

Opinion: COVID is a wakeup call that rights and freedoms can be tested in a crisis

Sandeep Agrawal | Dec 08, 2020



Snow covers tents in camp Pekiwewin on Saturday, Nov. 7, 2020 in Edmonton. Photo by Greg Southam /Postmedia

With the worsening ongoing pandemic, public health protocols have called for exceptional measures in Alberta and elsewhere in Canada, including restricting movement and prohibiting assembling. This includes constraints on gatherings in places of worship and, indeed, even in our own homes.

Politicians and others argue for enforcing stronger measures, stating that the government has an obligation to protect Canadians: it can and therefore it should. However, the government has not pursued further public health measures because it could also impair the Charter rights and freedoms of individual Canadians. This middle ground can be confusing. It is hard to discern the government's real ability to uphold our fundamental rights and freedoms.

Can the Canadian government place limits on our Charter rights? The short answer is — yes.

All three levels of Canadian government can use Section 1 of the Charter of Rights and Freedoms to impose reasonable limits on Canadians' rights and freedoms. This is what gives the government the legal authority to mandate mask-wearing, which has become a lightning rod in the U.S. and for some in Canada. However, Michelle Bachelet, the UN high commissioner for human rights, has warned countries against using COVID-19 as an "excuse for human rights violations."

This pandemic highlights three key issues affecting Canadians' Charter rights:

Access to health care and employment

COVID-19 disproportionately affects poor, racialized minorities, especially, women, living in Canadian cities, thus revealing how the pandemic exacerbates many longstanding social and economic inequalities. Both Statistics Canada and Public Health Ontario confirm that these groups experience more discriminatory and adverse effects of COVID-19. They face more risk because they often work frontline jobs, live in smaller and more crowded homes, and encounter barriers when accessing health information. Another StatsCan study says that their existing high poverty rates make them more vulnerable to the financial impact of work disruptions.

Despite the absence of an explicit reference to socio-economic rights in the Charter, the right to equality (Section 15) and the right to "life, liberty and security of the person" (Section 7) and provincial human rights legislation together protect these people from any form of discrimination in health care and employment. But, public- and private-sector organizations must

recognize their human rights obligations and consider the disproportionate impacts of COVID-19 on the vulnerable groups they employ or provide services.

Availability of affordable housing

COVID is rendering many Canadians homeless, as more people cannot pay their rent or access homeless shelters due to the spread of the virus within the shelter system. In Edmonton and Calgary, about 2,000-3,000 people are homeless — a figure that has risen dramatically since the pandemic began. Several hundred people now sleep outside every night in frigid weather.

The end of provincial eviction bans, as of September, only makes this worse. And many provinces have also lifted the rent increase freeze. Tent cities keep emerging across Canadian cities, even though many municipalities have tried to help. Obviously, the cumulative effect of these changes will hit low-income renters hard in coming months.

Unfortunately, housing is not a Charter-protected right in Canada.

The federal government's new housing strategy is based on human rights, but it is not a constitutionally guaranteed right. However, it should be one. It is poor, racialized, or Indigenous people, people with disabilities, and others who are protected under Charter Section 15 or provincial human rights legislation who need or currently occupy affordable housing. Although not stated explicitly, the Alberta Human Rights Act and the Ontario Human Rights Code appear to suggest that they prohibit discrimination based on poverty, through key phrases like "source of income" or "receipt of public assistance." But, still, the poor remain unprotected and often unhoused.

Restrictions on religious services

COVID-19 has instigated constraints on gatherings at places of worship. These measures have affected two Charter freedoms — freedom to assembly and to practise religion. Although not as widespread as lawsuits contesting this in the U.S., a few B.C. church gatherings have defied provincial health directives. When fined, they questioned the validity of the law by citing their rights in Charter Section 2.

The pandemic has certainly placed the Canadian government in a serious bind: how to maintain its obligation to keep Canadians safe while upholding its human rights obligations. It has added to our societal vulnerabilities given that many Canadians are in precarious employment or housing situations, The pandemic has worsened the situation of many ethno-racial communities, many of which were already living on the verge of crisis.

In a way, this pandemic is a wake-up call that our fundamental rights and freedoms can be so easily tested under trying circumstances. Without a deliberate and long-term commitment to human rights, any future adversities will further aggravate existing inequities and vulnerabilities in our society.

At present, the government must prioritize Charter-protected groups in its COVID-19 vaccine rollout plan, putting them at the front of the line to be vaccinated: older people living alone or in institutions, Indigenous peoples, precarious workers, people experiencing poverty and homelessness, and people with disabilities.

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