



# Justice Centre

for Constitutional Freedoms

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## Who had the worst bunk in Canada's locked down barracks?

Which governments have been the worst violators  
of *Charter* rights and freedoms in the two years  
prior to its 40<sup>th</sup> Anniversary?

April 14, 2022

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## Executive Summary

On April 17, 2022, Canadians will mark the 40th anniversary of the *Canadian Charter of Rights and Freedoms* becoming part of Canada's Constitution. Sadly, the anniversary is marred by two years of *Charter* rights and freedoms violations, perpetrated by its federal and provincial governments during which Canada became in many ways more like a police state than the "free and democratic society" which the *Charter* sets out as its ideal.

When the Covid pandemic first began, all Canada's provincial governments initially violated Canadians' *Charter* rights in much the same way. As time went by however, provincial government responses became increasingly varied, as did the experiences of Canadians living with them.

Quebec's *Charter* violations were arguably the worst, including curfews, travel restrictions and serious violations of religious freedom. B.C. and Manitoba also seriously infringed *Charter* religious freedoms, with B.C. closing churches for an astonishing 14 months. But while Manitoba also violated mobility rights, its church closures were measured in weeks, not months. After Quebec and B.C., Manitoba was the third-worst place to be.

Canadians living in Ontario had a somewhat easier time of it. That said, lengthy provincial stay-at-home orders, intended by Premier Doug Ford to be enforced with random police stops, showed an alarming government comfort with Soviet-style enforcement. Ontario's mutual border closures with Manitoba and Quebec also violated Canadians' *Charter* right to move. The province prosecuted and fined some pastors and congregations which defied public health orders, but unlike Alberta, at least did not jail anyone. No province closed its schools for longer than Ontario.<sup>1</sup> Yet Ontario avoided some of the worst excesses of other provinces.

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<sup>1</sup> <https://ottawacitizen.com/news/local-news/study>

Within the so-called ‘Atlantic Bubble’ of Nova Scotia, New Brunswick, Newfoundland and Labrador and Prince Edward Island, Canadians could travel inside this region without needing to self-isolate,<sup>2</sup> but severe hardship was imposed on those needing to work in other provinces.

In Saskatchewan and Alberta, centre-right premiers were less committed to lockdowns, inclined to impose them later and lift them earlier. Measures issued elsewhere as orders were sometimes just issued as recommendations in Alberta. It is also notable that at a time when nearby B.C. had closed houses of worship completely, neither Alberta nor Saskatchewan prohibited in-person worship entirely.

Conversely, Alberta was the only province to jail pastors. The jailing of pastors was the direct result of a provincial government policy decision to seek and obtain court injunctions rather than relying on regular law enforcement. Jailed pastors were deprived of their *Charter* right to life, liberty and security of the person, for having exercised their *Charter* freedoms of conscience, religion, expression, association and peaceful assembly. Apart from this serious issue of jailing pastors, it could be said that Alberta's violations of *Charter* rights and freedoms were the least oppressive or the least egregious in Canada.

All-in-all, it appears that Saskatchewan's violations of Charter rights and freedoms were the least severe in Canada. If true, this is no cause for Saskatchewan or its people to celebrate, because in every Canadian province the "two weeks to flatten the curve" became two years to flatten our freedoms.<sup>3</sup>

## Introduction

The *Canadian Charter of Rights and Freedoms* states Canada is founded upon principles that recognize the ‘supremacy of God and the rule of law.’

Section 2 sets out four ‘fundamental’ freedoms, those of:

- a) conscience and religion;

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<sup>2</sup> The Atlantic Travel Bubble was established in July 2020, but broke up in November when cases of Covid started to rise in Nova Scotia and New Brunswick, and PEI withdrew.

<sup>3</sup> <https://www.jccf.ca/wp-content/uploads/2022/03/2022-03-14-Two-years-to-flatten-our-freedoms.pdf>

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

Section 6 sets out the rights to move freely and gain a livelihood:

Every citizen of Canada has the right to enter, remain in and leave Canada.

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

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

Section 1 of the *Charter* subjects these rights and freedoms to ‘such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.’ This clause is very much a matter of interpretation, with some judges placing a higher value on individual freedoms than other judges.<sup>4</sup>

Given that Covid was the same virus across Canada, it is surprising how government responses to it varied around the country. British Columbia, for example, famously kept restaurants open but banned indoor worship, while Alberta closed restaurants but kept churches open, albeit with attendance limits. (Of course, Alberta also jailed pastors who did not conform to public health orders, an extreme remedy that even in directly comparable circumstances, no other province found necessary.) Some provinces excluded outsiders, others did not. At a time when Nova Scotia proclaimed itself to be focussed on controlling transmission, it permitted indoor gatherings of up to 100 people. On the other hand, Quebec imposed (and enforced) overnight curfews from 8:00 p.m. to 5:00 a.m., the only province to do so.

As a citizen of this country, one’s experience of government’s heavy hand differed significantly, according to where one lived. Indeed, many Canadians felt their country was becoming deeply authoritarian, a police state even. Even the supine CBC, generally a reliable conduit for the

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<sup>4</sup> <https://www.jccf.ca/wp-content/uploads/2019/05/Judicial-Freedom-Index-2019.pdf>

government narrative *du jour*, published a thoughtful article<sup>5</sup> on how far the violation of personal freedoms could be justified.<sup>6</sup>

While this paper concentrates on the provinces, it is clear that Prime Minister Trudeau's federal government has set itself apart for its blatant and ongoing disregard of the *Charter*. Mandatory hotel quarantine confinements, the imposition of vaccine mandates for federally regulated workers like truckers, the continued ban of unvaccinated Canadians from air travel, the violent suppression of peaceful protesters in Ottawa, and the egregious freezing of citizen's bank accounts would all push the federal government to the top of the list if it were to be included. However, with this paper we limit ourselves to a provincial focus.

In what follows, and with the 40<sup>th</sup> anniversary of the *Canadian Charter of Rights and Freedoms* in mind, we consider which *Charter* freedoms were most seriously abused, and which provinces most thoroughly abused Canadians' constitutional freedoms.

Nowhere do we see the kind of respect that *Charter* freedoms deserve. However, in the locked-down Canadian barracks, some billets were worse than others.

## **Worst cases – Freedom of conscience and religion**

Freedom of conscience and religion is the first freedom that is mentioned in the *Charter*, suggesting it may be the most foundational right of all, perhaps even more crucial than the tremendously important freedoms to speak, associate, assemble and travel. Although more than two thirds of Canadians over the age of 15 still claim a religious affiliation,<sup>7</sup> health administrators and politicians treated religious observance – regardless of its object of worship – more as a hobby of diminishing popularity, than as an expression of humanity's most profound quest for meaning and redemption.

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<sup>5</sup> <https://www.cbc.ca/news/opinion/opinion-charter-rights-freedoms-covid-1.5508222>

<sup>6</sup> The CBC's authors concluded of course that anything could be justified, except a provincial government using the notwithstanding clause.

<sup>7</sup> Statistics Canada: <https://www150.statcan.gc.ca/n1/daily-quotidien/211028/dq211028b-eng.htm>

Nevertheless – and perhaps not surprisingly – officials in many parts of Canada holding such a diminished opinion of the value of humanity’s relationship with the divine, found closing houses of worship would be consistent with closing other venues where people gathered, such as theatres, sports stadia, gymnasiums and restaurants. As a result, buildings used for religious gatherings were variously closed, or had access severely limited.

For example, British Columbia ordered houses of worship to be closed, and they were closed for 14 months. All provinces placed some kind of limitation upon religious observance of course, but B.C.’s blanket, lengthy, all-purpose closure was a unique interpretation of the supposed science behind Canada’s Covid response.

Sometimes the religious convictions of parishioners compelled them to gather for in-person worship despite the prohibition on such gatherings.<sup>8</sup> By the end of October 2021, 2,335 tickets had been handed out in B.C. for violation of public health orders, that is by holding in-person worship services.<sup>9</sup> Fines totalled \$1.58 million, although not all fines were ultimately paid.<sup>10</sup>

The ironies here should have embarrassed the government, of course.

- More people would typically visit big-box stores and warehouses such as Costco than would be likely to visit all but the largest churches. Yet, B.C. allowed these to remain open, albeit with reduced capacity: five square metres per customer. As Pastor Sam Chua of Westlynn Baptist Church in North Vancouver wrote, *“How is transmission risk any different when multiple tables of people are listening to a live band playing in a pub, separated by two to three metres (as permitted in your [i.e. Dr. Bonnie Henry’s] orders), compared to when multiple families are listening to a pastor lead a church service, separated by two to three metres (as currently prohibited)?”*<sup>11</sup>

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<sup>8</sup> <https://www.nelsonstar.com/news/b-c-issued-2335-covid-19-tickets-over-14-months-but-not-all-ended-in-paid-fines/>

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> <https://churchforvancouver.ca/easter-creativity-some-grumbling-greet-modest-changes-to-covid-19-order/>

- Cannabis stores were considered essential and allowed to remain open, while houses of worship closed.
- Even as B.C. was closing churches, it allowed restaurants to remain open. This might not have been so surprising, except that across the Alberta border, restaurants were closed and churches (with some infamous exceptions) remained open.
- Indoor low-intensity workout classes were permitted in B.C. with up to 25 persons, while not even 10 persons could gather for worship, indoor or outdoors.

Like Quebec, B.C. permitted its Northern Health Region to make attendance at a house of worship conditional upon vaccination.<sup>12</sup> B.C. was the last province to remove restrictions altogether, which it finally did on 1<sup>st</sup> April, 2022.<sup>13</sup>

In Alberta, three pastors acting on their conviction that restrictions on worship exceeded the authority of government, continued holding services that did not conform to Alberta Health Services orders limiting attendance and requiring masks and social distancing.

- James Coates, of GraceLife Church (*sic*)<sup>14</sup> in Spruce Grove (Edmonton)
- Tim Stephens Fairview Baptist Church<sup>15</sup> (Calgary)
- Artur Pawlowski<sup>16</sup> of the Street Church and the Cave of Adallum (Calgary)

Pastors Coates and Stephens were both charged with exceeding capacity limits. Pastor Coates spent a month in jail, while Pastor Stephens served three days before the Alberta Crown took the position that his arrest was ‘unlawful.’<sup>17</sup> Pastor Pawlowski had been arrested before for holding religious services without following public health rules, and in October 2021 was fined \$23,000 and handed 18 months probation.<sup>18</sup>

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<sup>12</sup> <https://bc.ctvnews.ca/in-person-faith-services-permitted-in-b-c-s-northern-health-with-proof-of-covid-19-vaccination-1.5702392>

<sup>13</sup> <https://www2.gov.bc.ca/gov/content/covid-19/info/restrictions>

<sup>14</sup> <https://www.christianitytoday.com/news/2021/february/canada-pastor-jail-arrest-gracelife-church-covid-order.html>

<sup>15</sup> <https://wng.org/sift/canadian-pastor-jailed-over-pandemic-violations-1623792755>

<sup>16</sup> <https://lynnwoodtimes.com/2022/02/23/pawlowski-trucker-convoy/>

<sup>17</sup> <https://www.jccf.ca/pastor-tim-stephens-freed-from-alberta-jail/#:~:text=Pastor%20Stephens%20was%20in%20jail,that%20his%20arrest%20was%20unlawful.>

<sup>18</sup> <https://calgary.ctvnews.ca/calgary-pastor-brother-avoid-jail-time-fined-33k-for-violating-health-orders-1.5621579>



Operating under AHS instructions, police padlocked their churches and arrested the pastors. All were jailed. Pastor Coates was held for more than a month, much of this time in solitary confinement with only one other cell mate, and very limited times outside of his cell.<sup>19 20</sup> He was also fined \$1,500.<sup>21</sup>

Ontario also prosecuted some pastors who defied public health orders, whose congregations were fined. Only Alberta jailed them, and in this respect Alberta exceeded B.C. and every other province in infringing religious and conscience rights.

It was the Government of Quebec however, that was easily the least respectful of *Charter* freedoms in general, and religious freedom in particular. Quebec took the remarkable step of mandating its vaccine passport<sup>22</sup> for church attendance,<sup>23</sup> thereby usurping the position of a religious body in determining who might worship and who may not. As of 20<sup>th</sup> December 2021,<sup>24</sup> passports were required in Quebec for entry into places of worship for all persons aged 14 to 75 years. Verification had to be done using the VAXICODE app along with presentation of photo identification and the maximum number of people was limited to just half the capacity of the place of worship, and only to a maximum of 250 people. So even a large worship space with capacity for 2,000 people or 1,000 people was limited to having only 250 people attend.

Popular commentator Father Raymond de Souza recognized this unique escalation of state intrusion upon religious freedom, commenting in the National Post:

*“With this rule change, the Quebec government is moving into new territory. No longer is it regulating how many people can come to church, as all provinces have throughout the pandemic, or how they are to be arranged (physical distancing and the like), but who can enter the house of God at all. That is different in kind and not just degree... a blanket prohibition on the unvaccinated in houses of worship, independent of any other factor, gives the state the right to segregate a congregation. That is simply beyond its competence.”<sup>25</sup>*

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<sup>19</sup> <https://edmonton.ctvnews.ca/trial-of-alberta-pastor-accused-of-flouting-covid-19-health-measures-to-resume-june-7-1.5413458#:~:text=Coates%20was%20released%20on%20March,rules%20over%20gathering%20and%20masking.>

<sup>20</sup> <https://www.todayville.com/calgary/pastor-james-coates-in-jail-for-one-more-sunday-erin-coates-releases-statement/>

<sup>21</sup> <https://edmontonjournal.com/news/local-news/gracelife-pastor-james-coates-handed-1500-fine-will-be-able-to-leave-jail>

<sup>22</sup> <https://montreal.ctvnews.ca/covid-19-vaccine-passports-officially-in-effect-in-quebec-1.5569166>

<sup>23</sup> <https://ici.radio-canada.ca/rci/en/news/1848285/quebec-government-tightens-public-health-measures-as-covid-19-cases-soar>

<sup>24</sup> [https://cdn-contentu.quebec.ca/cdn-contentu/sante/documents/Problemes\\_de\\_sante/covid-19/mesures-en-vigueur.pdf?1639698465](https://cdn-contentu.quebec.ca/cdn-contentu/sante/documents/Problemes_de_sante/covid-19/mesures-en-vigueur.pdf?1639698465)

<sup>25</sup> <https://nationalpost.com/opinion/raymond-j-de-souza-o-come-all-ye-faithful-faithfully-vaccinated-that-is>

## **Worst cases – Freedom of thought, belief, opinion and expression**

Within a month of governments imposing lockdowns, Canada's federal government revealed more than a passing interest in restricting freedom of expression. In April 2020, the CBC quoted<sup>26</sup> Privy Council President Dominic LeBlanc as stating that the federal government was considering laws to make it an offence to knowingly spread "misinformation" that could harm people. That particular proposal appears to have been stillborn, as no such legislation was actually introduced. However, the fact that this proposal was even floated reveals how little regard for *Charter* freedoms there appears to be within the federal government. Quite apart from the obvious Big Brother considerations, Canada's governments together have such a miserable record of delivering consistent, accurate information during the pandemic,<sup>27</sup> that they would have no credibility in determining what was misinformation, disinformation or accurate information.

Perhaps this legislation was not pursued because, at the provincial level, Colleges of Physicians and Surgeons aggressively silenced off-message voices by threatening doctors who expressed public disagreement with any or all of the official narrative as promoted by government and media.

Colleges of Physicians and Surgeons are government bodies established under provincial legislation to regulate the practice of medicine. In order to practice medicine, physicians are obliged to be members in good standing of their provincial College.

Prior to 2020, the Colleges generally limited their policing to ethical matters. For example, Colleges would discipline a doctor for having sex with his patient, or for being influenced by financial gain in the prescribing of certain drugs or treatments, or for violating the sacred principle of informed consent, or for failing to treat his patients with kindness and respect.

Prior to 2020, Colleges did not participate in scientific debates about medical issues such as the circumcision of baby boys or the controversial "liberation therapy" for multiple sclerosis. Prior

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<sup>26</sup> <https://www.cbc.ca/news/politics/covid-misinformation-disinformation-law-1.5532325>

<sup>27</sup> [https://www.jccf.ca/published\\_reports/two-weeks-to-flatten-the-curve-two-years-to-flatten-our-freedoms/](https://www.jccf.ca/published_reports/two-weeks-to-flatten-the-curve-two-years-to-flatten-our-freedoms/)

to 2020, Colleges did not see themselves as arbiters of medical or scientific truth, let alone exert their power as such. With the exception of prohibiting barbaric practices like female genital mutilation, Colleges did not force doctors to prescribe (or to refrain from prescribing) specific drugs or other treatments. Colleges respected the professional judgment of doctors to engage in the common and completely unremarkable practice of prescribing drugs “off-label.” The label has nothing to do with clinical practice; it only regulates what a drug can be advertised for. Once a drug is being manufactured, physicians can use it for whatever is supported by the medical literature which chronicles the ongoing scientific debate about diseases and their treatment. For example, trazodone was originally developed as an anti-depressant but today is more often prescribed off-label as a remedy to fight insomnia.

But since 2020, Colleges have used their power to promote and enforce the government-and-media narrative: Covid is as bad as the Spanish Flu of 1918 and threatens everyone; there are no treatments available for Covid to prevent hospitalization; lockdowns save many lives and inflict only minimal harm on public health; the new Covid mRNA vaccines are safe and effective. Provincial Colleges have now assumed the role of arbiters of correct thought regarding Covid, lockdowns and vaccines. As a result, several doctors have been sanctioned, have lost hospital privileges or have been outright fired for holding and advocating opinions that deviated from the official line.

A case in point would be that of B.C. physician Dr. Stephen Malthouse. Dr. Malthouse published his opinion that Covid was no more deadly than influenza (with which it does indeed have much in common.)<sup>28</sup> He also asserted that vaccines are more dangerous than the virus itself. In June 2021 he was reprimanded by the provincial college for making public his opinions.<sup>29</sup> The College campaign against him ramped up after he directly challenged B.C. Provincial Health Officer Bonnie Henry in an open letter earlier that year. More recently, the College has suspended Dr. Malthouse’s licence to practice.<sup>30</sup>

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<sup>28</sup> [https://www.jccf.ca/published\\_reports/covid-versus-the-spanish-flu-of-1918-does-the-virus-merit-the-governments-response/](https://www.jccf.ca/published_reports/covid-versus-the-spanish-flu-of-1918-does-the-virus-merit-the-governments-response/)

<sup>29</sup> who in 2021 was reprimanded by the provincial college for stating his opinion

<sup>30</sup> <https://www.cbc.ca/news/canada/british-columbia/b-c-doctor-suspended-for-spreading-covid-19-misinformation-1.6400737>

Other B.C. doctors meanwhile, have been warned by the College in a joint statement<sup>31</sup> with the First Nations Health Authority that spreading what the College deems to be ‘misinformation’ could result in professional discipline.<sup>32</sup>

A similar case was that of Dr. Francis Christian, Clinical Professor of General Surgery at the University of Saskatchewan and a practising surgeon in Saskatoon. In 2021, Dr. Christian was suspended from all teaching responsibilities and fired from his position with the University of Saskatchewan as of September 2021.<sup>33</sup> Dr. Christian had been a surgeon for more than 20 years and had begun working in Saskatoon in 2007. He was appointed Director of the Surgical Humanities Program and Director of Quality and Patient Safety in 2018 and co-founded the Surgical Humanities Program. Dr. Christian is also the Editor of the Journal of The Surgical Humanities.

His crime was arguing publicly<sup>34</sup> on June 17, 2021, against injecting children with the new Covid vaccine. (Dr. Christian is himself vaccinated and recommends vaccination for others.) His concern was about informed consent: a patient should always be “fully aware of the risks of the medical intervention, the benefits of the intervention, and if any alternatives exist to the intervention. ... ”This should apply particularly to a new vaccine that has never before been tried in humans... before the vaccine is rolled out to children, both children and parents must know the risks of mRNA vaccines,” he wrote in an open letter to colleagues.

Dr. Christian expressed concern that he had not come across “a single vaccinated child or parent who has been adequately informed” about Covid vaccines for children.

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<sup>31</sup> <https://www.fnha.ca/about/news-and-events/news/joint-statement-on-misleading-covid-19-information>

<sup>32</sup> <https://www.cbc.ca/news/canada/british-columbia/bc-doctors-misinformation-covid-19-1.6021489>

<sup>33</sup> <https://www.jccf.ca/surgeon-fired-by-college-of-medicine-for-voicing-safety-concerns-about-covid-shots-for-children/>

<sup>34</sup> <https://www.jccf.ca/wp-content/uploads/2021/06/17-June-press-conference-statement-Dr.-Christian.pdf>

## Worst cases – Freedoms of association and peaceful assembly

Given that many people could make an intuitive link between countering an infectious disease and reducing contact between individuals, and given that non-pharmaceutical interventions (more commonly known as "lockdowns") were specifically recommended by expert opinion,<sup>35</sup> public health orders limiting person-to-person contact were to be expected. As the *Charter* recognizes, it is a matter of degree: Can government's limitation on the freedom of Canadians be justified demonstrably in a free and democratic society? The *Charter* requires politicians as well as unelected government officials (such as chief medical officers) to weigh the benefits and the harms of any policy that violates any *Charter* right or freedom. Yet no government in Canada, federal or provincial, has undertaken a thorough, detailed and comprehensive analysis of lockdown harms, in order to fulfill what the *Charter* requires of governments.

For example, the harm of lengthy school closures has yet to be fully tallied, including harm to children's education as well as harm to children's mental health. As of mid-2021, approximately 5.7 million Canadian children<sup>36</sup> had already been impacted by school closures. The same may be said of people told to stay at home. Even those able to work from home found the lack of social contact depressing. Those merely confined to their living quarters with no outlet for their social skills were at greater risk yet of declining mental health.<sup>37</sup> Also, deaths from unintentional substance poisoning, surged year-over-year<sup>38</sup> in younger demographics. As Statistics Canada reported in March 2022, "There is evidence the COVID-19 pandemic is contributing to the already deadly and ongoing national public health overdose crisis."<sup>39</sup>

In assessing violations of the *Charter*'s freedom of assembly and association clauses, two provinces were prominent, Ontario and Quebec.

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<sup>35</sup> *Inter alia*: [https://www.researchgate.net/publication/342182508\\_Report\\_9\\_Impact\\_of\\_non-pharmaceutical\\_interventions\\_NPIs\\_to\\_reduce\\_COVID-19\\_mortality\\_and\\_healthcare\\_demand](https://www.researchgate.net/publication/342182508_Report_9_Impact_of_non-pharmaceutical_interventions_NPIs_to_reduce_COVID-19_mortality_and_healthcare_demand)

<sup>36</sup> <https://www150.statcan.gc.ca/n1/pub/71-607-x/71-607-x2021009-eng.htm>, cited <https://www.facetsjournal.com/doi/10.1139/facets-2021-0080>

<sup>37</sup> *Inter alia*. <https://www.camh.ca/-/media/files/pdfs---public-policy-submissions/covid-and-mh-policy-paper-pdf.pdf>

<sup>38</sup> <https://www150.statcan.gc.ca/t1/tbl1/en/cv/recreate.action?pid=1310015601&selectedNodeIds=4D8871,4D9008,4D9009,4D9010,4D9011,4D9012,4D9013,4D9014,4D9015,4D9029,4D9030,4D9031,4D9032,4D9033,4D9034,4D9035,4D9036,4D9092,4D9501&checkedLevels=0D1,1D1,2D1,3D1,3D2&refPeriods=20160101,20200101&dimensionLayouts=layout2,layout2,layout2,layout3,layout2&vectorDisplay=false>

<sup>39</sup> <https://health-infobase.canada.ca/substance-related-harms/opioids-stimulants/>

Ontario was not the only province to issue stay-at-home orders, confining Ontarians to their homes except for very limited reasons.<sup>40</sup> What made Ontario unique was Premier Doug Ford's order<sup>41</sup> to the Ontario Provincial Police to enforce the order through random stops of pedestrians and motorists.<sup>42</sup> Alarming, this Soviet-style intrusion slipped past whatever ideological barriers the province maintains in policy definition. The order was only withdrawn<sup>43</sup> after many police stated publicly that they would refuse to comply with it.

Once again however, it was Quebec that took *Charter* freedoms and trampled them more than other provinces. Twice, the province imposed overnight curfews from 8:00 p.m. to 5:00 a.m., the only province to do so. One curfew ran for 140 days. The state also enforced curfews: According to the *Policing the Pandemic Mapping Project* of the Canadian Civil Liberties Association, of the 10,000 tickets issued in Canada between April 1 and June 15 in 2020, two thirds were issued in Quebec. Of more than 46,000 Covid-related tickets issued in Quebec over two years, nearly half (22,500) were for curfew infractions.<sup>44</sup> Nearly 15,000 more were issued for gatherings in private residences, the second most common reason for issuing tickets.<sup>45</sup> Altogether, Quebec issued more than \$45 million in Covid-related tickets.<sup>46</sup>

## **Worst cases – Freedom to move**

The right to go freely where one wishes, when one wishes, for whatever reason that one wishes, and without needing to notify government or seek permission from government, is comparable in weight to the freedoms of speech, conscience and religion. During the past two years of lockdowns, the Government of Canada was the first and arguably its greatest violator as Canadians returning home from abroad were made subject to mandatory quarantine at their own expense, in "quarantine hotels" also referred to as "prison hotels." Later the federal government made travel dependent upon having received two injections of the new Covid vaccines. In direct

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<sup>40</sup> "To seek medical treatment, purchase groceries, exercise and to perform work that could not be done at home  
<https://news.ontario.ca/en/release/61192/ontario-strengthens-enforcement-of-stay-at-home-order#quickfacts>

<sup>41</sup> <https://news.ontario.ca/en/release/61192/ontario-strengthens-enforcement-of-stay-at-home-order>

<sup>42</sup> <https://globalnews.ca/news/7765412/covid-19-ontario-temporary-police-powers-carding/>

<sup>43</sup> <https://globalnews.ca/news/7765907/ontario-police-forces-new-covid-19-powers/>

<sup>44</sup> [https://beta.ctvnews.ca/local/montreal/2022/3/16/1\\_5822172.amp.html](https://beta.ctvnews.ca/local/montreal/2022/3/16/1_5822172.amp.html)

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*

violation of the *Charter's* right to bodily autonomy, protected by the *Charter* section 7 right to life, liberty and security of the person, the federal government also mandated all federal employees and those of federally-regulated industries to be injected. Extending this mandatory vaccination to cross-border truckers in January 2022 precipitated a large, lengthy and peaceful protest that Ottawa used to declare a national emergency under the *Emergencies Act*. This led to Canadian banks suddenly freezing bank accounts without court order or court oversight, and unarmed peaceful protesters being trampled underfoot by police horses. In these respects alone, the Government of Canada stands as the single most egregious violator of Canadians' *Charter* freedoms.

However, the focus of this paper is on comparing Canada's provinces.

The four Atlantic provinces (Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador) established the so-called Atlantic Bubble. Within this bubble, residents were permitted to move freely. However, other Canadians were barred from entering these four provinces unless government determined the reason to be "essential." The RCMP set up roadblocks on the Trans-Canada Highway to enforce the exclusion. One could hardly imagine a more unambiguous violation of the *Charter* section 6 mobility rights to move freely within Canada. The impact was felt especially by those Canadians on the east coast accustomed to 'working away,' who could end up spending their entire furlough in some form of quarantine.

However, while the Atlantic provinces have between them a population of about 2.4 million,<sup>47</sup> of far more material significance were the border closures between Manitoba and Ontario, and between Ontario and Quebec. For two months in 2021, this arrangement infringed the movement rights of nearly two thirds of all Canadians.<sup>48</sup> The border was closed until June 16, 2021,<sup>49</sup> with police enforcement.<sup>50</sup> As with the Atlantic Bubble, the impact was arbitrary. Travel deemed "essential" by politicians was permitted, but border residents reported<sup>51</sup> significant inconvenience.

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<sup>47</sup> <https://worldpopulationreview.com/canadian-provinces>

<sup>48</sup> <https://globalnews.ca/news/7948023/quebec-ontario-border-reopening-june-16/>

<sup>49</sup> <https://globalnews.ca/news/7948023/quebec-ontario-border-reopening-june-16/>

<sup>50</sup> <https://www.youtube.com/watch?v=xMNqJAhAucQ>

<sup>51</sup> <https://www.pembrokeobserver.com/news/local-news/west-quebec-resident-frustrated-with-ontarios-covid-19-border-closure>

## Conclusion

The governments of all provinces and the Government of Canada consistently violated Canadians' *Charter* rights from March of 2020 through to the 40th Anniversary of the *Charter* in April of 2022. As detailed in our recent review 'Two weeks to flatten curve, two years to flatten our freedoms',<sup>52</sup> as the pandemic went on, government approaches to the same virus remained uniformly unconstitutional but became increasingly dissimilar in scope and purpose, without obvious good reason. As a result of these widely differing provincial understandings of "the science," some Canadians suffered much more than others.

Between its curfews, border closures, cavalier treatment of religious sensitivities and outright hostility to unvaccinated Canadians, Quebec was easily the worst offender of freedoms guaranteed by the *Charter* and the worst place to live in Canada. In January of 2022, when approaching the two-year anniversary of the "two weeks to flatten the curve," Quebec's premier publicly discussed plans to fine unvaccinated Canadians and bar them from major retail outlets, including supermarkets.

B.C. also seriously violated religious freedom by keeping places of worship closed for 14 months. It also on occasion banned travel between its health regions, deploying the RCMP to ticket and send back travellers whose purpose was deemed non-essential. In Spring 2021 violators faced fines of up to \$575.<sup>53</sup> Later in the year, B.C. 'strongly discouraged' 'non-essential travel',<sup>54</sup> but did not enforce it with police action. B.C.'s Northern Health Region also, like Quebec, mandated that only the vaccinated could attend houses of worship.

Manitoba comes close to B.C. in the rank-ordering for second-worst abuser of *Charter* rights. Like B.C., Manitoba seriously infringed both religious freedom and mobility rights, closing all houses of worship from November 2020 to February 2021, and again in May of 2021. Although Manitoba never required vaccine passports to enter a house of worship, for two months in 2021 it joined Ontario and Quebec in mutually closing its provincial borders to supposedly "non-

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<sup>52</sup> <https://www.jccf.ca/wp-content/uploads/2022/03/2022-03-14-Two-years-to-flatten-our-freedoms.pdf>

<sup>53</sup> <https://www.cbc.ca/news/canada/british-columbia/bc-road-checks-travel-restrictions-1.6038352>

<sup>54</sup> <https://www.destinationbc.ca/newsletters/2020/11/COVID-19-bulletin-40.html>



essential" travel.<sup>55</sup> It was also in Manitoba that People's Party Leader Max Bernier was arrested and charged under Manitoba's Public Health Act for assembling in a gathering at an outdoor public place and for failing to self-isolate upon entering Manitoba. There were about 15 people at the open-air rally where Bernier was arrested, handcuffed and briefly detained.<sup>56</sup> A better billet than Quebec or B.C. from the perspective of rights violations, but not by much.

With more than a third of Canadians living there, Ontario comes close to defining an average Covid experience, both in the number of people affected by Covid and in where Ontario sits on the sliding scale of oppression in violating *Charter* rights and freedoms.

No province closed its schools for longer than did Ontario.<sup>57</sup> The *Charter* provides no right to in-person classroom education and teaching was provided online, so it would be hard to call this a *Charter* violation. So, while having the kids at home will be an abiding memory for Ontario parents, the province must be judged on its other violations. The mutual border closures with Manitoba and Quebec have already been noted as a clear violation of Canadians' *Charter* right to move. The province's most impactful *Charter* violations, however, were its stay-at-home orders.

Premier Ford's aborted order to the police to use random stops to interrogate people as to whether they had a "legitimate" reason to be driving their cars showed a stunning insensitivity to Canada's long-standing traditions as a free society. The province prosecuted and fined some pastors and congregations which defied public health orders, but did not jail anyone. Overall, Ontario was a middle-of-the-road Canadian Covid experience, but significantly more difficult for parents with small children, and even more so for those living in small accommodations.

Of all Canadians, those living in Alberta, Saskatchewan and the Maritime provinces faced fewer and less severe violations of their *Charter* rights and freedoms than Canadian residing in Quebec, B.C., Manitoba and Ontario.

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<sup>55</sup> <https://globalnews.ca/news/7947778/manitoba-border-with-ontario-set-to-reopen-wednesday/#:~:text=The%20Manitoba%2FOntario%20border%20is,end%20just%20after%20midnight%20Wednesday>.

<sup>56</sup> <https://www.cbc.ca/news/canada/manitoba/maxime-bernier-manitoba-taken-into-custody-1.6062801>

<sup>57</sup> <https://ottawacitizen.com/news/local-news/study>

Although the so-called ‘Atlantic Bubble’ of Nova Scotia, New Brunswick, Newfoundland and Labrador and Prince Edward Island was a gross infringement of Canadians’ right to travel (and was burdensome to the many Canadians who ‘worked away’), those within the Bubble experienced less government intrusion than residents of Quebec, Ontario or B.C. That is, Canadians on the east coast could at least travel within those four provinces without needing to self-isolate.<sup>58</sup>

Both Saskatchewan and Alberta echoed the policy responses of all other provinces, but their centre-right premiers seemed to be less committed to lockdowns, inclined to impose them later and lift them earlier. After the first wave in spring 2020 for example, Alberta lifted some restrictions in mid-May, barely two months after the pandemic had been declared. Albertans would not see a reimposition of significant restrictions until December of 2020, which came not long after Premier Kenney had publicly recognized and condemned some of the lockdown's harmful effects in November of 2020. Even then, Alberta's allowances for in-home gatherings (which banned elderly married parents from visiting their own adult children but allowed divorced or widowed single elderly parents to visit their own adult children) still compared favorably with restrictions in Quebec. Given the symbolism attached to masking, it is also indicative of the government’s general approach that both the cities of Calgary and Edmonton made indoor masking compulsory during the summer of 2020, a requirement not mandated provincially until December. What were issued as stay-at-home orders in other provinces, were issued as recommendations in Alberta.

It is also notable that at a time when nearby British Columbia had closed houses of worship completely, both Alberta and Saskatchewan did not prohibit gatherings for in-person worship entirely.

We conclude that in a time of widespread *Charter* violations by all provincial governments, the rights of Canadians living in Alberta and Saskatchewan were the least breached during the two years of lockdowns. Only Alberta’s egregious jailing of pastors accused of ignoring public

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<sup>58</sup> The Atlantic Travel Bubble was established in July 2020, but broke up in November when cases of Covid started to rise in Nova Scotia and New Brunswick, and PEI withdrew.

health orders – a sad milestone in Canadian church-state relations – places it in a worse position than Saskatchewan, where life was minimally impaired compared to the rest of the country.

Saskatchewan may thus be called the ‘best’ bunk in the locked-down Canadian barracks during Covid. But to be deemed such is nothing to celebrate.