

Quebec wants to tax the unvaccinated, but is that legal?

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Some political parties are calling it “radical,” while legal experts are calling it “unprecedented,” but the jury is still out on whether Quebec’s proposal to tax the unvaccinated is legally sound.

In a Canadian first, Quebec Premier François Legault announced a new “health contribution” that will have to be paid by people who haven’t received their first dose of the vaccine for non-medical reasons.

Though the province is still consulting with its minister of finance and legal advisers on the new measure, Legault announced Tuesday during a news conference that it would be a “significant” amount.

Montreal-based lawyer Julius Grey told CTV News “there is no question” that it is a clear violation of the Charter of Rights and Freedoms, but said he believes if an individual or group challenges it, whether it’s upheld in court will be a “close call.”

“On the individual side, this is a major attack on my integrity, my freedom,” Grey summarized the argument he predicted, and meanwhile, “there are other things the government could do” to accomplish its goals.

On the other hand, the counter-argument goes, “we’ve tried all sorts of things and Omicron is particularly contagious... and the government would get an expert to say there’s a real threat to the medical system and we might not get beds and so on.”

It’s a complicated question, he said.

“It’s not a discriminatory tax. It’s a way of trying to force vaccination, and while that is a clear and major Charter violation, I am not certain what the result will be... It could be argued both ways.”

Timothy Caulfield, law professor and Canada Research Chair in Health Law and Policy at the University of Alberta, said he thinks the validity of a tax on the unvaccinated depends on how it’s implemented.

Such a measure is a “pretty aggressive” move by the government and one that could further polarize public discourse around the vaccines, he said.

“There are certainly reasons to implement incentives and disincentives, but at the same time, this is pretty unprecedented in Canada,” said Caulfield.

“We need to see the details of this policy to get a sense of whether there are any severe legal issues associated with it.”

As long as the fee is not tied to access to health care, it doesn’t appear to violate the Canada Health Act, he added.

“If it’s just a tax that the unvaccinated pay at the end of the year, it’s not associated... in any way to access the health-care system,” he explained.

That means “it’ll probably be less legally problematic, especially if it has appropriate exemptions, appropriate accommodations for those that can’t access a vaccine.”

So far, the premier has only said that people who can’t get the vaccine for medical reasons will be exempt from the financial penalty.

Legault justified the controversial decision on Monday by saying the province needs to “go further” than just mandating the vaccine passport to more areas, such as liquor stores and cannabis stores.

Unvaccinated adults "will have a bill to pay because there are consequences on our health-care network and it's not up to all Quebecers to pay for this," the premier said.

"It's a question of equity because right now, these people, they put a very important burden on our health-care network. And I think it's normal that the majority of the population is asking that there be a consequence."

Caulfield said surveys like the one released last week by EKOS Research seem to suggest there is support among Canadians for measures targeting people who are unvaccinated.

The survey found that 66 per cent of people were [losing patience with the unvaccinated](#) and 60 per cent reported that [tighter restrictions for unvaccinated people](#) make them more hopeful about the COVID-19 pandemic.

"Whatever policy [the Quebec officials] develop has to have appropriate exemptions for those that can't, for medical reasons, for example, access vaccines, or those that have some clear religious exemption, for example," Caulfield said.

"But even there, I anticipate that most courts would see that exemption as being extremely narrow."

Quebec is [not the only jurisdiction to impose a tax on the unvaccinated](#).

In Austria, for example, people 14 and older will face fines of about \$5,150 CAD (3,600 Euros) every three months, starting in February, if they're not vaccinated, according to Reuters. Singapore is making the unvaccinated foot the bill for their own COVID-19 medical care.

In Quebec, there are already mechanisms to allow for such policies, according to Paul Brunet, a lawyer and patients' rights advocate.

"In the law on civil and public security there are already positions where the government can impose obligatory vaccination and impose sanctions[on those] who don't want to get vaccinated, so the setup is there already to be proven to be respectful of the law and constitutional rights," he said.

Brunet said he supports the premise of the Legault government's decision, citing the scarce hospital resources in Quebec and the high proportion of unvaccinated people who fill up intensive care beds.

Like Caulfield, he agreed that personal choices have consequences, though it will be up to the courts to decide if they are justified.

"This is not fair. You have the right to decide what you want to do," Brunet said, "but if what you're doing is impacting on anyone else's health or rights, you are wrong."

--With files from CTV's Vanessa Lee, Tania Krywiak and Selena Ross