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Vaccination roll-out for children: hurdles under the Care of Children Act

By Telise Kelly - 19 Aug 2021

With today's announcement that the Pfizer COVID-19 Vaccine has been approved for children aged 12 to 15 years, many parents will now be considering whether to vaccinate their children. But what happens when two parents (who are legal guardians of their children) can't agree on this critical issue?

The Care of Children Act 2004 confirms that both guardians of a child have the right and responsibility to make decisions on "important matters" which affect their child, regardless of whose day-to-day care the child is in. Guardians are expected to agree on such decisions and implement them jointly. Non-routine medical treatment is one such "important" decision (among others, including schooling and international travel).

The Family Court has found that vaccination is non-routine medical care. That means *both* Guardians need to agree before a child can receive any vaccination, including the COVID-19 Pfizer jab.

If both Guardians cannot agree, the dispute must be determined by the Court. This can be a difficult issue for a parent who wishes to have their child vaccinated, in circumstances where the other's parent's refusal to consent effectively achieves their goal: no vaccination. The onus is placed on the pro-vaccination parent to seek the Court's assistance or face the possibility of adverse consequences for taking unilateral action.

In the most recent decisions out of the Family Court on the issue of vaccination, the Court has upheld the Ministry of Health Guidelines on public immunisations when deciding whether a child should be vaccinated. On each occasion, the Court preferred the Ministry of Health's Guidelines to the evidence of the parent wishing to prevent vaccination, particularly where there was an absence of medical evidence to demonstrate a specific risk of vaccinating this particular child. On both occasions, the Court confirmed that the child should be vaccinated in accordance with the Ministry of Health's advice.

Thus, it would seem that there is a trend within the Family Court towards vaccination, so long as it is recommended by the Ministry of Health. However, on each occasion the Court has accepted and confirmed that vaccination is a guardianship issue and thus, its intervention is required in order to resolve the dispute between guardians.

In light of today's announcement, and the requirements that Guardians agree and act jointly with respect to vaccination, it seems that the Family Court will see more of these disputes coming before it.

If you believe you might be facing a difficult vaccination debate with your child's other guardian, please contact any member of our Family Law Team.

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