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She's fighting B.C.'s vaccine passport in court, but says she's no anti-vaxxer. Here's her story

Alex McKeen

Whatever ideas come to mind when you think about two people launching a constitutional challenge against vaccine passports — that they are anti-maskers, for example, or don't believe COVID-19 is a real threat — Leah Anne Eliason and Sarah Webb probably do not fit the mould.

The two women both say they believe the pandemic is real, that they really don't want to get COVID-19 themselves or make their families sick, and that public health measures, such as masking and distancing, have been warranted to curb the coronavirus's effects.

They both say they believe vaccines, including the vaccines developed to fight COVID-19, are effective.

Yet they're fighting B.C.'s vaccine passport program in court.

Eliason and Webb both have doctors recommending they don't get vaccinated.

Unlike some other provinces, B.C. does not allow medical exemptions to its vac-

cine passport. In Ontario, where a doctor's note can exempt people from the vaccine-passport program, the exemptions approved by the College of Physicians and Surgeons are vanishingly small: Only severe allergic reactions or an instance of myocarditis, a rare heart condition, following the first vaccine qualify.

More than 28,000 Canadians have died of COVID-19, and unvaccinated people are about 60 times more likely to end up in intensive care with the disease than unvaccinated people, according to an Ontario Science Table study.

But that doesn't mean patients are all getting the same medical advice about their risk for serious reactions to the vaccines. Eliason is unvaccinated because a host of pre-existing medical conditions have her and her doctor worried that the jab could trigger a more severe reaction than is standard for healthy adults (who usually face no more than a sore arm and flu-like symptoms for a day). Included in her affidavit to the B.C. court was a letter from her doctor supporting her decision to remain unvaccinated.

Two women challenging the vaccine-passport system in British Columbia reject allegations they're in any way COVID deniers or anti-vaxxers.

"I feel like, no matter which way I turn, there's a threat to me right now," she said. "I don't want to get COVID, but I also am terrified to get the vaccine."

Amid the polarizing public conversation about vaccines, the case points to some of the complex personal and health histories that leave a small number of people stuck between a desire to get vaccinated and medical advice, observers say. According to Canada's official reporting system for vaccine reactions, only 5,161, or 0.009 per cent of all COVID-19 doses administered, were followed by "serious" adverse effects such as an allergic reaction.

At the heart of the B.C. case is a reality with which any society using vaccine passports will have to reckon: The system comes with consequences, of socially ostracizing unvaccinated adults.

Whether or not you think that ostracization is justified, it is widespread. There

are about five million Canadians currently unvaccinated eligible Canadians. And some, like Eliason and Webb, have received medical advice not to get the vaccine.

Geraint Osborne, a sociology professor at the University of Alberta, sees such tension in a historical context.

“Human beings have long used the removal of individuals who are deemed a threat to the survival of the group as a sanction or form of social control,” said Osborne.

That brings with it a host of consequences — including mental-health issues.

“In the case of the unvaccinated, the consequences of social isolation are serious; however, they are mitigated by the use of social media to stay connected and forming support networks with people in the same situation.”

Eliason, who has participated in public health measures since the beginning of the pandemic, says it’s not a case of the vaccine card preventing her from leisure activities such as lunch with friends and movies out — things she would rarely do anyways, due to her illnesses. But the program is keeping her away from some of the important moments in life, she said.

“When the pandemic started, I was absolutely terrified,” Eliason told the Star in an interview, speaking by phone from her home in Maple Ridge, B.C., where she lives with her husband and younger daughter.

Having been chronically ill for two decades, Eliason was prolific at “physical distancing” before it was in most

Canadians’ vocabulary. A kidney disease, autoimmune complications, and heart troubles have kept her mostly inside as a self-described “homebody” for 20 years — except when it comes to performances and events involving her two daughters.

Recent struggles with a neurological condition caused her extreme dizziness and vertigo, keeping her mostly at home for a two-year period she describes as agony.

“Even when I was in the darkness every-day, (I found ways to do) the things that meant the most to me,” she said, “When my daughter was performing on stage, I would book a balcony seat, where I could be out of the way.”

Now, she realizes the fact that she’s unvaccinated and doesn’t qualify for a vaccine passport may keep her from her daughter’s university graduation next year.

“So when they did the passport, not allowing medical exemptions, I can’t even explain how awful I felt,” she said.

Eliason’s own caution about her health — the fear that even a small tweak in her body could trigger myriad elusive symptoms and instigate another years-long investigation by doctors, leaves her stuck at this stage of the pandemic.

Webb, who declined to be interviewed by the Star, is in a different sort of predicament. She received one dose of COVID-19 vaccine and had a severe reaction, prompting her doctor to recommend she not receive a second, court documents say.

Eliason and Webb are together petitioning the Supreme Court of B.C. to rule

that the province’s vaccine-passport policy unfairly discriminates against their constitutional rights to equality and freedom of movement.

The question of whether vaccine passports are justified has already been dealt with in other legal venues — namely, the Human Rights tribunals in Ontario and B.C.

Both tribunals have issued guidance papers explaining that vaccine cards are not an infringement on human rights, since getting a vaccine is a personal choice, not a circumstance protected under human rights laws.

But Eliason and Webb’s petition takes issue with something particular to B.C.’s vaccine passport program — the fact that it does not clearly outline a process for medical exemptions.

If the court does rule in their favour, it may essentially strike down the provincial vaccine passport system as unconstitutional, but more likely it would require the province to allow for a broader range of exemptions to the program, says Carissima Mathen, a professor of law at the University of Ottawa.

“The lack of a medical exemption creates burdens for people who have essentially, as the law would view it, a disability preventing them from being vaccinated,” Mathen said. “Then you have to actually show that distinction is discriminatory.”

If a court is persuaded that the rules are discriminatory against people who cannot receive the vaccine for medical reasons, the government can still argue that it’s a reasonable limit to freedoms in the context of the pandemic.

For that reason, Mathen said, she doesn't think challenges to vaccine cards in other jurisdictions such as Ontario, which has rules regarding medical exemptions, are likely to succeed. But there is a window for the B.C. case, which focuses on the specific circumstance of people who have been told by doctors that the vaccines may carry greater risks for them than the general population.

That hasn't stopped some from labelling Eliason, Webb and their legal team as anti-vaccine, labels they all strongly refute.

"I'm not ashamed of my chronic illness and I do want people to understand that no, I'm not an anti-vaxxer, or anti-masker, there are a lot of us who are unfortunately are stuck in the middle," Eliason said. "The safest thing that happened for me is that my family got vaccinated."

Christine Van Geyn is the Toronto-based litigation director for the Canadian Constitution Foundation, a non-partisan group launching an administrative challenge to B.C.'s vaccine card, separate from Eliason and Webb's case.

Van Geyn said the reason their challenge is also focusing on people with medical issues preventing them from being vaccinated is that she feels "urgent concern" on behalf of those individuals' rights.

"I wish that the tone of the conversation around this whole thing had more compassion, especially for these people with medical conditions," she said.

"A lot of the patients who we're working with have expressed concerns about being put into an anti-vaccine narrative

because they had adverse reactions. But adverse reactions happen, and we should treat people with compassion when they do."

Alex McKeen is a Vancouver-based reporter for the Star. Follow her on Twitter: @alex_mckeen

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<https://www.thestar.com/news/canada/2021/10/23/they-believe-covid-is-real-and-that-vaccines-work-theyre-fighting-vaccine-passports-in-court-anyway.html>