

Hugs Over Masks is all about giving you the information you need to protect your rights and freedoms, especially in light of unprecedented government policies in response to covid-19. To help you better understand your rights, we have reviewed the most relevant sections of the [Canadian Charter of Rights and Freedoms](#) and will explain them in regards to covid-19 bi-laws, restrictions and government legislation that infringe on these fundamental rights.

Government action	Charter Right Infringement *
Physical distancing	S.7 Right to liberty S.12 Right to not be subjected to cruel and unusual punishment
Prohibit or limit social gatherings	S.2 (b, c, d) Right to freedom of expression / peaceful assembly / association S.7 Right to liberty
Lockdowns / business closures	S.7 Right to liberty S.12 Right to not be subjected to cruel and unusual punishment
Limiting free movement between provinces to take up residence or work	S.6 Mobility rights
Denying elective surgeries and cancer treatments	S.7 Right to life S.12 Right to not be subjected to cruel and unusual punishment
Forced isolation for seniors in LTC homes	S.7 Right to life and liberty S.12 Right to not be subjected to cruel and unusual punishment
Forced quarantine for travelers and non-contagious individuals	S.7 Right to liberty
Mask mandates	S.7 Right to liberty and security of the person
Mandatory vaccination	S.7 Right to liberty and security of the person
Excessive fines for hosting large gatherings	S.12 Right to not be subjected to cruel and unusual punishment
Excessive fines for hosting short-term rentals	S.12 Right to not be subjected to cruel and unusual punishment

** If anyone infringes on your Charter rights, you can seek the assistance of a police officer to uphold these rights on your behalf. As per the [Police Services Act \(Section I\)](#), all officers take an oath to “uphold the Constitution of Canada”, which supersedes any emergency measures or contradictory legislation.*

Section 2: Fundamental Freedoms

Fundamental freedoms

2. Everyone has the following fundamental freedoms:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- (c) freedom of peaceful assembly; and
- (d) freedom of association.

The Ontario Government has applied lockdowns which have infringed on all Canadians' fundamental freedoms of expression, peaceful assembly and freedom of association. By enacting laws that limit both indoor and outdoor gatherings, the government is limiting these fundamental freedoms under the guise of safety measures. In order for the government's actions to be upheld in court, they must pass a legal test known as the [Oakes Test](#). This test is applied to prove that such laws are demonstrably justified in a free and democratic society. To satisfy this test, the government is responsible for proving that any law limiting these charter rights is (i) rationally connected to the law's purpose (not arbitrary), (ii) it must minimally impair these rights, and (iii) it must be proportionate. It will be extremely difficult for the government to prove that the following measures are not arbitrary, impairing fundamental rights and disproportionate:

- 1) Prohibit or limit the size of social gatherings, including weddings, family gatherings, team sports, religious services, support groups, etc.
- 2) Persecuting those who host or attend social gatherings (fines, tickets, etc.)

Section 6: Mobility Rights

Mobility of citizens

6. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.

Rights to move and gain livelihood

(2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right

- (a) to move to and take up residence in any province; and
- (b) to pursue the gaining of a livelihood in any province.

Some provinces have tried to prevent out-of-province Canadians from entering their province through legislation and restrictions. As a Canadian citizen, you have the right to move to any province and the right to take up employment in any province. Any law that prohibits such movement is in violation of this charter right and can be challenged, especially if the law is discriminating based on one's current province of residence.

Section 7: Life, Liberty and the Security of the Person

Life, liberty and security of person

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Section 7 of the Charter offers broad protection from a variety of government mandates that have been implemented throughout the pandemic. Infringements of these rights can only be upheld so long as they meet the [principles for fundamental justice](#) detailed below.

The right to life protects all Canadians from any legislation or government action that increases the risk of death, including indirect measures that affect health care for life-threatening conditions. These rights were infringed upon when the government chose to:

- 1) Cancel elective surgeries (including cancer screenings/treatment). Given that the government chose such extreme action, they now have the burden of proof to show that these actions did not increase the risk of death or affect health care for those with life-threatening conditions.
- 2) Mandate that seniors in Long Term Care homes were to be strictly isolated to their rooms for months, including extended periods without in-person family visits. The government must prove that its actions did not directly or indirectly contribute to their demise or worsening health during the lockdowns. For example, a person whose health was significantly impacted by such isolation measures (worsening dementia, loneliness, stress, etc.) can challenge the government's action as increasing their risk of death and thus infringed on their right to life.

The right to liberty and security of the person is established by the Charter to protect our right to enjoy individual **liberty and independence**, the right to **move without physical restraint**, the right to **choose how a person wants to live their life**, and the right to **make choices that affect his or her own body**. Security of the person also offers protections from any government actions that cause "state-imposed stress", which is classified as any additional state-imposed stress that exceeds typical day-to-day stress. These rights have been violated by the following government mandates:

- 1) Lockdowns. Lockdowns have undoubtedly caused unnecessary stress for many Canadians. Such lockdowns have led to job loss, family separations, ruined friendships, depression and overwhelming levels of fear and stress. The continuation of lockdowns have caused tremendous damage to the well-being of far too many Canadians, which directly infringes on our right to be free from unnecessary state-imposed stress.
- 2) Extended quarantine. Those who test positive for covid-19 are required to self-isolate for 14 days, which may also include anyone who's come into contact with this person or been in the same establishment as determined by contact tracing. Given the arbitrariness of the PCR test and its ability to return a positive test result for non-contagious individuals for many weeks, these quarantine restrictions can be deemed unconstitutional by limiting our fundamental right to liberty and freedom to move without physical restraint. This is particularly true if the cycle threshold for the PCR test is 35 or above, indicating that the individual is not actively infected or contagious. Any form of forced quarantine can also be challenged under Section 9 because the test produces arbitrary results, meeting the criteria for arbitrary detention.
- 3) Business closures. By forcing certain businesses to close while leaving others open, the government is showing that its restrictions are arbitrary and unrelated to the goal of protecting hospitals. Furthermore, this measure is grossly disproportionate because hospital capacity has never been a systemic concern in Ontario and thus, this measure goes well beyond its stated objective.
- 4) Mask mandates. Many regional bodies have imposed blanket mask mandates, even for those who are completely healthy. These mask mandates are unconstitutional because they infringe on our rights to choose how we want to live and make choices that affect our bodies. Furthermore, mask requirements add unnecessary mental stress to the general public by inflating the perceived threat of covid-19. Given that there are no RCT studies proving the effectiveness of masks for respiratory virus transmission, and that universal mask use is an unprecedented public health policy, it's overwhelmingly clear that mask mandates violate our fundamental human rights without just cause.
- 5) Vaccines. While there isn't yet an approved vaccine for covid-19, and thus no vaccine mandate at this time, the Prime Minister and many other government officials have implied that they want every Canadian to take the vaccine and they have already stated that they have ordered enough doses for the entire population. If such a mandate is ever attempted, it should be challenged in the Supreme Court because this will grossly infringe on our right to make choices that affect our own bodies. In the Ontario Court of Appeals case *Fleming v Reid*, Justice Sydney Robins made this unequivocally clear when explaining his [decision](#):

"The right to determine what shall, or shall not, be done with one's own body, and to be free from non-consensual medical treatment, is a right deeply rooted in our common law. This right underlines the doctrine of informed consent. With very limited exceptions, every person's body is considered inviolate, and, accordingly, every competent adult has the right to be free from unwanted medical treatment. The fact that serious risks or consequences may result from a refusal of medical treatment does not vitiate the right of medical self-determination. The doctrine of informed consent ensures the freedom of individuals to make choices about their medical care. It is the patient, not the

physician, who ultimately must decide if treatment — any treatment — is to be administered.”

If any of the above legislation is to be upheld by the courts, the government must prove that these infringements conform to the principles of *fundamental justice*. The courts will apply the specific concepts of arbitrariness, overbreadth and disproportionality to determine if these Charter infringements are legal. Fundamental justice is characterized by:

Arbitrariness. If the law leads to an effect that is not connected to its objective, it is considered arbitrary and thus illegal. The government must prove that all of the above infringements accomplish the goal of protecting hospitals from overcapacity. Furthermore, the government must prove that a single positive PCR test is an accurate indicator of active infection, in order to justify the quarantine/isolation mandates. This seems unlikely to hold up in court given that the PCR test is known to produce false-positive results more than 50% of the time, making a covid-19 diagnosis unequivocally arbitrary.

Overbreadth. The means used by the government to achieve the purpose of a law must be reasonably necessary. If the law goes beyond what is required, it is deemed overbroad and thus illegal. It's important to recognize that hospital capacity has never been a serious concern, aside from a small number of isolated incidents in rural communities. Because there was no sustained burden on hospital capacity throughout the pandemic, it's not possible to justify lockdowns and other measures as they are by definition, beyond what is required.

Disproportionality. The court would determine if the state actions are too extreme to justify. If the law goes beyond its stated objectives, it is considered disproportionate. If challenged in the courts, the government would need to justify the extreme infringements of these Charter rights (physical distancing, lockdowns, curfews, forced quarantine, mask mandates, etc.) in lieu of combatting a coronavirus that has a similar impact on hospital/ICU admissions and mortality risk as the seasonal flu.

Section 12: Cruel and unusual treatment or punishment

Treatment or punishment

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

Along with the protections offered under Section 7 described above, every person has the right not to be subjected to cruel and unusual treatment. To be cruel and unusual, the treatment or punishment must be “grossly disproportionate”: in other words, “so excessive as to outrage standards of decency” and be “abhorrent or intolerable to society”. The governments’ response to this pandemic has in many ways neglected standards of decency and proved intolerable to society. Cruel and unusual treatment has been inflicted by government mandates that:

- 1) Force seniors to “shelter in place”, causing seniors to be separated from loved ones during their final moments of life. This grossly disproportionate response forced families to remain apart for months on end and may have contributed to worsening dementia.
- 2) Denying cancer treatments to patients in need of life-saving healthcare. This also includes all other elective surgeries and treatments that were indefinitely cancelled, causing unnecessary harm and death.
- 3) Force businesses to close, resulting in record job losses and business closures.
- 4) Prevent Canadians from hosting family gatherings and holidays with one another.
- 5) Excise a \$10,000 fine for those hosting an indoor gathering of more than 10 guests on your own private property.
- 6) Excise a \$100,000 to \$10,000,000 fine for hosting a short-term rental (e.g. AirBnB). This contradicts the legal precedent which requires that *the amount of the fine is tightly linked to the economic impacts of the offence*.
- 7) Force travelers to Canada to stay in federally funded ‘isolation sites’ for 2 weeks upon arrival (expected by 2021). These isolation centres are meant to strictly quarantine incoming travelers, even if they are not presently ill or diagnosed with covid-19. This trivial form of detention can also be challenged under Section 9 which states that everyone has the right not to be arbitrarily detained or imprisoned.