



# Vaccination and Child Welfare: Does vaccine hesitancy constitute medical neglect?

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## Introduction

In the context of the COVID-19 global pandemic, the issue of vaccination and vaccine hesitancy is more salient than ever. Among currently-eligible youth under the age of 18, 73% have received at least one dose of a COVID-19 vaccine and 47% are fully vaccinated as of early August 2021 (Public Health Agency of Canada, 2021). Though vaccine coverage in Canada for routine early childhood vaccine-preventable diseases is generally high, gaps in coverage place children and communities at greater risk of disease (Public Health Agency of Canada, 2021; Phadke et al., 2016). This info sheet reviews vaccination and vaccination hesitancy in the context of medical neglect and Canadian case law. The info sheet was supported by Social Sciences and Humanities Research Council (SSHRC) Chair in Child Welfare funds awarded to Dr. Barbara Fallon.

This fact sheet provides an overview of the Canadian policy context with respect to routine childhood vaccination and its intersection with the child protection system. In particular, this fact sheet reviews both provincial/ territorial legislation and case law to examine the extent to which vaccine non-compliance is viewed by the child protection system as constituting medical neglect. Best practices related to working with vaccine-hesitant parents are also noted.

## Failure to Vaccinate as Medical Neglect

Across all Canadian provinces and territories, medical neglect is defined consistently as a failure or refusal to provide proper medical, surgical, or remedial care to prevent or ameliorate physical harm of suffering to the child. Though vaccination is not explicitly mentioned in any provincial

or territorial legislation, given its well-established role in preventing vaccine-preventable illness, it is generally considered a cornerstone of preventative paediatric healthcare (Public Health Agency of Canada, 2019). *For a detailed description of child welfare legislation pertaining to medical neglect, please see Table 1.*

Table 1.  
*Child Welfare Legislation Related to Medical Neglect in Canada*

<b>Province</b>	<b>Relevant Legislation</b>
Newfoundland & Labrador	A child is in need of protective intervention where the child is in the custody of a parent who refuses or fails to obtain or permit essential medical, psychiatric, surgical or remedial care or treatment to be given to the child when recommended by a qualified health practitioner (Children and Youth Care and Protection Act, 2010).
Prince Edward Island	A child is in need of protection where the child requires specific medical, psychological or psychiatric treatment to cure, prevent or ameliorate the effects of a physical or emotional condition or harm suffered, and the parent does not, or refuses to, obtain medical treatment or is unavailable or unable to consent to treatment (The Child Protection Act, 1988).
Nova Scotia	A child is in need of protective services where a child requires medical treatment to cure, prevent or alleviate physical harm or suffering and the child's parent or guardian does not provide, or refuses or is unavailable or is unable to consent to, the treatment (Children and Family Services Act, 1990).
New Brunswick	The security or development of a child may be in danger when the child is in the care of the person who neglects or refuses to provide or obtain proper medical, surgical, or other remedial care or treatment necessary for the health or well-being of the child or refuses to permit such care or treatment to be supplied to the child. (Family Services Act, 1980).
Quebec	Neglect refers to a situation in which the child's parents or the person having custody of the child do not meet the child's basic needs i.e., failing to give the child the care required for the child's physical or mental health, or not allowing the child to receive such care (Youth Protection Act, 1984).

Ontario	A child is in need of protection where, the child requires treatment to cure, prevent or alleviate physical harm or suffering and the child’s parent or the person having charge of the child does not provide the treatment or access to the treatment, or, where the child is incapable of consenting to the treatment under the <i>Health Care Consent Act, 1996</i> and the parent is a substitute decision-maker for the child, the parent refuses or is unavailable or unable to consent to the treatment on the child’s behalf (Child, Youth and Family Services Act, 2017).
Manitoba	A child is in need of protection where the child is in the care, custody, control or charge of a person who neglects or refuses to provide or obtain proper medical or other remedial care or treatment necessary for the health or well-being of the child or who refuses to permit such care to be provided to the child when the care or treatment is recommended by a duly qualified medical practitioner (Child and Family Services Act, 1985).
Saskatchewan	A child is in need of protection where as a result of action or omission by the child’s parent: medical, surgical, or other recognized remedial care or treatment that is considered essential by a duly qualified medical practitioner has not been or is not likely to be provided to the child (Child and Family Services Act, 1989).
Alberta	For the purposes of section 2(c), a child is neglected if the guardian is unable or unwilling to obtain for the child, or to permit the child to receive, essential medical, surgical or other remedial treatment that is necessary for the health or well-being of the child (Child, Youth and Family Enhancement Act, 2000).
British Columbia	A child needs protection: if the child’s development is likely to be seriously impaired by a treatable condition and the child’s parent refuses to provide or consent to treatment (Child, Family and Community Service Act, 1996).
Northwest Territory & Nunavut	A child needs protection where the child requires medical treatment to cure, prevent, or alleviate serious physical harm or serious physical suffering, and the child’s parent does not provide, or refuses or is unavailable to consent to the provision of the treatment (Child and Family Services Act, 1997).
Yukon Territory	A child is in need of protective intervention if the child is being deprived of health care that, in the opinion of a health care provider, is

	necessary to preserve the child’s life, prevent imminent serious physical or mental harm, or alleviate severe pain (Child and Family Services Act, 2008).
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### Case Law Pertaining to Vaccine Refusal in Canada

Though failing to vaccinate a child against vaccine-preventable illness is not explicitly identified as a form of medical neglect in Canadian child protection legislation, the issue has been examined in the context of case law with mixed outcomes. In the United States, court decisions related to whether vaccine refusal constitutes medical neglect has tended to be determined by whether non-medical exemptions were permitted in the jurisdiction at the time in which the case was adjudicated (Paradis & Opel, 2017). Canadian case law, however; has not adjudicated vaccine refusal cases according to local paediatric vaccine mandates. Only two provinces in Canada require vaccination for school attendance: Ontario and New Brunswick (Public Health Agency of Canada, 2019). Canadian case law has followed a different metric than local vaccine mandates to adjudicate vaccine refusal cases: risk of imminent harm. In Canada, vaccine refusal as medical neglect in one case (*Children’s Aid Society of Peel (Region) v. H. (T.M.C.) (2008)*), with the judge citing imminent harm to the child as grounds for child welfare intervention. All other decisions have found vaccine refusal to not place the child at substantial risk of harm, instead favouring parental rights to refuse vaccination based on religious or personal belief. *For a detailed description of Canadian case law related to vaccine refusal please see Table 2.*

Table 2. Case Law Pertaining to Vaccine Refusal in Canada

Province and Case (Year)	Allegations of neglect	Decision/ Outcome
<b>Ontario</b> <i>Children’s Aid Society of Peel (Region) v. H. (T.M.C.) (2008)</i>	Mother was carrier of Hepatitis B, if child not vaccinated at birth, 95% chance child would be infected. Parents wanted to wait two years before vaccinating child.	Child believed to be in need of protection, placed in temporary custody to receive medical treatment.  Medical evidence demonstrated that failure to vaccinate child would likely result in serious/permanent physical harm to the child.

<p><b>Alberta</b> <i>P.(J.), Re (2010)</i></p>	<p>Doctor determined four out of five children needed vaccinations, parents did not consent. Mother believed eldest child developed eczema and became clumsy after vaccinated and that the chicken pox vaccine had one of her children ‘worse off’ than her other children.</p>	<p>Children deemed not to be in need of protection as vaccination was determined to not be essential (children’s health or lives were not imminently threatened).</p>
<p><b>Newfoundland &amp; Labrador</b> <i>B.(C.R.) v. Newfoundland (Director of Child Welfare) (1995)</i></p>	<p>Parents were members of a sect of the Seventh Day Adventist Church and refused to have their children immunized.</p>	<p>Children not deemed to be in need of protection. A temporary care and custody order was granted, but then an appeal was granted.</p> <p>The aversion to immunization (and dietary rules) followed by parents were based on their religious beliefs and did not warrant intervention unless/until proved to be detrimental to the children’s health. Accordingly, judge’s concerns were not sufficient enough to warrant a finding that the children were in need of protection.</p>
<p><b>Nova Scotia</b> <i>Nova Scotia (Minister of Community Services) v. B. (E.P.) (2007)</i></p>	<p>Alleged that mother had not attended to child’s immunizations. The youngest child was three months old by the time this protection proceeding commenced and he had not received the immunizations he should have received by that date.</p>	<p>Child not determined to be in need of protection and child ordered to be returned to the mother. Failure to immunize the child did not place the child at substantial risk of harm.</p>

	Mother indicated that missed appointments was due to difficult life circumstances.	
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## Best Practices for Responding to Vaccine Hesitancy

There are a variety of concerns that typically drive parental vaccine hesitancy including fears about vaccine side effects and vaccine safety, concerns about vaccine efficacy and the necessity of the vaccine; in addition to specific religious or personal beliefs that are in opposition to vaccination (MacDonald et al., 2015; Dubé et al., 2016). In some cases, parents may be resistant to one vaccine but not others or may refuse all vaccines for their child (Dempsey et al., 2011). Even in Canada where routine vaccinations are free, some families face instrumental and structural barriers to accessing vaccination including transportation, childcare and work scheduling challenges (Hapuhennedige, 2020). Individuals who have had negative experiences within the healthcare system, either as an individual or as part of a marginalized community, may also be hesitant towards vaccination due to these experiences (Lannon et al., 1995). Considering the many drivers and presentations of vaccine hesitancy, a one-size-fits all approach to addressing hesitancy is not sufficient; responses must be tailored to the specific needs and concerns of the parent and family. The most promising approaches to responding to vaccine hesitancy include using motivational interviewing techniques (Gagneur et al., 2018), providing a personal recommendation (e.g. ‘I am vaccinated or ‘My children are vaccinated’) (Kempe et al., 2011), and offering community-based vaccine clinics and concurrent culturally-competent wrap-around services to remove access barriers and repair fractured relationships with marginalized communities.

## Resources for Responding to Vaccine Hesitancy

Public Health Ontario – Primer: Building Confidence in Vaccines  
<https://www.publichealthontario.ca/-/media/documents/ncov/vaccines/2021/04/covid-19-building-confidence-in-vaccines.pdf?la=en>

CANVax, addressing vaccine hesitancy – Motivational interviewing: A powerful tool to address vaccine hesitancy  
<https://www.canada.ca/en/public-health/services/reports-publications/canada-communicable-disease-report-ccdr/monthly-issue/2020-46/issue-4-april-2-2020/article-6-canvax-addressing-vaccine-hesitancy.html>

## Conclusion

Provincial/ territorial child protection legislation and case law indicate that vaccine refusal is only grounds for child welfare intervention in cases where vaccine refusal places the child at imminent risk of harm. Though paediatric vaccination is recognized as a critical aspect of preventative healthcare, in isolation vaccine refusal is not viewed as sufficient grounds to warrant child welfare intervention in Canada. Best practices for addressing parental vaccine hesitancy include motivational interviewing techniques, personal endorsement, and culturally-competent wraparound services that address logistical and structural barriers to access.

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