

Is our rights and freedoms vanishing before our eyes? This is a concern some may feel towards a law prohibiting where peaceful assemblies may occur, specifically not within 500 metres of a hospital, as they consider it unreasonable limitations of freedoms outlined by the Canadian Charter of Rights and Freedoms. While this law can be considered as restricting protestors' freedoms, this is a reasonable limitation providing a solution to its goal of unimpeded access to healthcare and safe environments for hospital staff and patients. However, there are ways this law can be improved to minimize its impairments. This hypothetical situation of protests against government restrictions taking place outside of healthcare facilities has become reality for healthcare centres and communities across Canada in the past year, making it a topic our society must address. Overall, the law implemented by the government in Option Three is reasonable in protecting the rights of hospital workers and patients, even though it restricts the rights of protestors, but can be improved.

For some, the law passed by the government prohibiting protest within 500 metres of a hospital, regardless of intent, is a threat to their civil rights. By not condoning peaceful assembly around public hospitals, they likely believe their freedoms of expression and peaceful assembly in section 2(b) and 2(c) of the Canadian Charter are being stripped.¹ However, for others, this is beyond exercising a civil right, and is endangerment of patients and creates unsafe environments for healthcare workers. This topic is significant as it surrounds concerns of the Canadian Charter being compromised, which is a grave issue as the Charter protects the rights and freedoms of Canadians and is the basis upon which Canada's free and democratic society is able to stand. The worries of protestors is that with the passing of this law, which they deem unconstitutional, it

¹ "The Constitution Acts, 1867 to 1982." (Justice Laws Website), Government of Canada Legislative Services Branch, <<https://laws-lois.justice.gc.ca/eng/const/page-12.html>>. 26 May 2022.

paves the way for future laws that infringe further upon constitutional rights and freedoms.

Regardless of which side one is on—for or against the protests—it is important to be aware of the possible repercussions for all Canadians if the government passes an unreasonable limitation.

Resultantly, it is important for the law to be deemed a reasonable and justified limitation. according to the Supreme Court's Oakes Test, which stresses the importance of the law being connected to achieving a pressing and substantial goal benefitting society and minimally impairing the violated right or freedom.² The objective of the law is to prevent the protests disrupting access to healthcare services and maintaining safe environments for hospital staff and patients. While protestors are not blocking driveways nor doors, paramedics carrying patients are slowed by congested roads to the hospital. Moreover, the protests are described as loud and aggressive, which disturbs patients who are sick and require peaceful environments to recover, and may deter patients from seeking medical attention. Hospital workers are impacted as well because the protests may escalate to verbal harassment and intimidation and, according to Article 23 of the United Nations' Universal Declaration of Human Rights, everyone has the right to just and favourable work conditions.³ So, hospital workers have a right to go to work without seeing or hearing protests that make them feel unsafe at work. Additionally, section 124 of Canada's Labour Code states employers have a duty to the health and safety of employees at work.⁴ Consequently, there is a pressing and substantiated need for the government to address the protests, as they are impeding access to timely healthcare and producing unsafe environments for patients and workers. The law is rationally connected and benefits the majority of society, as

²“Oakes Test.” (Centre for Constitutional Studies, 2020), University of Alberta Faculty of Law, <<https://www.constitutionalstudies.ca/2019/07/oakes-test/>>. 26 May 2022.

³“Universal Declaration of Human Rights.” United Nations, <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>>. 26 May 2022.

⁴“Canada Labour Code.” (Justice Laws Website), Government of Canada Legislative Services Branch, <<https://laws-lois.justice.gc.ca/eng/acts/l-2/page-15.html#docCont>>. 27 May 2022.

restricting protestors does not ban them from exercising fundamental freedoms, but will prevent noise or aggression from affecting recovering patients and hospital staff, and reduces traffic on roads around the hospital so ambulances can navigate. While the law does minimally violate the freedom of protestors' by allowing them to protest with restrictions, there are aspects that could be improved upon.

The law passed can be improved to be more fair for all parties. Firstly, while 500 metres ensures hospital patients and workers are not affected by noise, it means entire blocks where protestors are prohibited. This could be made fairer for protestors by reducing the restricted distance. For example, British Columbia has implemented a restricted access zone of 20 metres around hospitals.⁵ In Saskatchewan, the buffer zone is 50 metres.⁶ The precedents of these provinces suggest 500 metres is too large, and the law can be effective if the restricted distance is decreased. Moreover, the law could be made fairer by increasing the distance in phases. The restricted distance could begin as small as 20 metres and, in light of any incidents, the distance could be increased. This would be fairer because so long as protestors are not impeding upon the accessibility and safety of those residing or working in hospitals, then there is no reason to further restrict the freedom of protestors to 500 metres—which seems unreasonable and extreme. One may suggest dissatisfaction towards government policies should be directed towards the government and not healthcare workers, however it would be unfair to prohibit the protest around hospitals completely, as it creates double standards for other protests (like the now celebrated actions of groups like ACT-UP! against social injustices towards HIV/AIDS patients

⁵ "New Act Protects Important Services from Disruption." (BC Government News, 2021), Government of British Columbia, Office of the Premier, <<https://news.gov.bc.ca/releases/2021PREM0071-002169>>. 27 May 2022.

⁶Ghania, Yasmine, and Adam Hunter. "Saskatchewan Introduces Legislation Banning COVID Protesters around Hospitals." (CBC News, 2021), CBC, <<https://www.cbc.ca/news/canada/saskatchewan/hospital-covid-protest-buffer-zone-1.6244087>>. 27 May 2022

in the 1980s) as well as healthcare unions who should be able to strike near their workplace.⁷ So, it would be unreasonable to completely ban the protests from occurring at hospitals and would be better to decrease the restricted distance and apply it for all protests and strikes, as it ensures equal treatment towards all peaceful assemblies regardless of opinion.

In conclusion, the government in Option Three has implemented a law that, even though limits the freedom of protestors, is reasonable and protects the rights of hospital workers and patients, but can be improved to be more fair. Amongst the contrasting opinions on the topic, the freedoms of protestors are being restricted, but this limitation can be proven to be a reasonable and justified one. However, the law can be considered more reasonable if the restricted distance was decreased, and it was applied to all protests near healthcare facilities to guarantee equal treatment. No matter which side of the argument one stands on, it is important we respect the concerns of any individual about infringements on civil rights and freedoms to reach a conclusion that benefits all of society and ensures the preservation of Canada's free and democratic society.

⁷Rodier, David. "The Legacy of the HIV/AIDS Fight in Canada." (Policy Options, 2017), <<https://policyoptions.irpp.org/magazines/january-2017/the-legacy-of-the-hiv-aids-fight-in-canada/>>. 26 May 2022

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