

# Court of Queen's Bench of Alberta

**Citation: Sembaliuk v Sembaliuk, 2022 ABQB 62**

**Date:** 20220121  
**Docket:** 4803 165814  
**Registry:** Edmonton

Between:

**Warren Richard Sembaliuk**

Plaintiff

- and -

**Lisa A. Sembaliuk**

Defendant

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**Reasons for Judgment  
of the  
Honourable Mr. Justice N. Whiting**

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## **A. Overview and Factual Background**

[1] The Plaintiff Father and the Defendant Mother were married on August 11, 2001, in the City of Red Deer, in the Province of Alberta. The parties separated and have lived apart since January, 2012. There is one child of the marriage, a daughter, who is currently 13 years of age. At the conclusion of the hearing before me, I granted a Divorce Judgment finally dissolving the marriage.

[2] Notwithstanding the issuance of a Divorce Judgment, there do remain some corollary relief issues that remain outstanding. These include the issue that is addressed in these reasons.

[3] The parties' current parenting arrangements are defined by a Consent Final Parenting Order granted on November 17, 2021. Paragraph 1 of that Order provides that the parties shall have shared parenting of their daughter. Sub-paragraph 8(b) of that Order provides that the Father shall be responsible for scheduling the child's vaccination appointments and that the Mother shall be notified of such appointments. However, that provision also states that the Father's authority to do so is "[s]ubject to the Mother's right to make immediate application to the Court if she disagrees with the Father's decision in this regard".

[4] The Father has made an appointment for the child to be vaccinated against the COVID-19 virus with the Pfizer vaccine. The Mother has applied to the Court in objection to this decision.

[5] In the context of what is technically the Mother's application, the Father now seeks an order permitting him to take the child to the vaccine appointment that he has set up despite the absence of the Mother's consent. He argues that it is in the best interests of the child for her to be vaccinated against the virus so as to protect her from the harm that the virus presents. To be clear, the Father does not seek an order specifically directing that the child shall be vaccinated. Rather, he seeks an order dispensing with the Mother's right to object to the Father taking the child to a COVID-19 vaccination appointment.

[6] The Mother objects to her daughter being vaccinated against COVID-19. She argues that since the child has previously contracted COVID-19, the vaccines offer her little in the way of benefit, while exposing her to an unacceptable risk of harm in the form of side effects. She also objects to the administration of a vaccine to her daughter upon religious grounds. The Mother argues that the COVID-19 vaccines, including the Pfizer vaccine, have been developed using tissues harvested from aborted fetuses, which process offends her religious beliefs as a Catholic person. She argues further that since the child is also an adherent of the Catholic faith, the administration of a vaccine would be contrary to the child's religious beliefs and heritage.

[7] I conclude that it is in the best interests of the child for the Father to be permitted to take the child to her vaccination appointment despite the absence of the Mother's consent. It is generally accepted by the scientific community and Alberta's public health authorities that the benefits of the COVID-19 vaccines outweigh their potential harms, even for those who have previously contracted the virus. The Mother's sincerely held religious beliefs and the child's religious heritage are factors to be considered, but are outweighed by the health protections offered by the COVID-19 vaccines.

## **B. Risks and Benefits of the COVID-19 Vaccines**

[8] In *R v Morgan*, 2020 ONCA 279, it was held at paragraph 8 that it falls within the accepted bounds of judicial notice to take into account the fact of the COVID-10 pandemic, its impact on Canadians generally, and the current state of medical knowledge of the virus, including its mode of transmission and recommended methods to avoid its transmission. This conclusion was adopted by Graesser J. of this Court in *R v Mella*, 2021 ABQB 785 at paragraph 40. Similar conclusions were drawn by Devlin J. in *R v Aiello*, 2021 ABQB 772, who wrote:

3 Factually, I am satisfied that vaccination is a safe and highly effective means of preventing the spread of the coronavirus, the development of COVID 19 infections, and

severe illness in those who do become infected. The scientific consensus on this fact is notorious and beyond reasonable dispute. I take judicial notice of it: *R v Find*, 2001 SCC 32 at para 48.

4 Short of ceasing all contact with other humans, vaccination is now proven to be the single most effective method of reducing the risk and prevalence of COVID 19, a disease which has ravaged our society, its institutions, and the physical and mental well-being of all Canadians.

[9] The evidence before me includes a number of publicly available documents reflecting the current recommendations and policies of the Government of Alberta and Alberta Health Services respecting the COVID-19 vaccines. A document containing “Frequently Asked Questions” published by Alberta Health Services includes the following passage:

**Q: Should I get vaccinated even if I’ve had COVID-19?**

**A:** Yes. People with previous COVID-19 infection should continue to receive a complete vaccine series at the recommended intervals.

While having had the disease offers some protection against future infection, there’s not enough data about that level of protection to know when it tapers off or how protective it is against new variants.

Getting fully immunized offers the best protection possible from the virus.

[10] Similarly, a Government of Alberta document entitled “This is an urgent health message”, states:

**If you’ve had COVID-19, you should still get vaccinated.**

Getting COVID-19 offers some natural protection or immunity, but we’re still learning how long this lasts and how much long-term protection it gives. To get the best protection, you should get vaccinated even if you’ve had the virus.

[11] Against the above materials, the Mother has submitted and relied upon a number of articles and studies that she has identified from her own research which arguably support the view that COVID-19 vaccinations offer little or no benefits to persons who have previously contracted COVID-19, and that any such benefits are outweighed by the risk of harmful side effects.

[12] I allowed the Mother’s research materials into evidence on the basis that they illustrate the basis for the Mother’s own conclusion that her daughter should not be vaccinated. I made it clear at the time, and I reiterate now, that those materials will not be relied upon as evidence for the scientific opinions reflected therein. Given that it has not been demonstrated that these opinions reflect the generally accepted views of the scientific community or those of Alberta’s public health authorities, they may not be relied upon without the assistance of an expert witness.

[13] In her testimony, the Mother argued that her own education and training qualify her to conduct research and to draw reliable conclusions respecting the scientific subject matters addressed in her materials. With respect, I do not find that the Mother is so qualified. In fact, it became apparent during her testimony that she had not conducted a fulsome or balanced review of the applicable material, and had instead compiled a one-sided collection of those materials which she believes to be supportive of her own point of view.

[14] The Mother's testimony also reflected an inability on her part to properly interpret the source material she relied upon in accordance with scientific standards. As an example, she repeatedly pointed to statistics which apparently indicate that the Pfizer vaccine has been associated with the highest number of observed side effects in Alberta. She argued that these statistics demonstrate that the Father is seeking to expose the child to an especially dangerous vaccine. She did not appear to have considered the possibility that these statistics merely reflect the fact that the Pfizer vaccine is the one most often administered in Alberta.

[15] The Mother also relied upon materials which purport to identify the extent to which biological material from aborted fetuses has been used to develop the various vaccines. Again, I do not rely upon this material for the truth of its contents absent the assistance of an expert. However, this material does demonstrate that the Mother holds a sincere and firmly-held belief that the use of the COVID-19 vaccines is morally wrong, and contrary to the tenets of her religion.

[16] From the above materials and case law, I take judicial notice of the fact that vaccinations are the most effective method of reducing the risk and prevalence of COVID-19, and that getting fully immunized offers the best possible protection from the virus, even in the case of persons who have previously contracted the virus. I also accept that the Mother holds a sincerely-held belief, rooted in her religion, that the use of the COVID-19 vaccines is morally wrong.

### **C. The Best Interests of the Child**

[17] Of course, this parenting application is governed by the best interests of the child. The best interests of the child is a fluid concept. Some of the factors to be considered in its assessment are set out in s. 16 of the *Divorce Act*. Of these factors, s. 16(2) provides that "the court shall give primary consideration to the child's physical, emotional and psychological safety, security and well being."

[18] As stated above, it is the prevailing view of the scientific community and the public health authorities of Alberta that it is in everyone's best interests to be vaccinated against COVID-19. Although there are undoubtedly risks associated with vaccines, those risks are outweighed by their benefits.

[19] It would obviously not be in the best interests of the parties' child to contract COVID-19. Particularly given the transmissibility of the current Omicron variant, there remains a substantial risk that this could happen, notwithstanding the fact that she has previously contracted the virus. The prevailing scientific opinion is that the administration of a vaccine would assist in reducing that risk. There is no evidence before me that the vaccine presents any appreciable risk or danger to the child that is not clearly outweighed by its benefits.

[20] As noted previously, the Mother argues that the administration of a vaccine to the child would be contrary to the religious beliefs of both the Mother and the child. Although there is no direct evidence before me respecting the child's own views respecting the present application, the Mother testified that the child adheres to the Catholic religion, and that the administration of a COVID-19 vaccine would be contrary to the child's own religious beliefs.

[21] I accept that the child's religious beliefs and heritage are important factors to consider in determining her best interests. Although this is a factor to be considered, it is not determinative. The following conclusions of Baird J. of the New Brunswick Court of Queen's Bench in *ASK v*

*MABK*, 2008 NBQB 229 at paragraph 122 are quoted in Payne & Payne, *Canadian Family Law*, 7<sup>th</sup> ed (Irwin Law Inc., 2017) at page 604:

The child's religious heritage, like racial or cultural heritage, is one factor in his or her personal identity. In making a best interest decision, a court must consider that factor but it is not determinative... What is more important is the child's right to make his or her own decision on religious affiliation... The best way to preserve that right is by not foreclosing any future options and allowing both parents to share their religious heritage with the child... [citations omitted]

[22] In the present case, there is scant evidence respecting the child's own views respecting the administration of COVID-19 vaccines, or her own willingness to receive such a vaccine. I am therefore unable to accept the mother's submission that a COVID-19 vaccination would be contrary to the child's own religious beliefs. It is equally likely that the child would consider the perspectives of both her parents, and arrive at an opinion which is different from her Mother's.

[23] Further, I note that that the order now sought by the Father would not positively require the child to submit to a vaccination. Rather, it would merely authorize the Father to make a vaccination appointment for the child and to take her to that appointment without the Mother's consent or authorization. It is possible that the child might object to being vaccinated, or even express her refusal to submit to such a vaccination. What might happen in that event is speculative. In that context, the Father would presumably take his daughter's wishes into account when exercising his own legal authority as her parent.

[24] Having considered all of the factors bearing upon the child's best interests, and in giving primary consideration to her physical, emotional and psychological safety, security and well being, I find it to be in the best interests of the child to grant the order requested by the Father. I find that any risks presented by the COVID-19 vaccines are outweighed by their benefits. Although I acknowledge the Mother's sincere objection to the use of the COVID-19 vaccines, particularly on the basis of her religious beliefs, I must balance that consideration against the Father's sincere wish to protect his daughter from disease. At the end of the day, the balance favours access to the vaccines which have been approved by the scientific community and Alberta's public health authorities.

#### **D. Conclusions and Order Granted**

[25] The order requested by the Father is granted. The Father may make COVID-19 vaccination appointments for the child and may take the child to those appointments despite the absence of the Mother's consent.

[26] The Father made the aforementioned vaccination appointment in order to trigger the language of the current parenting Order. As a result of the delay in preparing these reasons, that date has now passed. However, the effect of the present decision is to dispense with the Mother's right to object to COVID-19 vaccinations pursuant to s. 8(b) of the Consent Final Parenting Order. Consequently, the Father is at liberty to make further COVID-19 vaccination appointments for the child in the future, and to take the child to such appointments despite the absence of the Mother's consent.

Heard on the 8<sup>th</sup> of December, 2021.

**Dated** at the City of Edmonton, Alberta this 21<sup>st</sup> day of January, 2022.

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**N. Whiting**  
**J.C.Q.B.A.**

**Appearances:**

Karin F. Schwab, Frohlich Rollins Schwab  
for the Plaintiff Father

Lisa A. Sembaliuk, the Mother,  
on her own behalf