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## **Summary of Our Concerns**

### **Brief to the Standing Committee on the Legislative Assembly**

### **On Proposed Amendments to the Immunization of School Pupils Act**

**Re: Schedule 1 of Bill 87, An Act to implement health measures and measures relating to seniors by enacting, amending or repealing various statutes.**

**Protecting Patients Act, 2017**

**May 3, 2017**

**Submitted by: Vaccine Choice Canada**

## **Vaccine Choice Canada – Summary of our Concerns – May 3, 2017**

Re: Bill 87, Schedule 1 (formerly Bill 198, an Act to amend the Immunization of School Pupils Act of Ontario).

### **Who We Are**

Vaccine Choice Canada is a federally registered not-for-profit society. Our main goal is to uphold the right of all Canadians to give informed consent to medical treatments with vaccine products. Since informed consent necessarily implies access to information, Vaccine Choice Canada serves as a public information and resource group. Our energies are concentrated on the collection and dissemination of vaccine-related information.

The roots of our organization lie in the passage of the July 7, 1982 Immunization of School Pupils Act (ISPA) and the group of concerned parents who formed the Committee Against Compulsory Vaccination in response to that Act.

### **Our Charter Rights**

The citizen group, Committee Against Compulsory Vaccination formed to lobby for inclusion of a conscience-based exemption to the Act based on fundamental protections guaranteed to all citizens in the Canadian Charter of Rights and Freedoms which had been patriated earlier that same year, on April 17, 1982.

In the spring of 1982 the fundamental human rights of Canadians were secured by the patriated Constitution Act, proclaimed by Queen Elizabeth II in Ottawa on April 17, 1982. The Canadian Charter of Rights and Freedoms forms a major part of the Act, and is intended to protect the civil rights of Canadians from the policies and actions of all levels of government. Bringing the rights of Canadians into closer alignment with the Universal Declaration of Human Rights adopted by the United Nations General Assembly in 1948 was a historic achievement by Pierre Trudeau's Liberal government.

On July 7, 1982, less than 3 months after Canada celebrated its new Charter protections of freedom of conscience and religion and security of the person, the Ontario government passed the Immunization of School Pupils Act (ISPA). Strangely, the new law excluded parents' right to conscience-based vaccine exemptions, but allowed for medical and religious exemptions, which begs the question whether exclusion of conscience exemptions from ISPA was an oversight or intentional.

Following the determined efforts of this group of concerned parents, the government was compelled to amend ISPA to reflect our Charter guarantee of the individual's right to freedom of conscience. The conscience clause amendment to ISPA on December 14, 1984 secured parents' right to exempt their children from vaccination for reasons of conscience or sincerely held belief.

## **Monitoring the implementation of ISPA**

Since 1984, Vaccine Choice Canada has continued the work of our original Committee, has monitored the implementation of the ISPA in Ontario and has informed parents of their legal right to vaccine exemptions, has provided ease of access to vaccine exemption forms and has encouraged citizens to inform themselves on the safety and efficacy of vaccines.

Over the decades, we have watched the Ontario Ministry of Health continue to sanction words and actions that subvert information about the availability of legal exemptions from vaccines, state that vaccination is *mandatory* for school-age children when it is not, and coerce consent from students and parents with threats of school suspension without clearly informing them of their legal right to be exempted from vaccines.

Most shockingly, we have received reports from distressed parents that children as young as 11 have been coerced into submitting to vaccination in the school setting without parental knowledge or consent.

Repeated efforts to communicate our concerns to the Ministry of Health have been ignored as evidenced by our subsequent and current complaints filed with the Office of the Ontario Ombudsman<sup>1</sup>.

## **Our Concerns**

### **Schedule 1- Bill 87 Violates Constitutional Rights**

Vaccine Choice Canada is very concerned that the proposed amendment (Bill 87) to the Immunization of School Pupils Act (ISPA) forcing parents to attend "vaccine education" sessions against their will, in order to obtain a legal vaccine exemption, imposes an unacceptable restriction on our Constitutional Rights under the Canadian Charter of Rights and Freedoms.

Furthermore, Bill 87 places an unacceptable burden on busy families who will be forced under duress to submit to pro-vaccine messaging they already reject.

Bill 87 adds insult to injury to the Ontario government's decades long campaign to foil parents' access to vaccine exemptions. By placing yet another layer of restrictions on our civil rights, the provincial government sends a chilling message to all Canadians that it is willing to trample citizens' most fundamental Constitutional rights in order to achieve maximum compliance with its vaccination goals.

**The Ontario provincial government needs to be reminded once again that it does NOT have the right to impose legislative restrictions on civil and legal rights we are already granted by the Canadian Charter.**

### **Violation of Privacy Laws**

Another aspect of the ISPA amendment as proposed by Schedule 1 of Bill 87 that raises serious concerns is that doctors, nurses and other vaccine providers will be required to provide the medical officer of health (public health official) with the vaccine records of every child they have vaccinated. Disclosure of patients' medical records without the patient's or parental knowledge and consent is a serious breach of medical records privacy laws and must be contested. In Ontario PHIPA, the Personal Health Information Protection Act<sup>2</sup> is the legal instrument that protects people's right to privacy of their medical records.

The Privacy Commissioner of Ontario explains that patients have the right to ***“refuse or give consent to the collection, use or disclosure of your personal health information”***, except in certain circumstances such as emergencies.<sup>3</sup>

Requiring parents to reveal their children's medical (vaccine) records conflicts with Ontario privacy laws as this legal opinion on the Personal Health Information Protection Act explains:

***Consent is a cornerstone of this legislation.” And, “Fundamental to the concept of consent, PHIPA recognizes the right of the individual to withhold or withdraw his or her consent for the collection, use or disclosure of PHI, including for health care purposes. Further, section 20(2) of PHIPA provides that **an individual can withhold or withdraw his or her consent to the collection, use or disclosure of his or her PHI by a HIC for the purpose of providing or assisting in providing health care.**”<sup>4</sup>***

## **Bill 87 Violates Informed Consent Laws**

The medical ethic of informed consent is clearly articulated in Ontario's provincial health Acts. Informed consent is the ethical cornerstone of the practice of medicine. Every medical professional, including nurses, is taught the theory and application of medical ethics. Obtaining informed consent from the patient prior to any medical procedure, including vaccination, is both a legal and ethical requirement.

Every human being, prior to submitting to a medical treatment that carries known risks, has the right to know the risks and side effects that can result from such a medical treatment, has the right to consider the risks and benefits prior to making a voluntary, informed decision, and has the right to accept or reject the treatment. Every individual has the right to make a voluntary decision to medical risk taking without government or medical coercion. **Informed consent to medical risk taking is accepted as a basic human right.**

The informed consent ethic is enshrined in numerous international treaties to which Canada is signatory. The *Universal Declaration on Bioethics and Human Rights* is one such treaty:<sup>5</sup>

**Article 6 – Consent** in the treaty reads as follows:

“Any preventive, diagnostic and therapeutic medical intervention is only to be carried out with the prior, free and informed consent of the person concerned, based on adequate information. The consent should, where appropriate, be expressed and may be withdrawn by the person concerned at any time and for any reason without disadvantage or prejudice.”<sup>5</sup>

The medical ethic of informed consent and patients' right to give voluntary & informed consent is clearly articulated in Ontario's provincial health Acts referred to below.

### **A. Ontario's Health Protection and Promotion Act**

It is a widely documented medical fact that vaccines can and do cause a range of side effects and injuries, including death in some people.<sup>6</sup>

A particular procedure for informing consenting persons of certain adverse events is set out in Ontario's *Health Protection and Promotion Act*<sup>7</sup>, Section 38 titled, *Immunization Definitions*.

First, in section 38 (1) **reportable events** are defined:

38. (1) In this section...“reportable event” means,
- (a) persistent crying or screaming, anaphylaxis or anaphylactic shock occurring within forty-eight hours after the administration of an immunizing agent,
  - (b) shock-like collapse, high fever or convulsions occurring within three days after the administration of an immunizing agent,
  - (c) arthritis occurring within forty-two days after the administration of an immunizing agent,
  - (d) generalized urticarial [hives], residual seizure disorder, encephalopathy, encephalitis or any other significant occurrence occurring within fifteen days after the administration of an immunizing agent, or
  - (e) death occurring at any time and following upon a symptom described in clause (a), (b), (c) or (d).

Next, section 38 (2) articulates the medical providers’ duty to inform the patient of the importance of reporting reportable events that may occur following vaccination:

**Duty to inform**

(2) If consent to the administration of an immunizing agent has been given in accordance with the *Health Care Consent Act, 1996*, the physician or other person authorized to administer the immunizing agent shall cause the consenting person to be informed of the importance of immediately reporting to a physician or a registered nurse in the extended class any reaction that might be a reportable event.

So a patient would necessarily need to have a list of reportable events that relate to the vaccine or vaccines being administered and the window of time within which they need to let the person who administered the vaccine know that such an event has occurred.

Section 38 (3) then sets out one more duty for anyone who administers a vaccine:

**Duty to report reactions**

(3) A physician, a member of the College of Nurses of Ontario or a member of the Ontario College of Pharmacists who, while providing professional services to a person, recognizes the presence of a reportable event and forms the opinion that it may be related to the administration of an immunizing agent shall, within seven days after recognizing the reportable event, report thereon to the medical officer of health of the health unit where the professional services are provided.

This Act therefore clearly sets out a chain of events that are to take place regarding certain serious adverse reactions for both patients and their health care provider. To our knowledge this law is not generally being followed or enforced.

In this regard, the *2014 Annual Report of the Office of the Auditor General of Ontario*<sup>8</sup> noted the importance of **reportable events information** in Recommendation 10 reproduced below [emphasis ours].

**Recommendation 10**

**To enable meaningful analysis of adverse events following immunization and to help prevent future adverse events, the Ministry of Health and Long-Term Care, in conjunction with Public Health Ontario, should:**

- **require health-care providers who administer vaccines to give patients standardized information about which adverse events should be reported;**
- collect information on health-care providers who have administered vaccines associated with adverse events; and
- follow up on any unusual trends, including areas where adverse event rates look unusually low or high.

**B. Ontario's Health Care Consent Act**<sup>9</sup>

This act is very clear about the parameters of Informed Consent. While the protections provided by the Act insure that individuals are protected from medical overreach, Schedule 1 of Bill 87, if passed will act as a coercive instrument to undermine these rights.

**Stipulations of the *Health Care Consent Act*<sup>9</sup>, Part II: Treatment**

**No treatment without consent**

10. (1) A health practitioner who proposes a treatment for a person shall not administer the treatment, and shall take reasonable steps to ensure that it is not administered, unless,

- (a) he or she is of the opinion that the person is capable with respect to the treatment, and the person has given consent; or
- (b) he or she is of the opinion that the person is incapable with respect to the treatment, and the person's substitute decision-maker has given consent on the person's behalf in accordance with this Act.

**Elements of consent**

11. (1) The following are the elements required for consent to treatment:

- 1. The consent must relate to the treatment.

2. The consent must be informed.
3. The consent must be given voluntarily.
4. The consent must not be obtained through misrepresentation or fraud.

### **Informed consent**

11. (2) A consent to treatment is informed if, before giving it,
  - (a) the person received the information about the matters set out in subsection (3) that a reasonable person in the same circumstances would require in order to make a decision about the treatment; and
  - (b) the person received responses to his or her requests for additional information about those matters.

### **No infectious disease emergency**

Since vaccine compliance among Ontario families is already high, and since there is no infectious disease public health emergency, Vaccine Choice Canada questions why this government is intent on violating citizens' most fundamental civil rights in its misguided goal of imposing another level of constraint on the small percentage (less than 2%) of families who refuse some or all vaccines for their children?

It is important to reiterate that the dramatic decline in mortality from infectious diseases occurred well before mass vaccination programs. The occasional outbreak of 'vaccine preventable' diseases has much more to do with **vaccine failure** than with vaccine refusal. <sup>10,11,12</sup>

### **Wasting scarce healthcare dollars while trampling Informed Consent Rights**

Vaccine Choice Canada maintains that mandatory vaccine education sessions are a colossal waste of limited health care dollars that could be better spent elsewhere.

It is well known that the majority of parents who refuse vaccines for their children or who vaccinate selectively, are well educated and have already thoroughly researched the benefit/risk equation of injecting their children with the myriad complex biochemical substances that comprise vaccines, which like all drugs carry a risk of injury and death for some. Forcing parents to submit to mandatory vaccine education sessions in an attempt to influence their personal beliefs about medical risk taking will not sway them, will create more resentment, anger and polarization, and will be taken as an infringement of our Charter rights.



Schedule 1 of Bill 87 is blatantly coercive and violates the essential parameters of Informed Consent as articulated by Ontario's Health Care Consent Act, Canadian Medical Law, and physician guidelines in obtaining consent to medical treatment(s):

***“Patients must always be free to consent to or refuse treatment, and be free of any suggestion of duress or coercion. Consent obtained under any suggestion of compulsion either by the actions or words of the physician or others may be no consent at all and therefore may be successfully repudiated.”<sup>13</sup>***

## **No Compensation for Vaccine Injury Victims**

Neither the Province of Ontario, nor the Government of Canada take any responsibility whatsoever for the vaccine injuries and deaths that occur every year. Canada is the only G7 country without a vaccine injury compensation program (except for Quebec).

## **Vaccine Adverse Events Reports Inaccessible to the Public**

Canada operates a dual reporting system that is confusing, lacks transparency and is mostly inaccessible to the public.

Between 1987-2011, Health Canada and the Public Health Agency of Canada received **115,837 reports of adverse events following immunization (AEFI)**.<sup>14</sup> Of these, **6,180 were reports of Serious Adverse Events (SAE)** which resulted in a life threatening event, hospitalization, congenital deformity, disability or death.

The Vaccine Safety Report 2<sup>15</sup> provides evidence from periodic vaccine adverse events reports published by the Canadian government, that the vast majority of adverse events and injuries following immunizations occur in children and continues to rise.

In 2014 children of all ages experienced 80% of SAEs. In 2015 this had risen to 84%. In 2014 babies and infants under the age of 2 experienced 60% of SAEs. In 2015 this had risen to 63%.<sup>15</sup> It is an accepted fact that vaccine reactions and injuries are grossly underreported. It is estimated that only between 1-10% of vaccine reactions and injuries are reported to government agencies.

The data on vaccine adverse events held by the CAEFISS system and the Canada Vigilance (CV) system is largely unavailable for public scrutiny. Additionally, the data tracking and collection of adverse reactions events following vaccinations in Canada is seriously flawed in both quality and quantity. In spite of media claims that Canada has a transparent adverse reaction reporting system, nothing could be further from the truth. The CV system is functionally inaccessible for the public and therefore useless as a tool to assist in determining vaccine safety or making informed health decisions.<sup>15,16,17</sup>

## Conclusion

The Ontario government acts illegitimately when it attempts to impose state mandated medical dogma on its citizens. Such mandates have no place in a free society.

*“The state has no business telling us what we must think, believe, read, eat or what medicines we and our children must take. Such imposed conformity is antithetical to the ideals of a free society. The state acts completely illegitimately when, for instance, it compels us all to accept the tenets of a particular religion. And the government acts with equal illegitimacy when it decides what particular medical point of view all individuals in society must accept and adopt. Such a question is in the realm of culture and there are, understandably, a great variety of opinions about which methods are best as there are varieties of opinions on other cultural matters. There is no room in a free society for a state-mandated medical dogma which we all must accept.”<sup>18</sup>*

*“Individuals, for themselves and their minor children, should have the right to accept or refuse these preventive medical interventions based on adequate information and without coercion, such as the threat of loss of economic or educational benefits. **Informed consent must be the default position because compulsion, on its face, not only undermines trust, but limits the fundamental rights to life, liberty, bodily integrity, informed consent, privacy and to parental decision making.**”<sup>19</sup>*

**Vaccine Choice Canada holds that Schedule 1 of Bill 87 (proposed amendment to ISPA) violates our fundamental legal and civil rights that are protected by the Canadian Charter of Rights and Freedoms. As well it violates our informed consent rights as provided in Ontario’s health care Acts, and undermines our medical privacy rights which are protected by PHIPA. This proposed amendment to the Immunization of School Pupils Act also contravenes internationally accepted standards that protect the right to bodily integrity, informed consent, privacy and parental decision making.**

**As such, we request that Schedule 1 of Bill 87 be withdrawn.**

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Vaccine Choice Canada is a registered not-for-profit educational society dedicated to promoting health among Canadians by helping families make fully informed and voluntary choices about vaccination. Vaccine Choice Canada receives no funding from government or corporate sources and is solely supported by its members.

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