

Freedom of expression



Analysis from the NCI Final Report
7.1.4. The Constitution





Analysis

Excerpts from the NCI Final Report | 7.1.4. The Constitution

Loss of the Right to Freedom of Expression

Of all of the rights that were violated under the Charter, the NCI heard that the freedom of expression was the most essential, and its violation was the most impactful. Medical professionals were instructed not to speak out against public health messaging and were disciplined by their governing bodies if they did. Scientists were dismissed from their positions, dropped by media outlets where they had previously spoken, and censored on the Internet.

Freedom of expression, belief, and conscience is the cornerstone of a liberal democracy. It is not an accident that it is the first fundamental freedom described in the Canadian Charter. Freedom of expression and tolerance of diversity of opinion fosters respectful debate. Through this, innovation is fostered, and society improves.

The Canadian justice system did not support Canadians' freedom of expression where it conflicted with the public health messaging of the government. This was coupled with undue deference to government officials who had unfettered discretion to enact rights-violating measures that went unchallenged by the courts.

The Legality of COVID Injection Mandates

The Commission heard evidence from many Canadians who were required to take a COVID-19 vaccine in order to keep their job. The Commission heard from many who were injured as a result.

There is a considerable amount of legislation in Canada that requires employers to keep employees safe. During the time of the pandemic, employers relied on public health guidance to implement measures to keep employees safe. Presumably this is how employers who imposed mask and vaccine mandates justified these measures.

In determining whether an employer should be held accountable for harm that may have occurred as a result of a workplace vaccine mandate, the Commission heard from a workplace safety professional that three questions should be asked:

1. Was the employer required to implement the mandate at law?
2. Was it legal to implement the mandate?
3. Did the employer do the requisite due diligence to ensure the safety of employees as a result of the mandate?

The Commission further heard there is extensive legislation that applies to employers that should have prevented them from imposing a mandate, both legally and as a result of performing proper due diligence. Among these is the Canada Labour Code, provincial health and safety legislation, a Genetic Non-Discrimination Act, and the Criminal Code.

Despite the extensive regulatory framework that exists in Canada to protect employees from workplace hazards and dangers, vaccine mandates were implemented in many workplaces and people were harmed as a result.



Recommendations

Excerpts from the NCI Final Report | 7.1.4. The Constitution

Recommendations

The Commission recommends that legislation be enacted prohibiting employers from imposing vaccine mandates on employees.

- A. Canada should establish an independent review of its judicial appointment process.
- B. The federal and provincial courts should conduct a national inquiry into their response to pandemic measures, including a review of:
 - a) What role did the court play in protecting the rights of individuals?
 - b) What role should the court play when a government imposes vast rights-violating measures?
 - c) Should the government have the ability to impose pandemic measures on courts and the judiciary?
 - d) What level of independence do the courts have over their own process in implementing publicly recommended or ordered measures?
 - e) Should guidelines or best practices be adopted for case assignment, particularly in cases that involve alleged violations of Charter rights?
- C. Judges in provincial courts should be appointed by provincial governments and not the federal government. This recommendation is subject to review as part of the overall review of the judicial appointment process.
- D. The judicial selection process should involve a review by a panel that involves a wide array of citizens and legal experts with different political views and backgrounds. Recommendations for appointments should be made public.
- E. Canada should establish a fund to pay for legal services for Canadian citizens who bring cases against the government for a violation of Charter rights or who are defending prosecutions that violate Charter rights. Further study could be undertaken to determine the structure and principles governing the fund. Some fundamental principles should include:
 - a) The fund is governed/overseen by a board which has equal representation from constitutional scholars, lawyers, government representatives, academics, and citizens.
- F. Canada and the provinces should legislate parameters for mootness, including a prohibition on mootness when a case involves a violation of the Charter rights of an individual.
- G. An independent inquiry should be conducted into the response of the medical colleges in each province, including a review of
 - a) What role did the college play in protecting the rights of its members?
 - b) What role should the college play when a government makes recommendations for medical practice?
 - c) Should there be specific limits placed on the powers of the colleges?
 - d) What regulations can be put in place to assure that the colleges adhere to the Canadian Charter of Rights and Freedoms?