflammation of the heart muscle) and pericarditis (inflammation of the lining outside the heart) have occurred in some people who have received the Pfizer-BioNTech COVID-19 Vaccine. In most of these people, symptoms began within a few days following receipt of the second dose of the Pfizer-BioNTech COVID-19 Vaccine. The chance of having this occur is very low. You should seek medical attention right away if you have any of the following symptoms after receiving the Pfizer-BioNTech COVID-19 Vaccine:

- Chest pain
- Shortness of breath
- Feelings of having a fast-beating, fluttering, or pounding heart.

Side effects that have been reported with the Pfizer-BioNTech COVID-19 Vaccine include:

- severe allergic reactions
- non-severe allergic reactions such as rash, itching, hives, or swelling of the face
- myocarditis (inflammation of the heart muscle)
- pericarditis (inflammation of the lining outside the heart)
- injection site pain
- tiredness
- headache
- muscle pain
- chills
- joint pain
- fever
- injection site swelling
- injection site redness
- nausea
- feeling unwell
- swollen lymph nodes (lymphadenopathy)
- diarrhea
- vomiting
- arm pain

These may not be all the possible side effects of the Pfizer-BioNTech COVID-19 Vaccine. Serious and unexpected side effects may occur. Pfizer-BioNTech COVID-19 Vaccine is still being studied in clinical trials.

57 It's very hard to fault a parent for being worried about such an ominous list of potentially very serious side effects.

58 Several of the earlier decisions requiring children to be vaccinated have noted that the evidence presented by the objecting parent was not reliable because the authors' credentials were either not-established or non-existent.

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

60 For example, the article submitted by the mother "Are People Getting Full Facts on COVID Vaccine Risks?" quotes Dr. Robert W. Malone, the inventor of the mRNA vaccine. Whether he is right or wrong about the current use of COVID vaccines is a matter for discussion and determination. But with his credentials, he can hardly be dismissed as a crackpot or fringe author. The mother referred to the following excerpt from the article:

The original inventor of the mRNA vaccine (and DNA vaccine) core platform technology currently used to create the vaccines is Dr Robert W Malone. Dr Malone has been expressing serious concerns about how therapeutic approaches that are still in the research phase are being imposed on an ill-informed public. He says that public health leadership has, "stepped over the line and is now violating the bedrock principles which form the foundation upon which the ethics of clinical research are built".

Dr Malone asks why health leaders seem to be so afraid of sharing the adverse event data. He says, "Why is it necessary to suppress discussion and full disclosure of information concerning mRNA reactogenicity and safety risks?"

He goes onto say that we should be analysing the safety data and risks vigorously. Again he asks, "Is there information or patterns that can be found, such as the recent finding of the cardiomyopathy signals, or the latent virus reactivation signals? We should be enlisting the best biostatistics and machine learning experts to examine these data, and the results should — no must — be made available to the public promptly".

For any drug it has always been important to have systems in place for monitoring adverse events. However, for an experimental, genetic modifying approach that has not been fully tested, and where the public are effectively the guinea pigs, this information should be immediately and readily available. As previously reported...the fact that it is so difficult to access and make sense of ...reporting systems - along with low reporting simply raises further concern about what is actually happening.

...

Dr Malone says, ".. what is being done by suppressing open disclosure and debate concerning the profile of adverse events associated with these vaccines violates fundamental bioethical principles for clinical research".

With regard to the use and abuse of misinformation, the inventor of these vaccines says that the public have to be given accurate information to allow informed consent. He says, "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 disclose any and all risks associated with these experimental research products".

In short, it is simply not possible to arrive at a position of informed consent unless you have access to the full facts around your options and the associated risks and benefits.

61 The same article outlines other serious concerns about COVID vaccines expressed by Dr. Bret Weinstein, Dr. Peter McCullough, Dr. Tess Lawrie, Professor Stanley S. Levinson (medicine, endocrinology, diabetes and metabolism) and Professor Sucharit Bhakdi (awarded the Order of Merit for medical microbiology). These are well-known leaders in their fields.

62 Several other articles presented by the mother outline similar expressions of concern about the COVID vaccines from equally qualified and reputable sources worldwide.

63 For clarity:

- a. I am not for one moment suggesting that we should presume the mother's experts are *right*.
- b. But once we determine they're not crackpots and charlatans, how can we presume that they are *wrong*? Or that they couldn't possibly be right about any of their warnings?
- c. When children's lives are at stake, how can we ignore credible warnings?

64 The following paragraphs from *Saint-Phard v. Saint-Phard*, 2021 ONSC 6910 (SCJ) illustrate the approach which has been taken in a number of cases in which COVID vaccinations were approved by the court.

4 The decision to be made is governed by the best interests of the child: *A.C. v. L.L.*, 2021 ONSC 6530. It is required to be based on findings of fact made from admissible evidence before the court: *O.M.S. v. E.J.S.*, 2021 CarswellSask 547 (Q.B.); *B.C.J.B. v. E.-R.R.R.*, 2021 CarswellOnt 13242 (S.C.J.).

Judicial notice may be taken

5 Facts may be found by taking judicial notice: *B.C.J.B. v. E.-R.R.R.*, *A.P. v. L.K.*, 2021 ONSC 150, and *A.C. v. L.L.* Each of these cases include findings related to the safety and efficacy of publicly funded vaccines on the basis of judicial notice. For example, in *A.C. v. L.L.* at paragraphs 21, 23 and 25 the court made the following findings by taking judicial notice under the public documents' exception to the hearsay rule:

- The COVID-19 vaccination has been approved for children aged 12-17.
- All levels of government have been actively promoting vaccination against COVID-19 and expending significant resources to make it available to the public.
- The safety and efficacy of the COVID-19 vaccine has been endorsed by governments and public health agencies.
- The Ontario Ministry of Health website states that Pfizer-BioNTech vaccine is now licensed by Health Canada for adolescents aged 12 years and older, has been proven to be safe in clinical trials and provided excellent efficacy in adolescents, and that NACI continues to strongly recommend a complete series with an MNRA vaccine for all eligible individuals in Canada, including those 12 years of age and older, as the known and potential benefits outweigh the known and potential risks.

6 Elyon's father relied on statements made by Dr. Tam, Chief Officer of Health for Canada on the Canadian Government website recommending COVID-19 vaccinations for those between the ages of 12 and 17, stating that thorough testing has determined the vaccines to be safe and effective at preventing severe illness, hospitalization, and death from COVID-19. Dr. Kieran Moore is the Chief Medical Officer for Ontario. The father tendered his recommendation to vaccinate all youth ages 12 to 17 against COVID-19 as set out in a publication by the Ontario COVID-19 Science Advisory Table. Elyon's school is administered under the Ottawa Catholic School Board. That Board released a notice advising that all students over age 12 are eligible to be vaccinated for COVID-19 and stating that the vaccine is key in protecting schools from the virus.

7 Relying on these public documents and the authority of the court in *A.C. v. L.L.*, I find that the applicable government authorities have concluded that the COVID-19 vaccination is safe and effective for children ages 12-17 to prevent severe illness from COVID-19 and have encouraged eligible children to be vaccinated.

65 And that's really what many of these cases come down to: After considering all the evidence - or often, the lack of evidence - can the court just fill in the blanks and take judicial notice of the fact that all children should get vaccinated?

a. Because if the answer is "yes", then we're wasting a lot of time and judicial resources.

b. If judges just "know" that all children should be vaccinated, then we should clearly say that that's what we're doing.

c. But equally, if that's *not* what we're supposed to be doing....then we shouldn't do it.

66 In *R.S.P. v. H.L.C.*, 2021 ONSC 8362 (SCJ) Justice Breithaupt Smith recently set out a timely warning about the danger of applying judicial notice to cases where expert opinion is unclear or in dispute. It's a warning I whole heartedly adopt:

56 Unfortunately, the recent case of *Saint-Phard v. Saint-Phard* does not assist in navigating medical treatment for minors because of its fatal flaw regarding judicial notice. In that case, the Court wrote: "Facts may be found by taking judicial notice. [citations omitted] Each of these cases include findings related to the safety and efficacy of publicly funded vaccines on the basis of judicial notice." This shows a misunderstanding of the purpose of taking judicial notice, which, according to the Supreme Court's definitive decision in *R. v. Find*, 2001 SCC 32 (CanLII) (at paragraph 48) is intended to avoid unnecessary litigation over 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 not to 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.

57 Judicial notice of the facts contained in government publications are "capable of immediate and accurate demonstration by resort to readily accessible sources of indisputable accuracy." Such facts could include, for example, that there are two time zones in the Province of Ontario or that there were two deaths and 39 Intensive Care Unit admissions among Ontario children from January 15, 2020 to June 30, 2021 connected with SARS-CoV-2.

58 Judicial notice cannot be taken of expert opinion evidence. Chief Justice McLachlin for the unanimous Court in *R. v. Find* underscored that: "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" (at paragraph 49).

59 The acceptance of government-issued statements as evidence renders the facts published by the government agency (presumed to be a source of indisputable accuracy) admissible. Public Health Ontario's statement that two children died of SARS-CoV-2 between January 15, 2020 and June 30, 2021 is therefore admissible as fact. Public Health Ontario's publicly accessible document is admissible as proof of the truth of its contents. In contrast, a statement concerning the safety and efficacy of any medication in the prevention or treatment of any condition is, in and of itself, an opinion. Judicial notice cannot be taken of the opinion of any expert or government official that a medical treatment is "safe and effective." As judicial notice cannot be taken of expert opinion evidence, it is illogical to reason, as was done at paragraph 12 of *Saint-Phard*, that an expert's "objections raised against the vaccine 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." To compound the problem, this statement draws a conclusion that is overbroad (i.e. that the vaccine provides beneficial protection to all children and ought therefore to be received by the child in question) without having considered the comparative analysis of the factors in *A.C. v. Manitoba*, 2009 SCC 30 (CanLII). As a result, reliance upon this reasoning would be misguided.

60 In submissions, I was also referred to the case of *A.C. v. L.L.*, 2021 ONSC 6530 (SCJ) in which both parents agreed that each of their three teenage children would be permitted to make his or her own decision with respect to the COVID-19 vaccination. Two of the three children chose to have it administered and one did not. While the Court made many very concerning and overly broad comments, all are obiter dicta. None were relevant to the result ultimately reached, namely that both parents acknowledged each child's maturity in choosing whether or not to participate in the medical procedure and agreed to allow each child to make his or her own choice. With the parents having agreed upon that point, the Court was no longer obligated to make any finding as to whether receipt of the COVID-19 vaccine was in the best interests of any of the children. As the parents had agreed to respect the decisions made by their children, one of whom declined the COVID-19 vaccine, is that child now in breach of the Court's determination, at paragraph 32, that vaccination is in that child's best interests? Of what utility is the declaration in the Order portion of the decision that "[all three] children ... shall be entitled to receive the COVID-19 vaccine"? In family litigation, unsolicited judicial opinions on parenting questions already solved by the parents serve no one. I am reminded of Justice Abella's warning that: "[the analysis of a child's maturity in making medical decisions] does not mean ... that the standard is a license for the indiscriminate application of judicial discretion" *A.C. v. Manitoba* (paragraphs 90-91). Thus, while I commend the parents in *A.C. v. L.L.* for resolving the issue of each child's ability to make his or her own decision, the case itself does not assist this Court.

67 Why should we be so reluctant to take judicial notice that the government is always right?

a. Did the Motherisk inquiry teach us nothing about blind deference to "experts"? Thousands of child protection cases were tainted - and lives potentially ruined - because year after year courts routinely accepted and acted upon substance abuse testing which turned out to be incompetent.

b. What about the Residential School system? For decades the government assured us that taking Indigenous children away - and being wilfully blind to their abuse - was the right thing to do. We're still finding children's bodies.

c. How about sterilizing Eskimo women? The same thing. The government knew best.

d. Japanese and Chinese internment camps during World War Two? The government told us it was an emergency and had to be done. Emergencies can be used by governments to justify a lot of things that later turn out to be wrong.

e. Few people remember Thalidomide. It was an experimental drug approved by Canada and countries throughout the world in the late 1950's. It was supposed to treat cancer and some skin conditions. Instead it caused thousands of birth defects and dead babies before it was withdrawn from the market. But for a period of time government experts said it was perfectly safe.

f. On social issues the government has fared no better. For more than a century, courts took judicial notice of the fact that it was ridiculous to think two people of the same sex could get married. At any given moment, how many active complaints are before the courts across the Country, alleging government breaches of [Charter Rights](#)? These are vitally important debates which need to be fully canvassed.

g. The list of grievous government mistakes and miscalculations is both endless and notorious. Catching and correcting those mistakes is one of the most important functions of an independent judiciary.

h. And throughout history, the people who held government to account have always been regarded as heroes - not subversives.

i. When our government serially pays out billions of dollars to apologize for unthinkable historic violations of human rights and security - how can we possibly presume that today's government "experts" are infallible?

j. Nobody is infallible.

k. And nobody who controls other people's lives - *children's lives* - should be beyond scrutiny, or impervious to review.

68 As well, how can you take judicial notice of a moving target?

- a. During the past two years of the pandemic, governments around the world - and within Canada - have constantly changed their health directives about what we should or shouldn't be doing. What works and what doesn't.
- b. And the changes and uncertainty are accelerating with each passing newscast. Not a day goes by that we don't hear about COVID policies changing and restrictions being lifted.
- c. Government experts sound so sure of themselves in recommending the current vaccines.
- d. But they were equally sure when they told us to line up for AstraZeneca. Now they don't even mention that word.
- e. Even Pfizer has changed its mind. It recently approved vaccines for kids under five. Then more recently the company changed its mind.
- f. None of this is meant a criticism. Everyone is doing their best with a new and constantly evolving health crisis.
- g. But how can judges take judicial notice of "facts" where there's no consensus or consistency?

69 And then we have the issue of delegation.

- a. As with almost all these vaccine motions, the father asks for an order that his children receive the current COVID vaccine *"and all recommended booster vaccines."*
- b. Which recommended booster vaccines?
- c. When?
- d. How many?
- e. What will they contain?
- f. Who will decide?
- g. Will there be any opportunity for future judicial oversight, or will this simply be a forever commitment controlled by the government.
- h. What are the health implications if children receive the current vaccine, but skip some or all of the boosters?
- i. What future COVID variant will the boosters guard against? We already seem to be using the Delta vaccine to fight the Omicron variant. Will future boosters continue our pattern of using old medicine to fight new viruses?
- j. These are all valid questions, requiring answers which are currently unavailable.
- k. It is improper for the court to pre-determine future medical treatments at unknown times, in unknown circumstances, with decision making authority delegated to unknown persons.
- l. If you can't take judicial notice of the *present*, you can't take judicial notice of the *future*.

70 As well, there is a systemic issue common to most of these COVID vaccine cases.

- a. The father presented his expert evidence.
- b. The mother then presented her expert evidence.

c. The father responded that the mother's theories have already been "debunked" - so we shouldn't waste time talking about them.

d. Alleging that your opponent's position has already been debunked is a common tactic these days.

e. And quite effective.

f. Because unlike *stare decisis* - the doctrine of precedent which requires judges to follow specifically cited earlier court decisions - there is no such formality to the concept of debunking.

g. All you have to do is make the blanket assertion that an opposing view has already been debunked - without providing any details - and hope that nobody asks for proof.

h. In this case, I reject the father's claim that all of the mother's concerns about COVID vaccines have already been properly considered and disproven, in a process adhering to natural justice, conducted by an appropriate judicial body.

i. Quite to the contrary, I have not been able to find any indication - in the father's evidence or in the body of COVID vaccine case law - that allegedly debunked theories have ever been properly considered or tested. In any court. Anywhere.

71 In a complex, important, and emotional case like this, it is important to remember the court's mandate:

a. I am not being asked to make a scientific determination. I am being asked to make a parenting determination.

b. I am not being asked to decide whether vaccines are good or bad.

c. I am not being asked to decide if either *parent* is good or bad.

d. My task is to determine which parent is to have decision-making authority over L.E.G. and M.D.G. with respect to the very specific and narrow issue of COVID vaccinations. Each parent has clearly identified how they would exercise such decision-making authority.

72 Pursuant to the recent, final, consent order, the two children reside primarily with the mother.

a. She has sole decision-making authority on all issues - with the exception that the parties deferred the issue of decision-making in relation to COVID vaccinations.

b. The father suggests there should be an inference that the mother was deliberately deprived of authority over this particular issue, because she could not be trusted to make the right decision.

c. I am not prepared to make any such an inference.

d. Both parents showed commendable maturity and insight in negotiating comprehensive minutes of settlement on all but one of the issues.

e. I interpret the minutes of settlement as leaving it open for the court to consider vaccinations as a stand-alone issue, to be determined solely based on the best interests of the children, and without either parent having any presumptive advantage or disadvantage in the determination.

73 With respect to the mother and father:

a. I find that they are both excellent parents.

b. The father has shown excellent parenting skills and familiarity with respect to the oldest child C.B.G. who is doing well in his care.

c. The mother has shown excellent parenting skills and familiarity with respect to L.E.G. and M.D.G. who are doing well in her care.

74 With respect to the children L.E.G. and M.D.G.:

a. I find that they are both intelligent, mature, articulate and insightful with respect to their place both within the family and within the community.

b. Both children are healthy. Their medical needs have always been properly addressed.

c. I received no professional or other evidence to suggest that there are any specific medical condition or issue which either favours or disfavours vaccination.

d. I find that both children have very specific, strongly held and independently formulated views about COVID vaccinations. Those views have been verified independently by an experienced social worker who would be alive to the possibility of parental influence or interference.

e. While the mother has strongly held views on the subject, the father has equally strongly held views. It is both understandable and appropriate that each parent has discussed the issue with each child. I find that while each parent has expressed their preference and view on the topic, neither parent has pressured or manipulated the children.

f. I am confident that each child's view has been clear, consistent, thoughtful, and entirely understandable in all the circumstances.

75 Section 16(1) of the *Divorce Act* provides that the court shall take into consideration only the best interests of a child when making a parenting order or a contact order.

76 Section 16(2) says when considering best interest factors, primary consideration is to be given to the child's physical, emotional and psychological safety, security and well-being. *Pierre v. Pierre*, 2021 ONSC 5650 (SCJ).

77 Section 16(3) sets out a list of factors for the court to consider in considering the circumstances of a child and determining best interests:

16(3) Factors to be considered

In determining the best interests of the child, the court shall consider all factors related to the circumstances of the child, including

(a) the child's needs, given the child's age and stage of development, such as the child's need for stability;

(b) the nature and strength of the child's relationship with each spouse, each of the child's siblings and grandparents and any other person who plays an important role in the child's life;

(c) each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse;

(d) the history of care of the child;

(e) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;

(f) the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage;

- (g) any plans for the child's care;
- (h) the ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child;
- (i) the ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child;
- (j) any family violence and its impact on, among other things,
 - (i) the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and
 - (ii) the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child; and
- (k) any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.

78 I find that the combination of [sections 16\(2\)](#) ("the child's physical, emotional and psychological safety, security and well-being") and [16\(3\)\(e\)](#) ("the child's views and preferences...") require that significant weight should be given to each child's stated views and requests. I would be very concerned that any attempt to ignore either child's views on such a deeply personal and invasive issue would risk causing serious emotional harm and upset.

79 With respect to the positions advanced by each parent.

- a. I respect the father's decision to be guided by government and health protocols.
- b. I think the father did himself a disservice by focussing so much of his case on dismissive personal attacks on the mother. Those attacks are not only misguided and mean-spirited. They raise doubts about his insight with respect to the vaccine issue - and they also raise doubts about his appreciation of the nature and quality of the important relationship between the mother (as primary resident parent) and the children.
- c. I equally respect the mother's decision to make exhaustive efforts to inform herself about the vaccination issue.
- d. I find that the mother took a reasonable approach in acknowledging the strengths of the pro-vaccine materials, while at the same time attempting to reconcile them with contrary viewpoints and warnings issued by equally competent and credible medical professionals.
- e. I find that the mother's position is more reasonable and helpful in that she invites discussion and exploration of both sides of the story, while the father seeks to suppress it.
- f. I find that the father has inaccurately and somewhat unfairly characterized both the mother's position and her evidence.
- g. The father has attempted to dismiss the mother as some sort of crazy anti-vaxxer. Nothing could be further from the truth. The mother's materials and submissions actually addressed the important and complex issues in more detail and with more comprehension than conveyed by the father. She has made it very clear that she has not completely rejected COVID vaccinations for L.E.G. and M.D.G.. She is simply concerned that in her view there is overwhelming evidence of unresolved safety concerns with respect to the current vaccines being administered. She has come to the conclusion that at this time the risks associated with the vaccines outweigh the benefits.

h. As well, the mother's statement that she believes "in personal choice, knowledge, understanding and informed consent" is to be viewed in a reassuring context. She has gone to extraordinary lengths to inform herself, to maintain an open mind, and to discuss the issue with her children in a balanced, enlightened, and dispassionate manner.

i. The father has attempted to dismiss the mother's supporting materials as unreliable and less persuasive than his own materials. Once again, I find his attack to be misguided and inaccurate.

j. Pro-vaccine parents have consistently (and effectively) attempted to frame the issue as a contest between reputable government experts versus a lunatic fringe consisting of conspiracy theorists, and socially reprehensible extremists. This was absolutely the wrong case to attempt that strategy. The professional materials filed by the mother were actually more informative and more thought-provoking than the somewhat repetitive and narrow government materials filed by the father.

80 This is not the kind of case where the court can say that either side is necessarily correct. Nor that the same determinations should apply for every child, no matter the circumstances.

81 With the mother's materials satisfying me that a legitimate and highly complex debate exists on the efficacy and utilization of COVID vaccines, I am not prepared to apply judicial notice as a method of resolving the issue. Anyone reading even some of the articles presented by the mother would likely conclude that these are complicated and evolving issues, and there can be no simplistic presumption that one side is right and that the other side is comprised of a bunch of crackpots. That's why the court should require evidence rather than conclusory statements.

82 The father insists the mother's views have been debunked, but he provides no example of any such determination actually having been made. It would be helpful if, once and for all, the competing positions and science could be properly explored and tested in a public trial.

83 On balance, I am satisfied that that mother's request for a cautious approach is compelling, and reinforced by the children's views and preferences which are legitimate and must be respected. The mother has consistently made excellent decisions throughout the children's lives. Her current concerns about the vaccines are entirely understandable, given the credible warnings and commentary provided by reputable sources who are specifically acquainted with this issue.

84 The mother has consistently made excellent, informed, and child-focussed decisions. In every respect she is an exemplary parent, fully attuned to her children's physical and emotional needs. She has demonstrated a clear understanding of the science. She has raised legitimate questions and concerns. I have confidence that she will continue to seek out answers to safeguard the physical and emotional health of her children.

85 She is not a bad parent - *and no one is a bad citizen* - simply by virtue of asking questions of the government.

86 At a certain point, where you have absolute confidence in a parent's insight and decision-making, you have to step back and acknowledge that they love their child; they have always done the right thing for their child...*and they will continue to do the right thing for their child.*

87 The father's motion is dismissed.

88 The mother shall have sole decision-making authority with respect to the issue of administering COVID vaccines for the children L.E.G. and M.D.G..

89 If any issues other than costs need to be addressed, counsel should arrange with the Trial Co-ordinator a time for this matter to be spoken to. This should be arranged within 10 days.

90 If only costs need to be determined, the parties should serve and file written submissions on the following timelines:

- a. Mother's materials (not to exceed three pages of narrative, and not to be more than 12 pages in total including offers, with cases to be hyperlinked) by March 18, 2022.
- b. Father's materials (not to exceed three pages of narrative, and not to be more than 12 pages in total including offers, with cases to be hyperlinked) by April 1, 2022.
- c. Any reply by mother (not to exceed two pages) by April 11, 2022.

POSTSCRIPT:

- 91 It's irrelevant to my decision and it's none of anyone's business.
- 92 But I am fully vaccinated. My choice.
- 93 I mention this because I am acutely aware of how polarized the world has become.
- 94 We should all return to discussing *the issues* rather than making presumptions about one another.

Motion dismissed.