



What we did and why we did it

Recent experiences with COVID-19 have raised legal issues with respect to quarantine and human rights. Fourteen invited participants met online. They included academics and representatives from agencies and societies that represent businesses and industry sectors in Halifax.

Elaine Gibson, Professor of Law at Dalhousie's Schulich School of Law provided some historical perspective on quarantine and summarized key terms, actors, legislation and issues that arise from each. (Slides available.)

Following the presentation, participants discussed the issues raised and their perspective on them from their professional and personal experiences. Their comments are summarized below but not attributed.

About the MacEachen Institute

The MacEachen Institute for Public Policy and Governance at Dalhousie University is a nationally focused, non-partisan, interdisciplinary institute designed to support the development of progressive public policy and to encourage greater citizen engagement.

Contact

For more information on this research, contact mipp@dal.ca

Quarantine & Human Rights in COVID-19: Roundtable Discussion

Presentation

“Quarantine”, or the idea to separate those who are ill and exposed to communicable diseases from healthy populations is an ancient concept. The term comes from the practice of keeping sailors on ships for 40 days when they arrive in a new port to prevent the spread of any diseases they may be carrying. Today, quarantine refers to the separation of people that may have been exposed, whereas “isolation” refers to the separation of people who display symptoms. These terms are distinct but are generally misunderstood and can be confused with each other.

The practice raises important legal concerns with respect to human rights, for example, arrests of people who have broken isolation orders. We have measures in place to enforce quarantine and isolation. Each of these measures has scope depending on the jurisdiction and authority that put it in place. Federal measures include the Quarantine Act (limited to people travelling in and out of Canada) and the Emergencies Act.

Each Province and Territory also has similar legislation, but there are differences between provinces. In Nova Scotia, the Chief Medical Officer of Health can order quarantine and other requirements as necessary to reduce risks (e.g., change behaviour to avoid exposing others to infection, signage, restrict access to premises). After SARS, a mechanism was introduced to order a “class of persons” or specific group to adhere to a certain requirement.

With respect to failures to comply, the Chief Medical Officer of Health can use whatever measures are necessary and order the individuals to pay the cost of their detention. A provincial court judge can also order individuals to be detained in a facility. Sanctions may be issued per day of non-compliance on individuals and businesses. The Minister has the authority to designate quarantine facilities. The NS Emergency Measures Act designates emergency management roles and responsibilities.

Presentation continued

The Canadian Charter of Rights and Freedoms guarantees rights and freedoms; however, these rights are “subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society” (Section 1). This means that while rights and freedoms are guaranteed, they can be limited based on what can be justified within a given context. In the case of *Canadian AIDS Society v Ontario* (1995), the Ontario Superior Court ruled that public health and safety of all outweighs individual rights, stating that “the state objective of promoting public health for the safety of all will be given great weight [133].”

What we Discussed

Participants discussed the impacts of trust / distrust towards the state and how this influences adherence to public health measures, comparing public responses in Canada to the United States. It was noted that in the same week that Canada considered using the Emergencies Act, the United States considered rolling back public health measures.

Participants discussed the implications of maintaining strict measures over a long period of time. This may result in measures not being applied uniformly (e.g., allowing people that are not as vulnerable to serious risks of COVID-19, such as healthy young people, to return to work). Public health officials have identified high rates of testing for COVID-19 as a key mitigation measure in response to the pandemic. If mass testing is not carried out in an appropriate timeframe, participants questioned whether it is a human rights violation to apply restrictive measures against groups based on age, for example. Participants also noted that groups based on age are not homogeneous; vulnerabilities vary across age groups.

The group also discussed enforcement. Who decides on these measures? Who enforces them? How are they enforced? This is particularly salient in an emergency when consequences can be devastating. Using a precautionary approach makes sense when dealing with uncertain threat, but do we need to start refining our approach to address economic impacts? How do we balance health risks with economic ones? At present, we are focussed largely on the health issues but public opinion may change – towards who the measures apply to, and whether people are willing to follow them.

Canada last used the Emergencies Act (then called the War Measures Act) under Pierre Elliott Trudeau during the October Crisis. This decision has since been seen as an extreme reaction but at the time it was popular, supported by the vast majority of Canadians. This raises questions about the relation between popular consensus and individual rights and underscores that human rights should be safeguarded regardless of what is popular. The Federal Government seems reluctant to use the Emergencies Act to respond to COVID-19. The group discussed what the benefit would be of using the Emergencies Act, given the strong actions that the provinces are currently taking. Federal action could be helpful for addressing interprovincial issues, but it is not clear that it is necessary at this time.

Standards are being enforced through increasingly aggressive communications, and provincial legislation that allows measures to be put in place and enforced (e.g., sanctions). Different jurisdictions have different policies, which can be confusing.

What we Discussed continued

The group also discussed privacy issues. During SARS, Singapore used electronic surveillance to monitor SARS-positive individuals. Privacy rights are a significant concern. Taking drastic steps in an extraordinary time can mean that such rights are lost.

There are also concerns about employment conditions and an employee's right to safe work. During SARS, many health professionals got sick. Ensuring safe working conditions, especially for health professionals, continues to be an important issue during COVID-19.

About the MacEachen Institute

The MacEachen Institute for Public Policy and Governance at Dalhousie University is a nationally focused, non-partisan, interdisciplinary institute designed to support the development of progressive public policy and to encourage greater citizen engagement.

More from the MacEachen Institute

The Institute is working to create resources and policy discussion around the COVID-19 crisis. These include briefing notes like this one as well as panel discussions, videos and media commentary. You can find [all resources related to COVID-19 on our website](#).

Other briefing notes in this series

- Employment and COVID-19
- People with Disabilities and COVID-19

This briefing note was prepared by MacEachen Institute Research Assistant Kaitlynne Lowe.