



**FIRST REPORT
OF THE
STANDING COMMITTEE ON LAW AMENDMENTS**

**Third Session
59th Legislative Assembly
of the
Province of New Brunswick**

November 20, 2019

MEMBERS OF THE COMMITTEE

Hon. Ms. Anderson-Mason, Q.C., Chair
Mr. Northrup, Vice-Chair
Hon. Mr. Stewart
Mr. Fitch
Mr. K. Chiasson

Mr. Landry
Ms. Landry
Mr. McKee
Ms. Mitton
Mr. DeSaulniers

November 20, 2019

To The Honourable
The Legislative Assembly of
The Province of New Brunswick

Mr. Speaker:

I have the pleasure to present herewith the First Report of the Standing Committee on Law Amendments for the session.

The report is the result of your Committee's deliberations on Bill 39, *An Act Respecting Proof of Immunization*.

On behalf of the Committee, I wish to thank those individuals and organizations who appeared before the Committee or provided written submissions. In addition, I would like to express my appreciation to the members of the Committee for their contribution in carrying out our mandate.

Your Committee begs leave to make a further report.

Respectfully submitted,

Hon. Andrea Anderson-Mason, Q.C., MLA
Chair of the Standing Committee on Law Amendments

November 20, 2019

To The Honourable
The Legislative Assembly of
The Province of New Brunswick

Mr. Speaker:

Your Standing Committee on Law Amendments begs leave to submit their First Report of the session.

On June 7, 2019, Bill 39, *An Act Respecting Proof of Immunization*, was introduced in the Legislative Assembly by the Honourable Dominic Cardy, Minister of Education and Early Childhood Development. The purpose of Bill 39 is to remove non-medical exemptions from the mandatory immunization requirements for public school and licensed early learning and child care admissions. The Bill requires students attending public schools and children in licensed early learning and child care facilities to provide either proof of immunization or a medical exemption on a form signed by a medical professional. On June 11, 2019, by resolution of the House, consideration of the subject matter of Bill 39 was referred to the Standing Committee on Law Amendments.

On July 9, 2019, the Committee met and determined that members of the public and interested stakeholders should be invited to provide input and advice to the Committee with respect to the issues raised by Bill 39. Public hearings were held in the Legislative Council Chamber for Bill 39 on August 27, 28 and 29.

The Committee heard from 30 presenters, including the Education and Early Childhood Development Minister, the Chief Medical Officer of Health, and the Child, Youth and Seniors' Advocate, on the issues surrounding Bill 39. The Committee also received approximately 265 written submissions, mainly in the form of emails, from individuals and organizations in New Brunswick and across North America.

On October 18, 2019, the Committee met with officials from the Office of the Attorney General and the Department of Health. Following the meeting, the Committee forwarded questions to the Department of Education and Early Childhood Development for response. The Committee met again on November 13, 2019, to consider the input received during the consultation process and to formulate a Committee report with recommendations to the House. The Committee wishes to express its appreciation to the presenters who appeared at the public hearings and to those individuals and organizations who provided written submissions.

The Committee wishes to note that Bill 39 has since died on the Order and Notice Paper as the Second Session of the 59th Legislative Assembly was prorogued on November 19, 2019. Nonetheless, the mandate of the Committee to review the subject matter of the Bill remains in effect.

The following is a summary of the input received on the issues raised by Bill 39, with a recommendation to the House.

PUBLIC HEARINGS

Department of Education and Early Childhood Development

The Honorable Minister of Education and Early Childhood Development was the first presenter at the public hearings on Bill 39. He explained the genesis of the Bill and advised the Committee that its purpose is to make immunization mandatory for children attending the public education system, in order to protect immune-compromised children and citizens at large. He submitted that the removal of the non-medical exemptions to vaccination does not deny the right of parents to choose what they believe is best for their children.

The Minister presented his concerns, in the wake of the Saint John measles outbreak, about the increasing influence of the anti-vaccination movement and about the need to maintain high vaccination rates. He advised that the school system has thus far failed to adequately track vaccination records for children attending the public education system, as required under the *Education Act*, an issue that came to light during the outbreak, and that increased the need for a discussion and action on the matter.

In reference to a study conducted in Ontario, he informed the Committee that education programs targeting vaccine hesitant parents have been inconclusive, further reinforcing the need for mandatory vaccination as the only measure capable of protecting children. On the question of the constitutionality of the measures advanced by Bill 39, the Minister acknowledged that, if passed, the Bill would most likely be challenged in court, the outcome of which is uncertain.

The Minister detailed a proposed schedule of implementation for the Bill. A new electronic system tracking vaccines would be launched in 2020, allowing for a better picture of the vaccination needs in the province. Schools and healthcare professionals could refer to the system to target parents who may have simply forgotten the vaccination schedule of their children or have limited access to vaccination. The Bill would then come into force in 2021 to allow healthcare professionals to be adequately prepared. If parents refused to vaccinate their children accordingly, they would then need to provide a medical exemption or provide an alternative to the public school system, such as enrolling their children in a private school or home schooling.

According to the Minister, mandatory vaccination is becoming a response to the rise of the anti-vaccination movement. Maine and California have both opted for similar measures in the United

States and the issue has been raised in other Canadian provinces (British Columbia, Ontario and Manitoba), although New Brunswick would be the first Canadian jurisdiction to pass such a law.

New Brunswick Medical Society

A representative of the New Brunswick Medical Society spoke on behalf of physicians in the province. He argued for the need to address vaccine hesitant parents through dialogue to provide answers to their concerns and to stress the importance of vaccination programs. He advised the Committee that the health advancements as a result of vaccination programs are the most monumental seen in Canada and that the World Health Organization has named vaccine hesitancy as one of the biggest threats to public health.

His presentation raised concerns on the ethical considerations of removing non-medical exemptions and on the possible negative consequences of the Bill that could penalize certain individuals. As a result of these considerations, the New Brunswick Medical Society recommended: that sufficient resources be allocated to support the proper distribution of vaccines, to support parents and students in the school system, and to support the Immunization Record Database to enable more accurate and up-to-date information for patients and healthcare providers; that the efforts to increase rates of vaccination be reinforced; and that a province-wide educational and awareness campaign on the benefits of vaccination be launched. In addition, with respect to the safety of vaccines, he informed the Committee about the abundance of scientific research related to vaccination, demonstrating their benefits and efficiency.

Chief Medical Officer of Health

The Chief Medical Officer of Health for the Province of New Brunswick explained that part of her mandate consists of educating the public on the value of vaccination; implementing the new vaccine registry; responding to and controlling disease outbreaks; supporting public health partners to deliver the immunization program; and providing the science and evidence to help inform government legislation. As such, she advocates for the promotion of immunization and for keeping vaccination rates high.

The Chief Medical Officer gave the opinion that the Public Health Information Solution introduced by the Minister of Education and Early Childhood Development is a significant step forward in helping schools and healthcare professionals access up-to-date information about vaccination records. She further noted the importance of maintaining a dialogue with vaccine hesitant parents in order to improve their confidence and support them in getting their children vaccinated. She also informed the Committee on the effectiveness of vaccines, immunization being one of the most important ways to promote health, and of the significant risks associated with vaccine preventable diseases when compared to the lesser risk of a serious adverse reaction to a vaccine.

Child, Youth and Seniors' Advocate

The Child, Youth and Seniors' Advocate presented the results of the Child Rights Impact Assessment (CRIA) Advisory Opinion conducted in relation to Bill 39. The CRIA allows lawmakers to ensure legislative changes advance children's rights and best interests, and that negative impacts of proposed changes are identified and minimized to the greatest extent possible.

Following a thorough contextual analysis that included an overview of the situation in different jurisdictions, the Advocate advised that the need to improve New Brunswick and Canada's immunization rates is an important and pressing substantive policy objective. The existing legislative scheme has proven inadequate to meet national and global public health goals in relation to disease prevention. He further indicated that the recent outbreak of measles is a small indication of a much larger public health challenge, where New Brunswick's performance to date has been lacking.

The Committee was advised by the Advocate that other jurisdictions have adopted a legislative scheme similar to the one proposed in Bill 39, and where such laws have been adopted, they have helped improve immunization rates.

Regarding possible constitutional challenges to Bill 39, the Advocate gave the opinion that a *Canadian Charter of Rights and Freedoms* section 2 argument that the Bill violates an individual's freedom of conscience and religion would be difficult to establish but, if proven, the infringement would be held justifiable under a section 1 of the *Charter* analysis. Similarly, he gave the opinion that a section 7 argument that the Bill violates an individual's right to life, liberty and security of the person would likely be rejected, but any infringement found by the courts would also be saved by section 1.

The Advocate recommended moving forward with the proposed Bill, but to also include it within a broader array of legislative and administrative measures that will help advance the legislative intent. These measures are in the areas of public education in relation to vaccine efficacy, improved coordination of vaccine delivery, the establishment of a provincial vaccine registry, better monitoring and reporting of provincial immunization and gap reduction efforts, and the consideration of creating a provincial vaccine adverse effects registry and a compensation mechanism.

New Brunswick Pharmacists' Association

Representatives of the New Brunswick Pharmacists' Association were in favour of Bill 39. Their input focused on the importance of vaccination in order to protect those most vulnerable, immune-compromised individuals. They submitted that vaccines have been proven safe and effective and explained how vaccination works and the process for vaccine approval in Canada.

Vaccine Choice Canada

A representative of Vaccine Choice Canada spoke about the loss of his son, believed to be related to vaccine injury, and about the mandate of his organization, which is to defend the ethical principle of informed consent. His presentation highlighted five main arguments that explained his opposition to Bill 39: vaccine products do not undergo the same level of safety testing as other medical products; vaccine products are not evaluated against a neutral placebo; the pre-license testing period is too short to evaluate the long-term safety of vaccine products; the safety of the vaccine program has not been established; and the legal immunity for vaccine manufacturers puts society at risk.

Documentation supporting these arguments and produced by Vaccine Choice Canada were provided to the Committee and were used by other presenters throughout the hearings.

A presenter from the legal profession representing Vaccine Choice Canada provided a legal analysis in opposition to Bill 39, arguing that if enacted it would force individuals to make a choice between vaccination and public education. In addition, according to his analysis, Bill 39 infringes the constitutional rights of citizens as protected by sections 2 and 7 of the *Charter*.

Other Presenters

A former educator suggested that it may have been more appropriate for the public consultation process to precede the development of the legislation. He also stressed the importance of placing the focus on the needs of the child and making a concerted effort to accommodate whenever possible. He suggested alternatives to the legislation should be explored, including consideration of a judicial review of the proposed Bill.

The other presenters who appeared at the public hearings were not in favour of Bill 39. Two presenters, from the medical profession, voiced their opposition to the Bill, based on their experience in the practice of medicine in the United States. One objected to the idea that the law is necessary, arguing that the diseases for which vaccines are made are not increasing, that most vaccines do not prevent the spread of diseases and that the complete vaccine schedule which the Bill would require, has, in his opinion, not proven to be safe. The other presenter emphasized the conflicts of interests between the medical profession, elected officials and pharmaceutical companies. She argued that adverse events related to vaccines are withheld from physicians and the public and had reservations on the current vaccine schedule administered to children.

Some presenters questioned the science behind vaccines and argued there are links between vaccines and numerous diseases and adverse effects. They questioned the possible financial links and conflicts of interests between the American public health agencies and the vaccine manufacturers. In addition, they questioned the safety of the substances found in vaccines and their potentially negative impact on the health of children.

The remainder of the presentations at the public hearings consisted of individuals who presented their personal points of view on Bill 39, often based on their children's reaction to vaccination. Two presenters who were parents discussed the health complications of their son, which started following his infant vaccines.

Some presenters stated they were in favour of vaccination before witnessing their children experience certain reactions following the administration of vaccines, prompting them to start researching the issue and refusing further vaccination for their children.

The parents of children believed to have suffered from vaccine-related injury expressed the lack of consideration they felt in the healthcare system when attempting to find answers and solutions for their children's declining health. They submitted they were not properly informed of the risks associated with vaccines, felt pressured to continue with the vaccine schedule despite the reactions they witnessed, and noted that the healthcare professionals administering the vaccines did not take the adverse reactions experienced seriously, as they were not forwarded to the registry of adverse effects.

They also argued that in light of these responses from the healthcare professionals, their children would probably not qualify for a medical exemption to mandatory vaccination and would thus have to be vaccinated in order to attend the public school system.

Doubtful about the safety and efficiency of vaccines, one presenter who was a parent explained that, in his opinion, vaccination is not a necessity to have healthy children and questioned the capacity of vaccines to prevent the spread of diseases.

Another main argument raised by the presenters in opposition to Bill 39 was that, if passed, the Bill would infringe on their rights, specifically the right to a public education for their children, and the right for parents to make decisions in the best interests of their children. Some presenters were not against vaccination, but rather were pro-choice, meaning they wanted the government to respect their individual rights to make informed decisions on the medical treatments provided to their children. They expressed the difficulty of having a constructive dialogue on the topic of vaccination without feeling bullied because of their perspective on the issue, and welcomed the openness demonstrated by the public consultation process.

Numerous presenters expressed their suspicions toward vaccine manufacturers and public health agencies, drawing for instance on documented examples of conflicts of interests in the United States. Some distributed articles highlighting certain risks associated with vaccines, the adverse events following immunization report from the Public Health Agency of Canada, and vaccine inserts detailing their possible adverse reactions and risks. This line of argument raised the question of the absence of a compensation plan for vaccine-related injuries and its necessity.

Several presenters in opposition to Bill 39 stated they would relocate to another province in the event that the Bill came into force, as they would not want their children to be vaccinated against their will

and they could not afford to home school their children. They pleaded for government not to compromise a child's access to the public school system and, instead, look for alternatives that include a dialogue with vaccine hesitant parents.

WRITTEN SUBMISSIONS

The Committee received approximately 265 written submissions, mainly in the form of emails, in the days preceding and following the public hearings, mostly from New Brunswickers, but also from other Canadian jurisdictions and from citizens of the United States. The majority of the written submissions reflected an individual opinion from a personal perspective, reinforced at times by references, and were not submitted on behalf of organizations or professional associations.

Submissions Opposed to Bill 39

The vast majority of the submissions were opposed to Bill 39. Three main themes emerged as the main concerns expressed in the written submissions. These are: the infringement of civil rights and individual freedom, the health implications of vaccines, and the suspicions about the pharmaceutical industry.

The following summary attempts to retrace the main ideas expressed under each theme.

1. Infringement of Civil Rights and Individual Freedom

As one of the main concerns expressed in the written submissions, numerous individuals perceived Bill 39 as an infringement of their rights.

A number of citizens believed the Bill infringes the *Charter* and constitutes a violation of their constitutional rights. Since they viewed vaccination as posing potential risks and as an invasive procedure, they asserted their right to informed consent, security of the person, and the right to choose. Additionally, they refuted the idea of a crisis following the measles outbreak in Saint John to justify what they understood as an infringement of their rights. It was argued that in order for a patient's consent to be regarded as informed, the patient must provide consent freely and without any coercion or deception. Another submission argued that fear-driven legislation to impose invasive medical procedures upon citizens without their desire or consent will create divisiveness and ultimately goes against our fundamental rights.

One argument raised in numerous submissions was the right of parents to determine what is best for their children, a matter in which the government should not, in their opinion, intervene. Some claimed that removing the non-medical exemptions to immunization for school children would infringe on the right to public education, as guaranteed by law, and undermine the diversity and inclusiveness of the education system. Also, according to this perspective, the Bill would result in an increased burden of responsibilities for school principals and personnel in applying the legislation.

One submission highlighted the concerns of the francophone community and the fear that if the Bill was to pass, francophone children would be at a disadvantage as French language private schools either do not exist in the province or are limited in number compared to their English counterparts.

A few individuals made the argument that vaccination conflicts with their personal beliefs, as they perceive the manufacturing and ingredients of vaccines as unethical and contrary to their faith. For that reason, they perceived the Bill as an infringement of an individual's freedom of conscience and religion.

Some of the submissions raised concerns about the perceived increase in government authority and power over an individual's body through mandatory vaccination and warned of its potential negative consequences.

2. Health Implications of Vaccines

The clear majority of the arguments contained in the written submissions sent in by the general public concerned the health implications of vaccines. Often accompanied by excerpts from anti-vaccination groups' webpages or by links to various websites and videos, the viewpoints expressed are varied but still presented similarities in their position.

Inadequate vaccination testing was one of the most common arguments found in the submissions, often referring to the "lack of double blinded placebo trials", to the "lack of evidence in the safety of the current combined childhood schedule of vaccinations", or to the "carcinogenic or mutagenic effects of vaccination". In relation to this argument, many proposed "mixed scientific results" on vaccination, the lack of transparency on the reporting of vaccine-related injuries that occur, and the lack of attention paid to the side effects.

Numerous accounts of perceived vaccine-related injuries and diseases were discussed in the submissions, most related to brain damage, autism, ADHD, and chronic illnesses. Another argument was that there are "more health problems today due to vaccines" and that "these diseases are more dangerous than those vaccines attempt to prevent". Personal stories of relatives and acquaintances believed to suffer from vaccine-related injuries were common to reinforce this argument, just as accounts of the healthy conditions of unvaccinated children or individuals were also told to emphasize the perceived dangers of vaccines.

Some of the opinions formulated against immunization brought forward the idea that vaccines destroy the immune system, advancing in some cases the thought that "having measles actually creates a stronger immune system and protects against certain types of cancers" or that "vaccination weakens the body's ability to respond to new viruses". Many believed that unvaccinated children do not pose a threat in the transmission of diseases, no more than those vaccinated, and that vaccines have failed to achieve herd immunity.

3. Suspicions about the Pharmaceutical Industry

Several arguments presented in the written submissions expressed overall suspicions about pharmaceutical companies, justifying the position against mandatory vaccinations.

Drawing on the health-related concerns of vaccines, some argued that “sacrifices were made for the financial gains of the pharmaceutical companies”, claiming that the “vaccine studies were always conducted by vaccine manufacturers” and that pharmaceutical companies would unjustly “benefit from the sale of vaccines and the drugs needed to treat their side effects”.

According to this view, the push for mandatory vaccination is the result of the efforts of pharmaceutical companies that have a hidden agenda and have enrolled governments, regulatory bodies such as the American Center for Disease Control and Prevention, and the media by providing them with financial incentives.

The lack of accountability of pharmaceutical companies in the event of vaccine-related injuries, their “legal immunity” and the existence of a vaccine court in the United States fed the suspicions expressed against the industry.

Submissions in Support of Bill 39

Among the few submissions received supporting Bill 39, the main arguments put forward by their authors raised the concern about the influence of the anti-vaccination movement and its potentially detrimental effect on the health of the population and the need to support evidence-based decision-making.

While the vast majority of written submissions were opposed to the Bill, one submission in support was particularly noteworthy. A senior scientist at the Ottawa Hospital Research Institute, who was unable to attend the public hearings, provided the Committee with a written submission explaining his view on mandatory vaccination, presenting a nuanced position on the issue.

Drawing on scientific literature, the doctor discussed the many benefits that immunization programs have brought to the world and emphasized the need for governments to pursue their goals of maintaining high vaccination rates to protect individuals, as reductions in vaccine coverage result in outbreaks that affect both vaccinated and unvaccinated individuals.

He presented his thoughts on both the positive and negative impacts of mandatory immunization policies. By looking at the examples of jurisdictions that removed exemptions to mandatory vaccination, he pointed to the benefits of increased immunization rates. On the other side, it was submitted that imposing a medical procedure can lead to parents withdrawing their children from the public health system, which would have a negative impact on public health.

The doctor acknowledged that given the evidence for these policies and the re-emergence of vaccine-preventable diseases, the benefits to the public may outweigh the infringements on a parent's right to choose. However, in order to proceed with removing non-medical exemptions, he argued for the need to consider whether all other less restrictive measures have been attempted and whether the policies, if adopted, will be effective. In addition, he argued in favor of the creation of a vaccine injury compensation program that would apply a principle of reciprocity, providing compensation in the rare event that a child was harmed by immunization.

The submission advised that the “removal of exemptions could be justified given the current public health climate and the evidence for benefit despite levels of uncertainty” and concluded by suggesting the following initiatives: constructive engagement should be conducted with potentially receptive vaccine hesitant communities; an effective immunization registry should be established; the opportunity to partner with Quebec on its vaccine compensation program should be discussed; sensitivity must be demonstrated to parents whose views may not align with the government since failure to do so could result in a spread of anti-vaccine sentiment; and the removal of exemptions policy should be periodically revisited, as mandating that such a policy may only be a temporary measure in the current environment of vaccine-preventable disease outbreaks may improve public acceptance of the policy.

RECOMMENDATION

The Committee strongly supports immunization programs and is in agreement that there is a need to maintain high vaccination rates and accurate, current and complete immunization records. The Committee also wishes to report the concerns raised by those who appeared at the public hearings or provided written submissions. Accordingly, the Committee makes the following recommendation:

THAT the Legislative Assembly consider the issues and concerns outlined in this report during its consideration of any proposed legislation similar to Bill 39, *An Act Respecting Proof of Immunization*, to remove non-medical exemptions from the mandatory immunization requirements for children attending the public education system.