

**DALHOUSIE
UNIVERSITY**SCHULICH SCHOOL OF LAW
Health Law Institute

TAXING THE UNVACCINATED: EVIDENCE, ETHICS AND POLICY IMPLICATIONS

Key Observations

- Vaccines are an effective tool to mitigate COVID-19. Increasing vaccination rates is a laudable goal, but a financial penalty is unlikely to have much impact. Long-term success involves supporting people to make the choice to be vaccinated.
- A tax on the unvaccinated would likely withstand legal challenges, given existing evidence of the need for vaccinations and the adverse impacts of COVID-19 on the health care system. The real question is whether it would be a good policy and how it compares to other policy alternatives.
- There are no clear public health principles to support a tax. This is a cause of concern.
- A tax raises ethical issues including its disproportionate impact on low-income earners. On the other side of this is the disparate burden of COVID-19, which has caused death and illness at disproportionate rates in poor, racialized and otherwise vulnerable communities.
- In addition to taking measures to encourage vaccination for all Canadians, Canada should focus on getting COVID-19 vaccines to the Global South.
- Strict measures and restrictions that made sense and were constitutionally legitimate at one point in the pandemic may not be so as the virus evolves. Context and evidence matter to both the merit of policy interventions and their constitutionality.

Purpose of the Note

On January 28th, 2022, the MacEachen Institute for Public Policy and Governance, in collaboration with the [Canadian Center for Vaccinology](#) and the [Health Law Institute at Dalhousie University](#), hosted a panel discussion to explore the medical and ethical issues with taxing persons who are unvaccinated for COVID-19. This briefing note summarizes the discussion and key observations made by the panelists.

Speakers

[Dr. Lisa Barrett](#) (Infectious Diseases Physician and Researcher, Dalhousie University), [Françoise Baylis](#) (University Research Professor, Special Advisor to the Vice-President of Research and Innovation Department of Philosophy, Dalhousie University), [Colleen Flood](#) (University Research Chair in Health Law and Policy, University of Ottawa), and [Dr. Gaynor Watson-Creed](#) (Assistant Dean of Serving and Engaging Society, Faculty of Medicine at Dalhousie University and Former Deputy Chief Medical Officer of Health for Nova Scotia). The panel was moderated by [Constance MacIntosh](#) (Acting Scholarly Director of the MacEachen Institute).

About the MacEachen Institute

The MacEachen Institute for Public Policy and Governance at Dalhousie University is a nationally focused, non-partisan, interdisciplinary institute designed to support the development of progressive public policy and to encourage greater citizen engagement.

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Event Abstract

Around the world, states continue to struggle to identify viable pathways to navigate the COVID-19 pandemic. As the situation evolved and vaccines became available in the Global North, many states began imposing restrictions on the unvaccinated, and made vaccination a requirement for citizens to participate in activities such as cross-border travel or in-person dining at a restaurant. More recently, some governments have moved toward imposing fines or taxes on the unvaccinated. For example, Austria fines unvaccinated persons around \$5,150 every three months. Singapore, which like Canada has a universal health care system, now bills unvaccinated people for hospital stays related to COVID-19. With Quebec's announcement that it will impose a tax on unvaccinated people, the debate has landed on Canadian soil.

This panel explored the medical and ethical issues that are raised by practices such as taxing or fining the unvaccinated, as well as the viability, desirability and legality of such policies in the Canadian context.

Speaker Observations

Dr. Lisa Barrett

- Vaccines reduce the spread of COVID-19 but do not completely prevent it. Medical doctors and public health officials are still trying to figure out the best way to protect the entire population. From a population standpoint, vaccines have proven to be effective, but can't necessarily be used in isolation especially when considering the most vulnerable.
- It is important to consider the intersections of the virus, the individual and the population as we continue to navigate COVID-19. A contagious respiratory infection such as COVID-19 is not just something that happens to a single person but also the people around them. While there is a large population that would have mild symptoms and no long-term effects if they contracted the virus, there are vulnerable populations that could have severe outcomes. We need to act to protect them, and reduce the risks they face, when making policy decisions.
- A big risk with a vaccination tax is potentially causing further disparity and negative impacts on people who are already disadvantaged including those with a lower socio-economic status. It is unlikely that this sort of policy will produce a quick uptake of vaccinations. A tax risks negatively impacting long-term vaccination rates, and further alienating people who may be vaccine hesitant.
- There is emerging evidence that COVID-19 hospitalizations have had an impact on non-COVID related preventable illness and disease. It remains unclear how we mitigate this moving forward.
- Where we were and where we are in the pandemic is always changing. In the beginning, it was more defensible to utilize stricter restrictions and precautions. Now that we have more knowledge of the virus and some tools to mitigate the spread, punitive measures like a vaccine tax are less defensible.

Dr. Gaynor Watson-Creed

- Vaccine mandates have successfully been used in the past. Canada has seen this in the [Immunization of School Pupils Act](#) in Ontario, and in certain workplaces and health-related university programs that require proof of immunization.
- Public health always looks for a variety of ways to coach the population towards the outcome that they consider to be best for everybody, which in this case is vaccination.
- It is difficult to identify the public health principles that a COVID-19 vaccine tax could stand on. This raises questions about the wisdom of a tax.
- We need to understand and respond to the reasons why people are vaccine hesitant. Sometimes it is fear, which health professionals can help with. Some people choose not to be vaccinated because of distrust of the government. A vaccine tax would likely only increase suspicion, and make these people less likely to choose a vaccine. The perception and experience is quite different, though, if health care providers or public health is the one encouraging vaccination.
- There is a point at which restrictive measures intended to support public health don't make sense anymore because the benefits become outweighed by the harms.
- We do use taxes to shape public health and it has had an impact on practices such as smoking. The question is whether a fine will advance us toward reducing the spread and impact of COVID-19, and whether there are better alternatives.
- The populations that are being disproportionately affected by COVID-19 have also historically been disproportionately affected by punitive measures from government. It could be more effective to incentivize people to come forward to get vaccinated rather than tax them into it.
- There is no single portion of the Canadian population that can hold full responsibility for the outcomes that we are facing. The unvaccinated population is disproportionately represented in hospitalization numbers and ICU beds. However, we must also look at the failures and underfunding of the healthcare system, and whether we acted on the lessons learned from pandemic planning in the early 2000s.

Françoise Baylis – CM, ONS, PhD, FRSC, FCAHS

- The cost of implementing and enforcing this tax would be significant, both in terms of financial costs—it would be expensive to impose this new system with no guarantee of it resulting in increased vaccination rates—and in terms of its disproportionate impact on different communities.
- Some communities with high rates of vaccine hesitancy have a history of negative interactions with the health care system. A tax could further undermine trust, both in government and in health care. We need to work with these communities in ways that will help them voluntarily come forward and seek vaccination rather than use a financial penalty to force people to proceed with something they aren't comfortable with.
- A flat tax would have a disproportionate impact on the poor because it would take a higher percentage of their earnings, which is inequitable.
- A small percentage of the population is always going to be vaccine resistant. We need to think about alternatives to forcing people into vaccination including, for example, funding the distribution of N95 masks. Some people who aren't willing to put something into their body, may be willing and able to wear a mask.
- The pandemic is a global problem that requires a global response. Instead of aggressively

- targeting the small percentage of Canadians who remain unvaccinated, it may be time for Canada to focus on ways in which it can help with vaccinating the world. We've been told by epidemiologists and medical doctors that this pandemic won't end until everyone is vaccinated, so it is in our best interest to get vaccine to everyone who wants it.
- It is dangerous to go down the path of blaming individuals for a communal challenge. There are many factors that have led us to where we are in this stage of the pandemic and it will take a collective response to navigate us out.
- Further observations from Françoise Baylis can be read in this op-ed: <https://healthydebate.ca/2022/02/topic/legault-comes-to-his-senses/>

Colleen Flood – SJD, FRSC, FCAHS

- From the few details that are available, a vaccine tax would withstand legal challenge. It would not contravene the [Canada Health Act](#), because it does not prevent anyone from accessing health care services.
- It would also not likely violate the Canadian Charter of Rights and Freedoms. Although section 7 of the Charter protects the right to “life, liberty and security” of the person, the protections do not extend to economic interests such as being fined. The Supreme Court of Canada has reiterated this point several times.
- The context of Quebec, where the Premier announced that they intended to impose a tax, is vital to this discussion. Quebec has not performed nearly as well as Nova Scotia or the rest of the country. The death rate from COVID-19 per 100,000 people is 141 in Quebec, compared to the Canadian average of 81 per 100,000 people. Quebec's hospitals have been severely strained. Half of their COVID-19 hospital beds are occupied by unvaccinated people, even though they only comprise 10% of the population.
- With the law and context in mind, the question then becomes whether a tax is ethically defensible. We know that racialized populations have lower vaccination rates. We also know that the poor have been disproportionately impacted by COVID-19. We have to consider those who need health care right now, but who can't get into the hospitals because of people with COVID-19 occupying the beds.
- We need to ask what the alternatives are, that will quickly increase the rates of vaccination, so as to protect the vulnerable. Other measures such as lock-downs, curfews, and business closures have also had significant impacts on vulnerable populations. We don't want to be forced back into those measures either.
- Incentives such as requiring vaccine passports to access non-essential services resulted in a quick uptake in vaccination. These incentives will likely be shown to have saved many people's lives.

Conclusion

A tax on the unvaccinated would likely withstand legal challenges. However, the panelists were not convinced that it is currently a defensible policy option. From their varied experiences and perspectives in epidemiology, public health, bioethics and law, the panelists agree that the potential harms of such a policy would likely outweigh its potential benefits, especially as a tax is unlikely to significantly impact vaccination rates. A vaccine tax would have a disproportionate effect on low-income earners; it could further alienate the population that is vaccine hesitant;

and though it has potential to marginally increase short-term vaccinations, it is likely that it would negatively impact long-term vaccinate rates. At this point in the pandemic, Canada should focus on distributing vaccine globally rather than spending resources attempting to force a small percentage of the population into vaccination while continuing to identify and support other public health strategies to increase the rates of vaccination in Canada that are more likely to be successful.

More from the MacEachen Institute

The Institute is working to create resources and policy discussions focussed on the COVID-19 crisis. These include briefing notes as well as panel discussions, videos and media commentary. You can find [all resources related to COVID-19 on our website](#).

MacEachen Institute briefing notes on COVID-19

- [Falling Through the Cracks: Long-Term Care and COVID-19](#)
- [The Road to Recovery for Atlantic Tourism](#)
- [Climate Adaptation in Nova Scotia: Overblown or Underwater?](#)
- [Race and Party Platforms in the Nova Scotia Election](#)
- [COVID-19: Leaders from the Health Community Identify Lessons from the First Wave and Concerns for the Second](#)
- [Lessons Learned from the First Wave or Lessons Merely Identified? Improving Nova Scotia and New Brunswick's health system for the second wave of COVID-19 and beyond](#)
- [Health Care Issues and Media Coverage Before and During the Pandemic](#)
- [The Economy and Media Coverage Before and During the Pandemic](#)
- [Social Justice Issues and Media Coverage Before and During the Pandemic](#)
- [Environmental Issues and Media Coverage Before and During the Pandemic](#)
- [Climate Risk Governance in Light of the COVID-19 Crisis](#)
- [Observations from Toronto's Tourism Recovery Post-SARS in 2003](#)
- [Foot and Mouth Disease in the U.K. in 2001: Observations for Policy-Makers and the Rural Tourism Sector in the age of COVID-19](#)
- [Labour Issues and COVID-19](#)
- [Quarantine and COVID-19](#)
- [People with Disabilities and COVID-19](#)
- [Nova Scotia Power and COVID-19](#)