

# Failing to Provide the Necessaries of Life: Freedom of Conscience and Religion, Parental Choice and Children's Rights

## Introduction

David and Collet Stephan were convicted in April 2016 of failing to provide the necessaries of life (Criminal Codes 215(2)(b)) to their son Ezekiel, who died of meningitis in March 2012.[\[1\]](#)

A family friend and nurse had suggested to the Stephans that Ezekiel was presenting with symptoms of meningitis and that he should see a doctor.[\[2\]](#) After conducting some research on the internet, the Stephans concluded that Ezekiel likely had viral meningitis, and not the more serious bacterial variation of the disease.[\[3\]](#) They decided to treat Ezekiel with olive leaf extract, garlic, echinacea and various other natural supplements rather than taking him to a medical doctor.[\[4\]](#)

The Crown's theory was that the Stephans' opposition to Western medicine made them unwilling to access appropriate medical care when Ezekiel's life was in danger.[\[5\]](#) The Stephans deny this accusation. They claimed that Ezekiel did not appear to be in need of medical care until the period immediately before his death at which time they sought emergency medical assistance.[\[6\]](#)

After the Stephans lost their initial appeal to the Alberta Court of Appeal, David Stephan posted on Facebook that his conviction set a dangerous precedent for parents in Canada - if they did not parent as the government saw fit, then they could face criminal prosecution.[\[7\]](#)

What rights do parents have when it comes to making critical medical decisions for their children who are too young to make decisions for themselves?

## Balancing Rights

Case law has always recognized that parents can and should make decisions for their children. They are presumed to be in the best position to make decisions in their child's best interests.[\[8\]](#) Parents do not, however, own their child. A child is an individual with rights.[\[9\]](#)

In the case *B (R) v Children's Aid Society of Metropolitan Toronto* involving the right of a parent to refuse a life-saving blood transfusion for their infant child, the Supreme Court of Canada said that choosing medical treatments for one's child is a "fundamental aspect" of

freedom of religion.<sup>[10]</sup> However, the Court also said, like all rights in the *Charter*, freedom of religion is not absolute.

Section 2(a) of the *Charter* protects [freedom of conscience](#) and [religion](#). The purpose of this section is to “prevent interference with profoundly held personal beliefs that govern one’s perception of oneself, humankind, nature, and, in some cases, a higher or different order of being.”<sup>[11]</sup> A belief based on conscience receives equal protection to religious beliefs.<sup>[12]</sup>

Freedom of religion has been litigated extensively, while conscience has received relatively little attention. For this reason, the cases referenced in this article deal primarily with religion, however, these decisions regarding religion would, in all likelihood, be applicable to conscience as well.

While one is free to hold any religious *belief*, religious *practices* following from such beliefs that “impact on the fundamental rights and freedoms of others” can be restricted.<sup>[13]</sup> Children have the right to life, liberty, and security of person under [section 7](#) of the *Charter*. The section 2(a) rights of the parent are not allowed to override these. <sup>[14]</sup>

The government has *parens patriae* jurisdiction - the government is the protector of its citizens. Based on this principle, the state may intervene to protect children when their lives are in jeopardy and to protect their well-being.<sup>[15]</sup>

### **Failing to Provide “the Necessaries of Life”**

The offence that the Stephans were charged with was failing to provide the necessaries of life.<sup>[16]</sup> This is a criminal negligence offence. Parents are duty-bound to provide the necessaries of life to their children under the age of 16.<sup>[17]</sup> “Necessaries of life” are those things that “tend to preserve life.”<sup>[18]</sup>

If the parent makes a marked departure from the level of care that a reasonable person would provide to a child, then they are criminally negligent.<sup>[19]</sup> This standard does not equate with simply differences in parenting styles. The Crown must show that the parent had “wanton or reckless disregard for the lives or safety of,” the child.<sup>[20]</sup>

While David Stephan made statements that the offence he was convicted of infringed on his rights to parent his children, this was not the argument that he made in his appeal to the Supreme Court.<sup>[21]</sup> The standard of “wanton or reckless disregard for the lives or safety of” is clearly connected to the right of the child to life, which is protected by section 7 of the *Charter*. In the precedent setting *B (R) v Children's Aid Society of Metropolitan Toronto* case, the court observed that the right of a parent to make choices about the medical care of their children, in accordance with their section 2(a) right to conscience and religion, cannot infringe on the child’s right to life.<sup>[22]</sup> The offence of failing to provide the necessaries of life, then, may be a violation of the parent’s rights to freedom of religion and conscience, but it is a [justifiable violation](#).<sup>[23]</sup>

## Conclusion

When it comes to making choices that put a child's life in danger, the section 2(a) rights to freedom of conscience and religion of the parent do not override the section 7 rights of the child to life, liberty, and security of person.

Cases of refusing medical treatment become more complicated when the child is mature enough to understand the choice being made - in these cases the best interests of the child are weighed against the child's maturity level and ability to make an independent choice.<sup>[24]</sup>

[1] R v Stephan, 2016 ABQB 319 at paras 1, 33, 44, 2016 ABQB 319 (CanLII).

In May 2018, the Supreme Court of Canada ordered a new trial for David and Collet Stephan because the instructions given to the jury by the judge at the original trial were not clear enough.

[2] R v Stephan, 2016 ABQB 319 at para 21, ABQB 319 (CanLII).

[3] R v Stephan, 2016 ABQB 319 at paras 21, 43, 2016 ABQB 319 (CanLII). Justice RA Jerke described the difference between viral and bacterial meningitis as follows: "Untreated bacterial meningitis is fatal. It is therefore more dangerous than viral meningitis, but viral meningitis is also very serious. For example, it can cause a person to stop breathing. Viral meningitis is potentially fatal although far less often than bacterial meningitis," (para 43).

[4] R v Stephan, 2016 ABQB 319 at para 22, 2016 ABQB 319 (CanLII).

[5] R. v. Stephan, 2018 SCC 21 at para 35, 2018 SCC 21 (CanLII).

[6] R v Stephan, supra note 4. See also Lucie Edwardson, "Parents convicted in son's meningitis death relying on judge's 'failed' jury charge in Supreme Court appeal," *CBC News* (15 May 2018) online: <<https://www.cbc.ca/news/canada/calgary/collet-david-stephan-supreme-court-canada-appeal-1.4662783>>.

[7] Meghan Grant, "'No room for justice': David Stephan posts tirade after conviction upheld in son's meningitis death," *CBC News* (16 November 2017), online: <<https://www.cbc.ca/news/canada/calgary/david-collet-stephan-meningitis-death-son-failure-provide-necessaries-facebook-1.4404690>>.

[8] *B (R) v Children's Aid Society of Metropolitan Toronto*, [1995] 1 SCR 315 at para 85, 122 DLR (4th) 1 .

[9] *BR*, supra note 8, at para 85

[10] *BR*, *supra* note 8 at para 105.

[11] “Paragraph 2(a) - Freedom of religion,” in Government of Canada, *Charterpedia* (last updated 28 June 2018), online: <<http://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccdl/check/art2a.html>>. See *R v Edwards Books and Art Ltd*, [1986] 2 SCR 713 at 759, 35 DLR (4<sup>th</sup>) 1; *R. v. Big M Drug Mart Ltd*, [1985] 1 SCR. 295 at 346, 18 DLR (4<sup>th</sup>) 321; *Syndicat Northcrest v. Amselem*, [2004] 2 SCR 551 at para 41, 241 DLR (4<sup>th</sup>) 1; *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37 at para 32, [2009] 2 SCR 567 .

[12] *Hutterian Brethren*, *supra* note 11 at para 90; *Mouvement laïque québécois v. Saguenay (City)*, [2015] 2 SCR. 3 at para 70.

[13] *BR*, *supra* note 8 at para 107.

[14] *BR*, *supra* note 8 at para 113.

[15] *BR*, *supra* note 8 at para 88

[16] *Criminal Code*, RCC 1985, c-C-46, s 215(1).

[17] *Criminal Code*, RCC 1985, c-C-46, s 215(1); see also *R v Stephan*, 2016 ABQB 319 at para 5, 2016 ABQB 319 (CanLII).

[18] See *R v Brooks* (1902), 5 CCC 372 (BCCA)

[19] *R v Stephan*, 2016 ABQB 319 at para 37, 2016 ABQB 319 (CanLII).

[20] *Criminal Code*, RCC 1985, c-C-46, s 219(1).

[21] *R v Stephan*, 2018 SCC 21 (Factum of the Appellant).

[22] *BR*, *supra* note 8.

[23] *BR*, *supra* note 8 at paras 112-113.

[24] *A.C. v. Manitoba (Director of Child and Family Services)*, 2009 SCC 30, [2009] 2 SCR 181. See also: The Canadian Medical Protection Association, “Can a child provide consent?,” *Duties and responsibilities: Expectations of physicians in practice*, (published March 2014, revised June 2016), online: <<https://www.cmpa-acpm.ca/en/advice-publications/browse-articles/2014/can-a-child-provide-consent>>.