John Carpay: Canadians Need Legislation to Protect Their Rights

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The justice statue outside the Supreme Court of Canada in Ottawa, in a file photo. The Canadian Press/Adrian Wyld

By John Carpay
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Commentary

In September, Alberta Premier Danielle Smith announced that the right to make one's own choices about receiving vaccinations should

be added to the Alberta Bill of Rights, stating: “No Albertan should ever be subjected or pressured into accepting a medical treatment without their full consent.”

Some argue that new laws to protect the right to bodily autonomy are redundant because the Canadian Charter of Rights and Freedoms already protects citizens from government abuse.

In theory, the Charter protects bodily autonomy, including the right to make medical choices, under the right to “life, liberty and security of the person.” In theory, the Charter protects the right to decide for oneself, without any coercion or pressure, whether to get injected with a vaccine. In theory, governments must justify “demonstrably” with cogent and persuasive evidence that any health order that violates a Charter right or freedom is reasonable, rational, truly necessary, and bringing about more good than harm. In theory, judges should base their rulings only on the evidence placed before them in court by the parties in a dispute, to the exclusion of media reports. In theory, when judges state that party “A” has presented better and more persuasive evidence than party “B,” judges will explain why and how they came to that conclusion. In theory, when a judge upholds lockdowns or vaccine passports as justified violations of Charter rights and freedoms, the judge will explain why she or he believes that the government’s evidence is better and more persuasive. In theory, Canadians don’t need laws to be changed because the Charter already protects citizens from being forced, pressured, or manipulated into getting injected with a vaccine.

Using the words “in theory” seven times in the paragraph above is necessary, unfortunately. In reality, when Canadians have challenged governments in court over violating Charter rights and freedoms, some judges have upheld lockdowns and mandatory vaccination policies without providing clear reasons—or any reasons—as to why the judge preferred the government’s evidence over the evidence presented by the citizens. In some cases, judges have made assertions in their rulings that are not supported by any evidence at all; these assertions appear to be based only on what the media have stated repeatedly.

In Gateway Bible Baptist Church v. Manitoba, the judge described COVID as an "unprecedented" public health threat and "the worst global pandemic in over a century." He did so without referencing any evidence to support his claim that COVID was more deadly than the the 1957–58 Asian Flu and the 1968–69 Hong Kong Flu, each of which claimed between one and four million lives, according to the World Health Organization. It appears that the judge's assertion about COVID was based only on the repeated claims made by fearmongering, government-funded media.

In Alberta Health Services v. Artur Pawlowski, the judge ordered an outspoken pastor to proclaim the government's narrative about COVID, lockdowns, and vaccines whenever the pastor addressed these topics in public. The judge ordered the pastor to state, among other things, that "Vaccinations have been shown statistically to save lives and to reduce the severity of COVID-19 symptoms." When the judge issued this totalitarian order in 2021, the mRNA vaccine was still in clinical trials, and no long-term safety data was available about the impact of this new technology on people.

In O.M.S. v. E.J.S., the judge was so convinced of the truth of the government-and-media narrative about COVID and vaccines that he declared the vaccine to be "safe and effective" for everyone. In September 2021, he ordered a 12-year-old girl to get injected with the COVID vaccine, against her will and against the will of her mother. The judge declared that he could conclude without the necessity of any specific proof that COVID poses a "serious and significant" health risk to children. This amounts to declaring: "The media and politicians have been saying every day for the past 18 months that COVID seriously threatens adults and children. This claim must be true, because I have heard it repeated hundreds of times by politicians and journalists, often in combination with frightening pictures of sick, dying, and dead people. Repeated media assertions combined with disturbing visual images are a good substitute for evidence in court."

If the judge had bothered to look at death statistics from any Canadian province, or any country in the world, he would have understood that children were as likely to die of COVID as they were to die of lightning strikes.

The judge in O.M.S. v. E.J.S. went on to take “judicial notice” of the “fact” that the COVID vaccine was “safe and effective” for use in both adults and children, because Health Canada and the Saskatchewan Health Authority had said so. The judge actually asserted in his ruling that no reasonable person would dispute the accuracy of a claim made by a government health authority!

Perhaps he has never heard of all the people damaged by thalidomide, a drug deemed safe and effective by health authorities in the 1950s. Doctors advised pregnant women to take thalidomide, resulting in miscarriages as well as babies dying at birth or shortly after. The babies who were not killed by thalidomide suffered life-long deformities and permanent damage to their limbs, brains, and other organs. All of this happened under the watchful eye of health authorities in Canada, Australia, New Zealand, the United States, Germany, and other countries. But when the Saskatchewan Health Authority declared a vaccine that was still in clinical trials to be “safe and effective” for children, this judge happily embraced the government’s claim as gospel truth.

In Hillier v. Ontario, the Ontario Superior Court of Justice upheld the government’s total ban on all outdoor protests as a justified violation of the Charter freedom of citizens to assemble peacefully. The judge ruled in favour of the government without considering seriously the very real harms that lockdowns inflicted on millions of people. The judge completely ignored a lengthy and comprehensive report by medical anthropologist Dr. Kevin Bardosh. His expert report relied on 150 peer-reviewed Canadian studies representing hundreds of Canadian scholars, showing the magnitude of lockdown harms in Canada.

In Ontario v. Trinity Bible Chapel, the judge upheld the government’s violations of Charter freedoms while declaring proudly that she would not engage in a serious scientific analysis of the relevant issues: “My role is not that of an armchair epidemiologist. I am neither equipped nor inclined to resolve scientific debates and controversy surrounding Covid-19.” The judge further declared that “it is not my task to mediate or resolve conflicting views about Covid-19.” Wrong. Resolving

conflicting views is a judge's job description. The Charter requires that governments justify "demonstrably" with persuasive evidence any health order that violates one or more of our Charter freedoms. This judge lowered the bar for government, and merely asked "Was it open to Ontario to act as it did?"

In theory, the Charter protects Canadians from being forced, pressured or manipulated into getting injected with a vaccine. In light of recent court rulings that are more media-based than evidence-based, the sad reality is that legislation must be changed expressly to protect citizens from government abuse.

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John Carpay
Author

Lawyer John Carpay is president of the Justice Centre for Constitutional Freedoms (jccf.ca).

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