Has the Crown really demonstrated that the limitation on the *Right to Decline Medical Treatment* was reasonable and demonstrably justified?

Part 3: Effective at What?

The government has repeatedly claimed that the vaccine is 'safe and effective'. The questions are – effective at what and just how effective does something need to be before it can rightly be called 'effective'?

A note about 'efficacy' and 'effectiveness'. In everyday language these terms can be interchangeable and will be used so in this article. With regards to vaccine science, efficacy refers to how well a product works under controlled experimental conditions while effectiveness refers to how well it works in the real world.

There are three different types of efficacy related to covid injections that are often confused (frequently deliberately):

1. Efficacy against infection.
2. Efficacy against severe disease including hospitalisation and death.
3. Efficacy against transmission – stopping the disease from spreading.

The purpose of the Vaccine Mandate was not to stop workers getting infected. Nor was it to stop workers getting severe disease and overcrowding the hospitals. It was simply to stop transmission from workers to others. So, when considering the question of the efficacy of the vaccine in relation to the education and healthcare mandates, the only thing which is important is its **efficacy against transmission.**

The Pfizer trials, unfortunately, did not measure transmission, so there was zero evidence that the vaccine reduced transmission at the time 'provisional consent' was granted in February 2021. This is clearly stated in Medsafe's Clinical Evaluation, *"Vaccine prevention of asymptomatic infection and disease transmission has not been established."*

The Medsafe 'COVID-19 Therapeutic Products – Questions and Answers' 15 March 2021 revision asked the question, *"Does the vaccine prevent or reduce transmission of COVID-19?"* The answer stated, *"At this stage, we do not know if vaccination prevents or reduces transmission of COVID-19".* This answer remained here until 30 September 2021, when the question and answer were removed.

Efficacy against transmission cannot simply be inferred from efficacy against infection for 2 reasons:

1. Almost all data on efficacy against infection is measuring efficacy against **symptomatic infection**, as those who are asymptomatic or who have very mild symptoms do not seek testing and are therefore not usually measured in the public health reports. This results in inflated values for efficacy against infection.
2. Most workplace transmission occurs from infected workers who are asymptomatic or have very mild symptoms. The reason is simple – those who feel unwell won't go to work, and therefore

won't spread the virus, while those with mild or no symptoms continue working and may transmit the virus.

Additionally, most studies that attempt to measure the efficacy against transmission, measure 'household transmission' – where an infected 'index case' is closely surrounded by their household 'contacts'. These studies have little relevance to viral transmission in many workplace settings.

So, what evidence did the Crown produce that convinced the court that the vaccine was effective in reducing transmission?

For the Delta variant, Dr Town's affidavit states, *"International studies have indicated that the vaccine does reduce transmission of the Delta variant by approximately 30-50%"* (Dr Town's affidavit paragraph 60)

This statement is true as far as it goes, but it failed to inform the court that the referenced studies were on household transmission, that the efficacy waned rapidly to approximately 20% by 12 weeks, and that the viral loads in infected cases were the same regardless of vaccination status (this is important as viral load reflects the ability to transmit the virus).

For the Omicron variant, Dr Town makes no claims about the vaccine's efficacy in reducing transmission, simply noting that Omicron is more transmissible, and the situation is still evolving.

Dr Bloomfield in his affidavit, makes frequent claims that the vaccine reduces transmission, but provides little in the way of evidence to substantiate the claim. The only time he specifically addresses the efficacy of the vaccine in preventing transmission is for Omicron in reference to *"non-peer reviewed data from a small study"*, saying:

> *"However, non-peer reviewed data from a small study suggests that vaccinated people infect fewer people in their household, which is a setting where many 'exposure events' are likely to occur (meaning that this setting would generally tend to reduce the observed vaccine effectiveness, and that the effect of the vaccine is likely underestimated in this study)."* (Dr Bloomfield's 1 March 2022 affidavit, paragraph 35)

Justice Cooke quotes this statement by Bloomfield in his judgement (NZTSOS, paragraph 99). This is unfortunate. The study Bloomfield refers to is a Norwegian household study by Jalali et al and contrary to what Bloomfield stated, the study found:

- In the fully vaccinated contacts, *"we found the protection against infection with Omicron to be 16%".*
- The fully vaccinated primary cases had a 'Secondary Attack Rate' of 0.43, compared with a 'Secondary Attack Rate' of 0.40 from unvaccinated primary cases. In other words, the fully vaccinated had a **slightly higher rate of transmission** than the unvaccinated!! (although the difference was small and not statistically significant)
- As for the booster, the authors conclude, *"As reported by others, booster doses decrease this risk of infection with Delta and Omicron, but our findings suggest that it* ***has limited effect on preventing Omicron transmission."***

That's basically it – the bottom line is that there was very little solid evidence concerning the efficacy of the vaccine in reducing transmission. Justice Cooke came to the same conclusion, stating:

- *"I nevertheless find it **difficult to make definitive findings** on the extent to which mandatory vaccination still meaningfully reduces the spread of the Omicron variant based on the evidence and submissions I have received"* (NZTSOS p107)
- *"I am **not able to make definitive findings** on the continued effectiveness of vaccination to suppress the transmission of the Omicron variant in current circumstances*." (NZTSOS p108)

Even if there was disagreement as to the peak effectiveness of the vaccine, there was complete agreement on the fact that the effectiveness waned rapidly. If the vaccine was 50% effective in teachers who were vaccinated in October/November 2021, by the time school returned in February 2022 the effect would have been minimal. Justice Cooke, realising this, and also that the booster (which may have temporarily restored effectiveness) was not required for a full 6 months, stated,

> *"Indeed this period of time seems to me to be irrational if the whole purpose of the mandate is to ensure maximum protection against transmission. I am, to say the least, perplexed by this."* (NZTSOS, paragraph 106)

Despite his inability to make definitive findings on transmission, and despite his conclusion that the booster timing was perplexing and irrational, Justice Cooke ultimately ruled that the mandate was not only demonstrably justified at the time of his hearing, but remained demonstrably justified right through until the education worker mandate was finally revoked by the government, a full month later. (NZTSOS, paragraph 163)

How thoroughly did he scrutinise this evidence when determining that it was appropriate to limit a fundamental right?