

## Democracy: Another Casualty of the Covid Pandemic?

From the early days and weeks of the Covid-19 pandemic we have grown used to hearing about the casualties inflicted by this virus on our community, our province, our country, and in other parts of the world. Statistics on the number of persons infected, the number of deaths, and the vulnerability of different segments of the population have become very familiar. So too have numbers on the unemployed, shrinking GDP, and business closures.

The list of the incidental social and health consequences during the pandemic is a long one. It includes, to mention only a handful, the temporary curtailment of such important community services as food banks and homeless shelters, the isolation experienced by many during periods of lock down and reduced mobility, isolation that hit the elderly and certain other groups particularly hard, elevated levels of anxiety brought on by loss of employment, the possibility of eventual evictions or mortgage foreclosure when government-imposed moratoriums on these end, and working or studying from home which some people have taken in stride, but many have not. The Covid pandemic has also produced what the French philosopher, Bernard-Henri Lévy calls "an epidemic of despair."

All of this likely sounds quite familiar. But what about the *political* impacts of life with Covid? Along with the other, better known casualties of this virus, democracy has not been immune from its consequences.

Among the first to sound the alarm bells about this was the International Institute for Democracy and Electoral Assistance, better known as IDEA, a Swedish think tank. On June 25, 2020, IDEA published a open letter with the title, "A Call to Defend Democracy." It was signed

by hundreds of people, among whom were many of the democratic world's most prominent political and public figures, including a couple dozen Nobel laureates. "The Covid-19 pandemic," the letter stated, "threatens more than the lives and livelihoods of people throughout the world. It is also a political crisis that threatens the future of liberal democracy." (Letter, <https://www.idea.int/news-media/news/covid-19-crisis-threatens-democracy-leading-world-figures-warn>; List of signatories, <https://nimd.org/wp-content/uploads/2020/06/List-of-signatories.pdf>)

This warning may sound exaggerated, and perhaps you will decide that it is. Of course the risk that an emergency, including a public health emergency on the scale of the Covid-19 pandemic, might be used to suppress political opposition, stifle dissent, muzzle the media, and suspend rights and democratic procedures is greater--much greater--in non-democratic regimes than in liberal democracies such as Canada. But the "Call to Defend Democracy" was a call for vigilance precisely in countries like ours, where most of us expect that individual rights and freedoms will be protected, transparency and accountability in our system of government should exist, and our fundamental democratic processes will not be impaired.

Here's a short list of some of the ways that, according to groups as different as the Canadian Civil Liberties Association (<https://ccla.org/cclanewsites/wp-content/uploads/2020/06/June-2020-COVID-report-working-document.pdf>) and the Fraser Institute (<https://www.fraserinstitute.org/article/covid-underscores-problems-with-government-intervention>), democracy in Canada has been negatively affected by government measures taken in response to the Covid-19 pandemic.

- Limits on personal mobility. Requirements that individuals returning to Canada from abroad or who have tested positive for the coronavirus self-quarantine for 14 days is a clear limit on individual mobility, albeit one that the vast majority of Canadians have supported as being necessary to limit the spread of infection. Most Canadians are unaware that for periods of a few to several months most provincial governments and territories restricted entry from other provinces in order to limit the spread of the virus.
- Limits on gatherings of people. For several months provincial governments imposed limits on the number of persons allowed to gather together in all sorts of circumstances, including a backyard party, a picnic in the park, a game of street hockey, a funeral, or at any one time in a grocery store, hardware or other business that was allowed to remain open.
- Limits on businesses and property rights. As we all know, many businesses were required to close and the reopening of some sectors of the economy, in particular the service and hospitality industries, was slow and uneven. It may not be obvious that this has anything to do with democracy, but of course in normal circumstances we do not expect that governments will be able to shutter businesses and even entire sectors of the economy, affecting the property rights of their owners, and to dictate when and under what conditions these businesses and industries may re-open.
- Limits on freedom of worship. Along with other social and institutional settings, places of worship were required to close for a time and then, when permitted to re-open, to follow legislated guidelines regarding social distancing, the wearing of face masks, and

activities such as singing, deemed to pose a greater risk for the spread of the coronavirus.

All of what has just been listed has to do with rights and freedoms. These limitations may appear to you to be, in the circumstances, rather inconsequential or at least warranted by the Covid pandemic. It certainly seems that most Canadians have believed so. Polls taken in April and May of 2020, during which time limits like these were put in place, showed that a strong majority of Canadians supported the emergency measures enacted by Ottawa, the provinces and territories, and local governments and public health authorities and, moreover, that trust in government increased significantly.

But here are some other consequences that might seem to support the fears expressed in IDEA's "Call to Defend Democracy" that was signed by so many of the democratic world's best known and most celebrated figures.

First, the Canadian parliament, which was expected to be in session until late June of 2020, was suspended on May 27 until September 21. The temporary suspension of legislative sessions also took place in many of the provinces. Governance continued, of course, but under the terms of the federal Emergencies Act and counterpart legislation in the provinces. The powers assigned to Ottawa and provincial governments under these emergency laws are sweeping. From the standpoint of civil libertarians, the good news is these laws do not override the Charter of Rights and Freedoms. In the event that a government measure is challenged under the Charter--and there have been many such challenges--the government that enacted the measure would still be required to demonstrate that the impugned limitation or limitations on a right or freedom are, in the words of section 1 of the Charter, "reasonable limits

prescribed by law as can be demonstrably justified in a free and democratic society." At the same time, however, most experts believe that the courts will not be inclined to second-guess a government's judgment that a public health emergency warrants the limits that it has placed on a Charter right or freedom.

Second, when Parliament or a provincial legislature is not in session the opportunities to hold government accountable for its actions are fewer and weaker. Question period is one such opportunity, giving opposition parties the chance to raise issues of their choosing and to criticize the government before the cameras and the Canadian people. Other opportunities for debate and holding government accountable are also either lost or seriously diminished when the legislature is not in session. It was precisely on these grounds that the May 2020 suspension of Parliament was strongly criticized by the Parliamentary Budget Officer and his predecessor, as well as a large number of groups from different ends of the political spectrum. (<https://nationalpost.com/news/liberals-derailing-parliament-when-covid-19-spending-oversight-especially-needed-critics>) Unless we decide that what is done by the media in terms of holding governments' feet to the fire is sufficient and that legislatures are an ineffective sideshow when it comes to accountability, then the fact of Parliament and other legislatures being suspended for much longer than usual should be cause for concern.

Rights and freedoms and democratic procedures are important to most of us. But perhaps in the circumstances of a public health emergency we are willing to see some shortcuts taken and corners trimmed. There is, however, yet another way in which the measures that have been enacted to deal with the Covid pandemic may be thought to undermine democracy. This involves the disparate impact that some of these measures have had on different segments

of the population. The Canadian Civil Liberties Association is among the many human rights organizations arguing that the homeless and various minority groups have been disproportionately represented among those charged and fined for having violated physical distancing requirements and restrictions on social gatherings. (<https://ccla.org/fines-report/>) A study of Toronto neighborhoods reported "a strong association between high coronavirus rates and low income, conditions of work, visible minority status and low levels of education." (<https://globalnews.ca/news/7015522/black-neighbourhoods-toronto-coronavirus-racism/>)

Workers in the hospitality sector typically have incomes below the Canadian average and fewer benefits. This sector has been among the hardest hit by state-mandated closings, such that many who were already on the lower rungs of the Canadian income ladder have fallen even further behind workers in most other sectors of the labor market. Indeed, the income inequality consequences of state measures taken to deal with the Covid-19 pandemic were expressed early and in many countries. (

<https://www.economist.com/britain/2020/03/26/how-covid-19-exacerbates-inequality>) The Canada Emergency Response Benefit helped mitigate this disparate impact.

The closing of schools and the temporary transition of much education online, at least at the senior elementary and high school levels, has contributed to fears that the already existing education gap between those from more and those from less affluent households will grow. Economist Miles Corak expresses the view of virtually everyone who has studied the impact of this sudden and massive transition to online learning when he writes, "children in lower socio-economic families have gained much less from online learning than their counterparts." (<https://milesorak.com/>, June 19, 2020)

Let's stop there. In Canada, as elsewhere, we've been navigating in largely uncharted waters. Our governments have governed under emergency legislation in the past, as was true during the two World Wars and again, briefly, in 1970 during the October Crisis. But we have never been governed under such laws for reasons of public health.

So here's a question, or really a series of questions. Could the public health crisis of the past several months have been managed in ways that would have avoided some of the undemocratic consequences that critics argue have resulted from government measures to control the Covid-19 pandemic? If you think so, what could have been done differently? Or do you think that these criticisms amount to a lot of carping and second-guessing, and that Canadian democracy has not been seriously impaired by these measures?