COURT OF APPEAL FOR ONTARIO

CITATION: Hillier v. Ontario, 2025 ONCA 259
DATE: 20250407
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Lauwers, Zarnett and Pomerance JJ.A.

BETWEEN

Randy Hillier

Applicant (Appellant)

and

His Majesty the King in Right of the Province of Ontario

Respondent (Respondent)

Christopher Fleury and Hatim Kheir, for the appellant

Ryan Cookson and Padraic Ryan, for the respondent

Heard: September 19, 2024

On appeal from the judgment of Justice John Callaghan of the Superior Court of Justice, dated November 22, 2023, with reasons reported at 2023 ONSC 6611.

Lauwers J.A.:

A. OVERVIEW

[1] Ontario imposed limits on gatherings during the COVID-19 pandemic. In defiance of these limits, the appellant, Randy Hillier, attended several protests

between April and May 2021.[1] As a result of two specific gatherings, Mr. Hillier was charged with provincial offences for acting as a host or organizer under s. 10.1(1) of the *Reopening Ontario (A Flexible Response to COVID-19) Act*.[2] The application judge noted Mr. Hillier's jeopardy at para. 33 of his reasons: "If found guilty, he faces a fine of $10,000 to $100,000 plus possible imprisonment of up to a year."

[2] Mr. Hillier challenged the constitutionality of the regulations imposing the gathering limits on the basis that they limited his right to peaceful assembly under s. 2(c) of the *Canadian Charter of Rights and Freedoms* and could not be justified under s. 1. Mr. Hillier asked that the challenged regulations be declared of no force or effect under s. 52(1) of the *Constitution Act, 1982*.

[3] The application judge held, as Ontario conceded, that the gathering limits restricted Mr. Hillier's right to peaceful assembly under s. 2(c) of the *Charter*. However, he found that the gathering limits were demonstrably justified under s. 1 and upheld their constitutionality, considering himself bound to do so by this court's decision in *Ontario (Attorney General) v. Trinity Bible Chapel*.[3] Mr. Hillier appeals from the application judge's decision.

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[1] For clarity, I use the terms "assembly" and "protest" interchangeably throughout these reasons.
[2] 2020, S.O. 2020, c. 17 ("*ROA*").
[3] 2023 ONCA 134, 478 D.L.R. (4th) 535, leave to appeal refused, [2023] S.C.C.A. No. 168. The application judge also noted, at para. 6, that there have been many cases that examined whether legislated COVID-19 restrictions violated *Charter* rights and whether such restrictions were justified under s. 1: see e.g. *Harjee v. Ontario*, 2023 ONCA 716; *Gateway Bible Baptist Church et al. v. Manitoba et al.*, 2023 MBCA 56, leave to appeal refused, [2023] S.C.C.A. No. 369; *Beaudoin v. British Columbia (Attorney General)*, 2022 BCCA 427, leave to appeal refused, [2023] S.C.C.A. No. 78; *Grandel v. Government of Saskatchewan*,

[4] There has been much debate over the merits of governmental responses to the COVID-19 pandemic. This case is not about the merits of those responses. Nor is it about the merits of the limited exemption in the relevant restrictions on outdoor religious gatherings, which was addressed in *Trinity Bible Chapel*. The focus in this appeal is narrower. It is on the effect of the gathering limits as they pertain to the right to peacefully assemble, which was not similarly accommodated.

[5] Section 2(c) offers protection that is related to, but fundamentally distinct from, its companion subsections. The right of peaceful assembly, including political protest, is (in concert with other s. 2 rights) integral to a functioning democracy. The effect of the ban in this case was to stifle assembly aimed at expressing collective opposition to the ban itself.

[6] *Trinity Bible Chapel* affirms that a measure of deference is owed to government decisions that seek to balance competing interests during a fluid public health crisis, based on the precautionary principle. Ontario should not be held to a standard of perfection. Nor is hindsight the proper lens to view the necessity of the imposed gathering limits. A reviewing court should contextually consider what was known and considered by Ontario at the time it imposed the limits.

2024 SKCA 53, leave to appeal refused, [2024] S.C.C.A. No. 317. The application judge concluded, at para. 48, that while all these decisions were helpful, this court's decision in *Trinity Bible Chapel* governs.

[7] Despite these cautions, I conclude that the gathering limits at issue in this case were not demonstrably justified under s. 1 of the *Charter*. This case is materially different from *Trinity Bible Chapel*. First, this case concerns an absolute, rather than partial ban. Second, while Ontario tailored restrictions on religious gatherings to facilitate freedom of religion, no such tailoring was performed to facilitate the right to peacefully assemble. The evidence discloses that Ontario failed to consider the impact of the gathering limits on s. 2(c) of the *Charter*. The pandemic posed significant challenges for Ontario, but the Constitution does not fade from view in times of crisis.

[8] I set the issue on appeal, next set out the factual background, and then the legal analysis leading to the disposition.

[9] For the reasons that follow, I would allow the appeal.

B. THE ISSUE

[10] There is one issue in this appeal: is the absence of an exception to the COVID-19 gathering limits to accommodate the fundamental freedom of peaceful assembly protected by s. 2(c) of the *Charter* demonstrably justified under s. 1?

C. FACTUAL BACKGROUND

(1) The Ontario Government's Response to the COVID-19 Pandemic

[11] In brief, the appellant challenges two regulations on appeal.[4] The first led to the "*Shutdown Order*" and the second to the "*Stay-at-Home Order*". The impugned provisions of the *Shutdown Order* prohibited people from attending certain gatherings with express carveouts. However, there were no carveouts for peaceful assemblies. The *Shutdown Order* worked in tandem with the *Stay-at-Home Order* and included the same limited carveouts.[5]

[12] The carveouts permitted gatherings for weddings, funerals, and religious services subject to certain restrictions, such as a limit of ten people. The application judge noted, at para. 97, that the "ban was absolute as it related to activities engaged in by Mr. Hillier". As the application judge and this court in *Trinity Bible Chapel* mentioned, Ontario was entitled to weigh the objective of reducing the risk of COVID-19 transmission with wider societal interests and to carve out exceptions for small religious gatherings and shopping. However, there is no evidence that the Ontario government gave any thought to permitting a parallel exception for outdoor peaceful assemblies, despite the *Charter*'s protection of the

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[4] See *Rules for Areas in Stage 1*, O. Reg. 82/20, Sch. 4, s. 1(1)(c) ("*Shutdown Order*"); *Stay-at-Home Order*, O. Reg. 265/21, Sch. 1, s. 1(1).

[5] For convenience, the text of the impugned orders is reproduced in Appendix A. The excerpt from the *Shutdown Order* was active from April 23, 2021 to May 19, 2021 and the excerpt from the *Stay-at-Home Order* was active from April 7, 2021 to June 1, 2021.

right to freedom of peaceful assembly as a fundamental freedom enumerated in s. 2(c).

[13] On April 3, 2021, in response to a surge of COVID-19 cases that threatened the collapse of the healthcare system, Ontario placed the province into a "Shutdown Zone" through an order under the *ROA*.[6] At the time, this prohibited outdoor gatherings of more than five people province-wide.

[14] On April 7, 2021, Ontario declared a state of emergency under s. 7.0.1(1) of the *Emergency Management and Civil Protection Act*,[7] and issued an emergency order requiring everyone to stay at home, except for certain kinds of gatherings, including, but not limited to, weddings, funerals, religious services, and permitting an individual living alone to gather with the members of another household.[8] The *Stay-at-Home Order* did not permit individuals to leave their homes to attend peaceful assemblies.

[15] Effective April 17, 2021, Ontario amended the *Shutdown Order* to prohibit all outdoor gatherings except for weddings, funerals, religious services, and for individuals living alone to gather outdoors with the members of another household. Again, the prohibition did not contain an exception for peaceful assemblies.

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[6] See *Shutdown Order*, Sch. 4, s. 1.
[7] R.S.O. 1990, c. E.9.
[8] See *Stay-At-Home Order*.

[16] On May 22, 2021, Ontario amended the *Shutdown Order* to increase the outdoor gathering limit from none to five people. Again, no exception was made explicitly for peaceful assemblies.

[17] The *Stay-at-Home Order* remained in force until its expiry on June 2, 2021. The *Shutdown Order* was extended until its expiry on March 16, 2022. For clarity, Mr. Hillier challenges both the *Shutdown Order* and the *Stay-at-Home Order*. Specifically, he challenges the *Shutdown Order* between April 17, 2021 and May 22, 2021, in which an absolute ban on outdoor assembly was in force, and the *Stay-at-Home Order* generally.[9]

(2) Mr. Hillier and the Protests at Issue

[18] Mr. Hillier has been a politician and an advocate. He was a member of the Legislative Assembly for the riding of Lanark-Frontenac-Kingston.

[19] At the outset of the COVID-19 emergency in March 2020, Mr. Hillier abided by the relevant government rules. However, as time progressed, he became frustrated with Ontario's response to the pandemic. He attended protests to express his discontent because the pandemic created fewer opportunities for him to voice his concerns in the Legislature. These were unquestionably political protests.

[9] A chart showing the gathering limits during the relevant time period is attached as Appendix B.

[20] Mr. Hillier faced charges as a host or organizer of the outdoor political protests that occurred in Kemptville, Ontario on April 8, 2021 and in Cornwall, Ontario on May 1, 2021. He also faced other charges for attending protests in Smiths Falls, Belleville, Peterborough, Stratford, Kitchener, and Chatham throughout April and May 2021.

[21] Mr. Hillier encouraged his supporters not to wear masks or get vaccinated against COVID-19. In all, the purpose of the protests was to amplify a collective voice to express discontent with Ontario's policies and restrictions in responding to the COVID-19 pandemic.

D. ANALYSIS

[22] To reiterate the issue on appeal, is the absence of an exception to the gathering limits to accommodate the fundamental freedom of peaceful assembly protected by s. 2(c) of the *Charter* demonstrably justified under s. 1? The analysis proceeds in two parts, the first addressing s. 2(c) and the second addressing s. 1.

[23] Despite Ontario's concession that the gathering limits did limit Mr. Hillier's fundamental freedom of peaceful assembly, I spend time developing the principled basis for determining that Mr. Hillier's s. 2(c) rights were limited. Doing so is a necessary precondition to an informed s. 1 analysis, which ultimately requires the court to determine whether the negative impact of the gathering limits on Mr. Hillier was proportionate to the goal of limiting the spread of COVID-19.

(1) Standard of Review

[24] Interpreting the *Charter* is a question of law that is subject to a standard of correctness.[10] Nonetheless, "the application of those constitutional standards may involve questions of fact or mixed fact and law which attract deference on appeal".[11]

(2) The Interpretation and Application of s. 2(c) of the *Charter*

[25] I set out the governing principles for the interpretation of s. 2(c) of the *Charter*, which protects the fundamental freedom of peaceful assembly, and then consider the application of those principles to the gathering limits.

(a) Introduction

[26] The task of interpretation requires the court to consider the text of the *Charter*, the context within which s. 2(c) is found and operates, and its purpose.[12]

[27] Section 2(c) takes its place in a list of fundamental freedoms in s. 2 of the *Charter*, which provides:

> 2. Everyone has the following fundamental freedoms:
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> a) freedom of conscience and religion;

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[10] *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, at para. 55.
[11] *Trinity Bible Chapel*, at para. 37, citing *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at paras. 8, 10, 36.
[12] *Vavilov*, at para. 118.

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

[28] The text of s. 2(c) should be interpreted in context with its inclusion among all of the fundamental freedoms listed in s. 2. Each of the fundamental freedoms are distinct and must be given independent meaning. However, as this court noted in *Toronto (City) v. Ontario (Attorney General)*: "rights protections often overlap in protecting a single activity, because persons, even in carrying out a single act, can simultaneously participate in multiple human goods."[13] In other words, the fundamental freedoms listed in s. 2 are not mutually exclusive. For example, one's right to freedom of religion (s. 2(a)) includes one's right to worship collectively in association with others (s. 2(d)). The case-specific context determines which freedom, or freedoms, are engaged and the weight or emphasis each might attract. Given the overlap among the fundamental freedoms listed under s. 2, it is likely, if not common, that a given fact situation will engage more than one. As will be discussed in more detail below, this is especially so with respect to freedom of peaceful assembly under s. 2(c).

[29] Where more than one subsection in s. 2 is invoked, it may well be that only one constitutional analysis is required. The question of whether a particular

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[13] 2019 ONCA 732, 146 O.R. (3d) 705, at para. 75, aff'd 2021 SCC 34, [2021] 2 S.C.R. 845.

subsection merits an independent analysis will invariably depend upon the factual and legal matrix of the case before the court.[14] For example, in *Trinity Bible Chapel*, the claims under the various subsections were reasonably subsumed by the s. 2(a) analysis addressing freedom of religion. Because the factual and legal bases for the claims were identical, there was no practical reason to duplicate the analysis under each subsection. Nor is it accurate to say that there were four separate violations, one for each subsection. There was one violation that straddled the various subsections. What marks this case and distinguishes it from *Trinity Bible Chapel* is that there is only one claim. It is advanced under s. 2(c) only, and the right of peaceful assembly is at the crux of the constitutional analysis.

[30] The exercise of freedom of peaceful assembly through these protests was free of objectionable acts that sometimes attend such protests. There is no claim that they were not peaceful or were disruptive or violent. There were no counter-protests. Nor did Mr. Hillier's participation draw charges under s. 63(1)(a) of the *Criminal Code*, as causing "persons in the neighbourhood" to fear on reasonable grounds that the assembly "will disturb the peace tumultuously".[15] Police action to disperse the protests was not necessary. In short, these were plain vanilla outdoor political protests.

[14] See *Trinity Bible Chapel*, at paras. 65-72.
[15] R.S.C. 1985, c. C-46.

(b) Section 2(c) Governing Principles

[31] Section 2(c) of the *Charter* is jurisprudentially underdeveloped. In Professor Jamie Cameron's background paper entitled "Freedom of Peaceful Assembly and Section 2(c) of the *Charter*", written for the Public Order Emergency Commission, also known as the Rouleau Commission, she notes: "Though it is one of the *Charter*'s fundamental freedoms, s.2(c)'s freedom of peaceful assembly received

little or no attention in the first 40 years of *Charter* interpretation and jurisprudence."[16] Her aim was to fill the jurisprudential "gap".[17]

[32] Professor Cameron argues, and in my view, convincingly establishes, this explanatory thesis:

> Though freedom of expression and freedom of assembly are not the same, it has been assumed that questions about expressive activity in public space should be addressed under s.2(b). In that way, the *Charter*'s guarantee of expressive freedom evolved without

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[16] Jamie Cameron, "Freedom of Peaceful Assembly and Section 2(c) of the *Charter*" (September 2022) (Ottawa: Public Order Emergency Commission, 2023), at 2, 48. I depart from Professor Cameron's illuminating analysis in one respect: whereas Professor Cameron writes of "violations" or "infringements" of rights at the first stage of a *Charter* rights analysis before the limit has been found to be demonstrably justified under the s. 1 analysis, it is more accurate and faithful to the language of s. 1 itself to speak of "limits". I adopt the clarification of the appropriate terminology in *R. v. Sharma*, 2020 ONCA 478, 152 O.R. (3d) 209, at para. 264, *per* Miller J.A. (dissenting):

> It is only possible to determine that a claimant's *Charter* rights have been violated after considering whether the limit placed on the exercise of a *Charter* right is justified: *McKitty (Litigation guardian of) v. Hayani*, [2019] O.J. No. 5134, 2019 ONCA 805, 439 D.L.R. (4th) 504, at para. 81. Although the Supreme Court uses the language of "infringement" (and "violation"), it has explained that it does not use these terms in their ordinary, pejorative sense, but intends them to be understood as synonymous with [page281] "limit": *Frank v. Canada (Attorney General)*, [2019] 1 S.C.R. 3, [2019] S.C.J. No. 1, 2019 SCC 1, at para. 40. The use of this artificial vocabulary is not necessarily fatal to sound reasoning, provided that it is understood that – whatever vocabulary one adopts – the conclusion of the first-stage analysis is *not* a determination that anyone's *Charter* rights have been violated. However, I agree with Côté and Brown JJ., dissenting in *Frank*, that the use of the language of "infringement" and "violation" in this context is a serious impediment to clear *Charter* reasoning and for that reason ought to be avoided: *Frank*, at para. 122. As they noted, "[i]t distorts our constitutional discourse, and our understanding of rights and of the legitimate boundaries of state action, to speak of individuals having rights which may be justifiably violated by the state": *Frank*, at para. 122.

I observe that in *R. v. Sharma*, 2022 SCC 39, 165 O.R. (3d) 398, the majority used the terminology of "limit", while the minority used terms such as "violate". In this decision, I use the term "limit", which is the language of s. 1.

[17] Cameron, at 7. See Dwight Newman, Derek Ross, and Brian Bird, (eds.), *The Forgotten Fundamental Freedoms: An Introduction* (Toronto: LexisNexis, 2020), also published as (2020), 98 S.C.L.R. (2d).

> aligning with s.2(c) and its concept of assembly. Meanwhile, an affinity between peaceful assembly and freedom of association was dampened by s.2(d)'s selective focus on labour relations issues.[18]

[33] Professor Cameron regrets s. 2(c)'s lack of separate development: "Accepting that an assembly or gathering in public space may be engaged in expressive or associational activity, the point in setting the right of assembly apart from ss.2(b) and (d) 'is the assembly itself'. Put another way, the assembly is, in its own right, 'the constitutional event'."[19]

[34] Section 2(c) has been insufficiently differentiated from other s. 2 freedoms and has been overshadowed, if not subsumed, under s. 2(d), freedom of association, and under s. 2(b), freedom of expression.[20] I find Professor Cameron's contextual approach to be persuasively inclusive and legally correct:

> In principle, freedom of assembly works in concert with s.2's other fundamental freedoms, forming part of an interrelated system that serves core democratic functions. As such, it depends for its protection on overlapping rights, such as freedom of expression and association. Assemblies invariably form in pursuit of a religious, expressive, or associational purposes, and will often be a "conduit" for the exercise of the *Charter*'s other fundamental freedoms.[21]

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[18] Cameron, at 15-16 [footnotes omitted].
[19] Cameron, at 16 [footnotes omitted].
[20] Cameron, at 15-16.
[21] Cameron, at 21.

[35] Under s. 2(c), “an assembly is necessarily collective in nature”, like an “association” contemplated by s. 2(d).[22] In *Dunmore v. Ontario (Attorney General)*, Bastarache J. stated: “the purpose of s. 2(*d*) commands a single inquiry: has the state precluded activity because of its associational nature, thereby discouraging the collective pursuit of common goals?”[23] I accept Professor Cameron’s argument: “By analogy to s.2(d), the key issue under s.2(c) is whether the government discouraged the collective pursuit of a common purpose by restricting or prohibiting a public gathering or assembly.”[24] She explains that ss. 2(c) and 2(d) protect collective entitlements, and that “under s.2(c) the right attaches to the collective entity, or assembly itself, as well as to individuals who participate as members of the assembly.”[25]

[36] I pick out, adapt, and adopt the following propositions as correct statements of the law in building out the contours of s. 2(c):

1. “[T]he act of assembling is the relevant constitutional event, and the value of it inheres in and attaches to the assembly, *qua* assembly.”[26] As the “collective enactment or embodiment of individual expressive activity,” a s. 2(c) peaceful assembly can advance the democratic goals of “self-

[22] Cameron, at 24.
[23] 2001 SCC 94, [2001] 3 S.C.R. 1016, at para. 16 [emphasis in original].
[24] Cameron, at 27.
[25] Cameron, at 16, fn. 38.
[26] Cameron, at 26 [footnotes omitted].

government, truth seeking, and self realization".[27] Moreover, the "capacity to empower unheard, marginalized voices is at the core of s.2(c)".[28]

2. An assembly is a "form of collective, not individual, action,"[29] and "[t]he right of peaceful assembly is, by definition, a group activity incapable of individual performance".[30]
3. "[A]n assembly is a concerted bodily enactment", or "a plural form of performativity". It need not accompany "verbalization" to be a form of expressive political action.[31]
4. An assembly includes a physical gathering of individuals in a physical space.[32] There are two corollaries applicable to physical assemblies. First, freedom of assembly "includes activities that are 'integral' to the assembly, such as mobilizing resources, planning, preparing, and publicizing a gathering, and travelling to and from the assembly."[33] Second, "digital connectivity facilitates" but neither displaces nor replaces collective forms of expression; it "complements traditional means of participating in public assemblies."[34]

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[27] Cameron, at 22 [footnotes omitted].
[28] Cameron, at 23.
[29] Cameron, at 24.
[30] *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1, [2015] 1 S.C.R. 3, at para. 64.
[31] Cameron, at 25, citing Judith Butler, *Notes Toward a Performative Theory of Assembly* (USA: Harvard University Press, 2015), at pp. 9, 18.
[32] Cameron, at 38.
[33] Cameron, at 29 [footnotes omitted].
[34] Cameron, at 36 [footnotes omitted].

5. A public assembly can "leverage a message of protest or dissent, forcing the community to pay attention and become involved in redressing grievances."[35]
6. The core issue in determining whether the government limited s. 2(c) is assessed by analyzing whether "the government discouraged the collective pursuit of a common purpose by restricting or prohibiting a public gathering or assembly."[36]
7. "[B]lanket bans that exclude or restrict an assembly because of its message or purpose are especially problematic."[37] They are "an 'excessive restriction' and 'presumptively disproportionate' for that reason.[38] "In particular, assemblies with a political message should receive a 'heightened level of accommodation and protection'."[39]

(c) Public Protests

[37] To understand the scope of s. 2(c)'s protection, it is necessary to account for the goods it is meant to serve. As noted, although there has been comparatively little scholarship and even less jurisprudence on s. 2(c), freedom of expression

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[35] Cameron, at 23, citing Thomas Emerson, *The System of Freedom of Expression* (USA: Random House, 1970), at p. 287.
[36] Cameron, at 27.
[37] Cameron, at 41.
[38] Cameron, at 41, citing Human Rights Committee*, General comment No. 37 (2020) on the right of peaceful assembly (article 21)*, UNHRC, 129th Sess., 2020, U.N. Doc. CPCR/C/GC/37, at paras. 32, 38 ("General Comment No. 37"); Council of Europe, European Commission for Democracy Through Law (Venice Commission), Guidelines on Freedom of Peaceful Assembly, CDL-AD(2019)017rev (2020), at para. 133.
[39] Cameron, at 41, citing General Comment No. 37, at para. 32.

scholarship can assist. In another paper for the Rouleau Commission, entitled "Freedom of Expression" Professor Richard Moon picks out the public goods that freedom of expression seeks to protect:

> It is said that freedom of expression must be protected because it contributes to the public's recognition of truth or to the growth of public knowledge; or because it is necessary to the operation of a democratic form of government; or because it is important to individual self-realization or personal autonomy.[40]

[38] In my view, these public goods also attach to other s. 2 fundamental freedoms, particularly peaceful assembly.

[39] Though freedom of expression and freedom of peaceful assembly are distinct rights, the human goods that animate the former are instructive in analyzing the latter. I agree with the proposition that "[c]onflating freedom of peaceful assembly with other freedoms like expression and association gives the erroneous impression that the former is a derivative of the latter (and that they are based on the same justifications)."[41] In other words, ss. 2(b) and (c) tend to converge because assemblies are necessarily expressive. But this is not to say that questions engaging s. 2(c) should engage only the s. 2(b) analysis. Peaceful

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[40] Richard Moon, "Freedom of Expression" (September 2022) (Ottawa: Public Order Emergency Commission, 2023), at 1. Regrettably, Professor Moon makes the same errors in terminology as Professor Cameron, noted in fn. 16.

[41] Nnaemeka Ezeani, "Understanding Freedom of Peaceful Assembly in the *Canadian Charter of Rights and Freedoms*" (2020) 98 S.C.L.R. (2d) 351 at 363-64, citing Basil S. Alexander, "Exploring a More Independent Freedom of Peaceful Assembly in Canada" (2018) 8:1 W.J. Leg. Stud. 1 at 4.

assembly is listed as a separate, independent freedom.[42] Continuing to treat s. 2(c) as the forgotten sibling of the other fundamental freedoms unduly limits protection for people living in a constitutional democracy. Although the instances in which s. 2(c) does not overlap with other fundamental freedoms under s. 2 are rare, it is "nonetheless misguided to assume that the freedom exists solely to facilitate the exercise of other freedoms."[43]

[40] Professor Moon describes protests "as action rather than speech – a physical display rather than a discursive engagement".[44] Moreover, the primary objective of public assemblies is to "confront others or to gain attention by disrupting ordinary life, or the ordinary use of public spaces."[45] Because such activity usually concentrates in public areas, "its message can (appear to) reach a general audience."[46] Thus, a "demonstration is an act of solidarity, a coming together of similarly minded individuals, but also collective act of expression."[47]

[41] Although there are now alternative forums, Professor Moon posits three reasons why public protests have a continued, if not enhanced, appeal. First, protests reflect "a desire to create a common space in which public engagement

[42] Alexander, at 4.
[43] Ezeani, at 366.
[44] Moon, at 26, citing *Dupond v. City of Montréal et al.*, [1978] 2 S.C.R. 770.
[45] Moon, at 25.
[46] Moon, at 25.
[47] Moon, at 25.

(politics) is possible," and help overcome the fragmentation of public discourse.[48] Second, "a demonstration in public space bridges physical and emotional distance, by bringing individuals together, and giving them a sense of presence, and connection with others, that is lacking in mediated forms of communication."[49] Third, protests "can make visible the extent and depth of support for a position."[50]

(d) The Principles Applied

[42] As a form of peaceful assembly, political protests are given constitutional protection. This is because s. 2(c)'s role in a constitutional democracy is to "validate the legitimacy and value of experiential, collective and public democracy" and political participation.[51] In this case, the ban on assemblies for political protest imposed by the gathering limits was absolute. Peaceful assemblies were not permitted even in the small numbers allowed for gatherings for religious and similar purposes. No opportunity was provided, to restate the goods this fundamental freedom protects, for dissenters to attract attention, in a visible act of solidarity, to their opposition to the law by disrupting ordinary life in the hope that the protest would lead to a change in public policy; this freedom is surely elemental in a democracy. The presence of alternative forums for protest, such as social media

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[48] Moon, at 25.
[49] Moon, at 25 [citations omitted].
[50] Moon, at 25.
[51] Cameron, at 49.

or virtual gatherings, was not sufficient to render the absolute prohibition on gatherings constitutionally compliant.

[43] The prohibition on peaceful assembly imposed by the gathering limits therefore requires justification under s. 1 of the *Charter*.

(3) The Interpretation and Application of s. 1 of the *Charter*

[44] Section 1 states that the *Charter* "guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." As the application judge noted, at para. 71, the impugned gathering limits in this case were implemented by regulation, which satisfies the requirement that they were prescribed by law.[52]

(a) Section 1 Governing Principles

[45] The method for assessing whether a limit on a fundamental freedom is demonstrably justified under s. 1 was prescribed by the Supreme Court in *R. v. Oakes.*[53] It was developed to structure the inquiry into whether a limit on the exercise of a *Charter* right is demonstrably justified in a free and democratic society. Not only does the *Oakes* test shape this legal analysis, but it also constrains and disciplines courts in order to render the final balancing step intelligible and transparent. A flexible, contextual approach has won out over a rigid

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[52] *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37, [2009] 2 S.C.R. 567, at para. 46.
[53] [1986] 1 S.C.R. 103.

application of *Oakes*, especially in the wake of *Hutterian Brethren*, *Canada (Attorney General) v. Bedford*,[54] and *Carter v. Canada (Attorney General)*.[55] In La Forest J.'s view, the *Oakes* test is not a set of rigid rules, but "a checklist, guidelines for the performance" of judicial duties.[56]

[46] The first step of the *Oakes* test is to determine whether the legislative goal of the measure imposing the gathering limits was pressing and substantial. As the application judge noted, at para. 72: "Mr. Hillier concedes that the Gathering Restrictions were enacted to address a pressing and substantial concern, namely COVID-19." Mr. Hillier did not retreat from this concession in this court. The pressing and substantial concern was to reduce the spread of COVID-19. Ontario therefore meets the first step of the *Oakes* test.

[47] The second *Oakes* step is to determine whether there is proportionality between the objective of the legislation and the means chosen to achieve it. This step engages three inquiries:

1. Rational connection: is there a causal link between the gathering limits and the pressing and substantial objective of preventing the spread of COVID-19?
2. Minimal impairment: does the ban on peaceful assembly impair the exercise of that fundamental

[54] 2013 SCC 72, [2013] 3 S.C.R. 1101.
[55] 2015 SCC 5, [2015] 1 S.C.R. 331. See also Gérard La Forest, "The Balancing of Interests under the *Charter*" (1992), 2 N.J.C.L 133, at 145-48.
[56] La Forest, at 148.

freedom more than is reasonably necessary to accomplish the objective?

3. Proportionate effects: is there proportionality between the deleterious effects of the ban on peaceful assembly and the salutary effects of the law imposing the limit?[57]

[48] In *Ontario (Attorney General) v. G*, Karakatsanis J. noted that the *Oakes* test has evolved; it "now focuses on justifying the infringing measure rather than the law as a whole".[58]

[49] I address each of theses three inquiries in turn.

(b) Were the Gathering Limits Rationally Connected?

[50] The evidentiary burden in this first inquiry "is not particularly onerous."[59] In fact, "the requirement of a rational connection has very little work to do."[60] A rational connection need not be proven on a rigorous scientific basis – and indeed to require proof to a scientific standard might hold the Crown to a higher standard of demonstration than is possible for the subject matter. A causal connection based on reason or logic may suffice.[61] Provided that the impugned measure shows care in design and a lack of arbitrariness, and provided that it furthers an important

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[57] *Carter*, at para. 94; *R. v. K.R.J.*, 2016 SCC 31, [2016] 1 S.C.R. 906, at para. 58; *Frank v. Canada (Attorney General)*, 2019 SCC 1, [2019] 1 S.C.R. 3, at paras. 38-39.
[58] 2020 SCC 38, [2020] 3 S.C.R. 629, at para. 108 [emphasis added].
[59] *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, 2000 SCC 69, [2000] 2 S.C.R. 1120, at para. 228.
[60] Peter W. Hogg and Wade K. Wright, *Constitutional Law of Canada*, 5th ed., vol. 2 (Toronto: Thomson Reuters Canada Ltd., 2023) (loose-leaf release 1, 7/2023), at §38:18.
[61] *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199, at paras. 137, 153; *Carter*, at para. 99.

government aim in a general way, it will pass the rational connection branch of the analysis.[62]

[51] Ontario need only demonstrate a reasonable prospect that the gathering limits as they relate to peaceful assembly will further the legislative objective of preventing the spread of COVID-19 to some extent, not that it will certainly do so.[63] In the absence of dispositive social science evidence, Ontario need only establish a "reasoned apprehension" of the harm it aims to prevent.[64]

[52] Before the application judge, Mr. Hillier argued that Ontario had not established a rational connection between the gathering limits and the threat of the outdoor spread of COVID-19. The application judge held, at para. 80, that "Restricting the gathering of people, even outdoors, was a rational means of reducing the transmission of COVID-19." Mr. Hillier does not challenge this finding, which seems rather obvious. Ontario therefore meets the first step of the proportionality assessment under s. 1 of the *Charter*.

(c) Were the Gathering Limits Minimally Impairing?

[53] The Supreme Court explained in *Carter* that "the analysis at this stage is meant to ensure that the deprivation of *Charter* rights is confined to what is

[62] *Canada (Human Rights Commission) v. Taylor*, [1990] 3 S.C.R. 892, at pp. 925-26.
[63] See *Hutterian Brethren*, at para. 48.
[64] *R. v. Butler*, [1992] 1 S.C.R. 452, at p. 504.

reasonably necessary to achieve the state's object."[65] The minimal impairment inquiry, therefore, is whether "the limit on the right is reasonably tailored to the objective,"[66] in particular, "whether there are less harmful means of achieving the legislative goal".[67] As such, the government bears the burden of demonstrating that "less drastic means"[68] were unavailable to achieve the objective "in a real and substantial manner".[69]

[54] Judicial deference to the Legislature at the minimal impairment step is to be sensitive to the context of the law in issue. The Legislature is not to be held to a standard of perfection: "If the law falls within a range of reasonable alternatives, the courts will not find it overbroad merely because they can conceive of an alternative which might better tailor objective to infringement".[70] Rather, the court will consider whether the government has established that "it has tailored the limit to the exigencies of the problem in a reasonable way".[71]

[55] The application judge recognized that the government was entitled to act out of an abundance of caution in imposing the impugned gathering limits in a public healthcare emergency, and to be duly deferential to the government's methods for

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[65] At para. 102.
[66] *Carter*, at para. 102.
[67] *Hutterian Brethren*, at para. 53.
[68] *Carter*, at para. 102.
[69] *Hutterian Brethren*, at para. 53.
[70] *RJR-MacDonald*, at p. 342.
[71] *Montréal (City) v. 2952-1366 Québec Inc.*, 2005 SCC 62, [2005] 3 S.C.R. 141, at para. 94.

doing so. While the application judge recognized that the gathering limits were absolute with respect to peaceful assemblies, he drew on *Trinity Bible Chapel* as an example of a tailored government response to the pandemic. In doing so, he took the gathering limits at a macro-level and did not analyze the specific *Charter* issue before him. This was an error that coloured his minimal impairment analysis.

[56] Mr. Hillier argues that an outright ban on peaceful assembly cannot meet the minimal impairment test in this case. I agree. An outright ban is different than, and leaves no room for, less onerous restrictions of the type considered in *Trinity Bible Chapel*. As the Supreme Court explained in *Ford v. Quebec (Attorney General)*, "the distinction between a limit that permits no exercise of a guaranteed right or freedom in a limited area of its potential exercise and one that permits a qualified exercise of it may be relevant to the application of the test of proportionality under s. 1."[72] A total ban on the exercise of a fundamental freedom cannot readily meet the second step of the proportionality assessment under s. 1 of the *Charter*, and it does not in this case.[73] The next section sets out additional reasons for the conclusion that the ban was not justified in this case.

[72] [1988] 2 S.C.R. 712, at p. 773.
[73] It is a longstanding principle that blanket prohibitions are generally not minimally impairing under s. 1. See e.g., *U.F.C.W., Local 1518 v. KMart Canada*, [1999] 2 S.C.R. 1083, at para. 77; *RJR-MacDonald*, at para. 163.

[57] This conclusion means that the gathering limits were unconstitutional. In the event that this conclusion is mistaken, I proceed to the next step in the *Oakes* analysis, and thereafter to the remedy.

(d) Are the Deleterious Effects of the Gathering Limits Proportionate to its Salutary Effects?

[58] The basic question in the third and last proportionality inquiry is this: "is the limit on the right proportionate in effect to the public benefit conferred by the limit?"[74] Or, as it was put in *Bedford*: "whether the negative impact of a law on the rights of individuals is proportionate to the pressing and substantial goal of the law in furthering the public interest."[75] This analysis "takes full account of the 'severity of the deleterious effects of a measure on individuals or groups'."[76] It entails a "broader assessment of whether the benefits of the impugned law are worth the cost of the rights limitation", or, putting it the other way, whether "the deleterious effects are out of proportion to the public good achieved" by the limits.[77]

[59] This form of analysis assists in determining whether it is just for the legislation to require some individuals to bear the burden of the negative effects in

[74] *Hutterian Brethren*, at para. 73.
[75] At para. 125. See also *Carter*, at para. 95.
[76] *Hutterian Brethren*, at para. 76.
[77] *Hutterian Brethren*, at paras. 77-78.

order to secure the benefits of the positive effects for the common good – a good that benefits the appellant as well.[78]

[60] The application judge found, at para. 103, that "[t]he imposition of the Gathering Restrictions for approximately two months was not disproportionate to the threat facing Ontario in the spring of 2021." He added, at para. 105:

> In the extraordinary circumstances existing in the spring of 2021, the Gathering Restrictions were both necessary and a proportionate response to the most significant health crisis of our time. The challenged restrictions were justified under s. 1 of the *Charter.*

[61] The application judge made a basic error in his approach to this question. He did not pay due regard to the limit – the absolute prohibition – imposed by the gathering limits on the fundamental freedom of peaceful assembly. He did not assess peaceful assembly separately as a fundamental freedom protected by s. 2(c) of the *Charter*. To repeat the instruction in *G*, the court must now focus on justifying the specific infringing measure rather than on the law as a whole. The application judge failed to do so.

[62] The gathering limit to be assessed under the third inquiry of the s. 1 proportionality analysis is the complete ban on peaceful assemblies, particularly

[78] See *Oakes*, p. 139; *K.R.J.*, at para. 58; *Frank*, at para. 38.

outdoor political protests. I consider the deleterious effects, next the beneficial effects, and then whether Ontario struck a demonstrably justified balance.

(i) The Deleterious Effects of the Gathering Limits on Peaceful Assembly

[63] The question is whether the negative impact of the gathering limits on the right to peacefully assemble is proportionate to the law's pressing and substantial goal of preventing the spread of COVID-19.[79]

[64] The deleterious effects include the following. The fundamental freedom of peaceful assembly was eliminated entirely for two months. Some gatherings were permitted in certain circumstances, such as "a wedding, a funeral or a religious service, rite or ceremony".[80] However, individuals or groups who wanted to publicly assemble to protest COVID-19 control measures were prevented by law from doing so either indoors or outdoors. As noted, outdoor protests are especially effective at amplifying minority voices and expressing political dissent. People who wished to participate in outdoor protests were denied the opportunity to influence public policy by this time-honoured method. The core problem with the determination of proportionality is that the detriments to be suffered by individuals and groups in any case under consideration, on the one hand, and the benefits that accrue to the common good, on the other hand, are usually incommensurable.

[79] See *Bedford*, at para. 125.
[80] *Shutdown Order*, Sch. 4, s. 1(1)(d); *Stay-at-Home Order*, Sch. 1, s.1(1).

There is no common basis, common denominator or common measure for evaluating and balancing the competing claims of the individuals and groups negatively affected by a law or decision, against any benefits to the common good. Nonetheless, subject to judicial forbearance, often the court must declare an outcome.[81]

(ii) The Beneficial Effects of the Gathering Limits on Peaceful Assembly

[65] The public good sought by the gathering limits was preventing the spread of COVID-19. This is unquestionably a legitimate state goal in pursuit of the common good. The question is whether the societal benefits of the gathering limits were proportionate to the detrimental effects of the ban on peaceful assemblies on Mr. Hillier.[82]

[66] This assessment cannot only be abstract; it must be concrete if the state's actions are to be constrained by the fundamental freedoms protected by the *Charter*. Abstractly, and intuitively, a complete ban on all gatherings would be maximally effective in preventing the spread of COVID-19, but in human terms, such a ban was neither possible nor desirable. The logical corollary is that

[81] Timothy Endicott, "Proportionality and Incommensurability" in Grant Huscroft, Bradley W. Miller, and Grégoire Webber, eds., *Proportionality and the Rule of Law* (Cambridge: Cambridge University Press, 2014) 317.
[82] See *Hutterian Brethren*, at para. 78.

permitting any more gatherings than the limits permitted would increase the risk of spreading COVID-19.

[67] But, proportional balancing sets a much more demanding standard in comparing costs and benefits.[83] The assessment is concrete, rather than abstract. How much, practically speaking, did the ban on peaceful assembly mitigate the risk of COVID-19 spread? There is no evidence as to the increase in risk that would have been posed by an exemption for outdoor peaceful assembly or protests that matched the exemption for permitted gatherings.[84]

[68] More particularly, there is no evidence as to the increase in risk posed by the outdoor protests in which Mr. Hillier participated.

[69] Perhaps most importantly, there is no evidence that Ontario ever considered an exemption for peaceful assembly for outdoor political protests. Can the court, in assessing the state's justification, countenance an outcome in which the state eliminates the free exercise of a fundamental freedom without giving that elimination any actual thought? Such an outcome would be entirely contrary to the purpose of the *Charter* in protecting the free exercise of fundamental freedoms against the limiting actions of government.

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[83] See generally *G*, at para. 108.
[84] I note, parenthetically, that there was unlikely to be as many protests as there are places of worship and funeral facilities.

(iii) Has Ontario Struck a Demonstrably Justified Balance?

[70] The application judge considered himself, on the facts and on the reasoning, to be unable to deviate from *Trinity Bible Chapel*. He erred in so doing. *Trinity Bible Chapel* is distinguishable. The cases would be analogous if the issue before the court in *Trinity Bible Chapel* had been an outright ban on religious gatherings. But that was not the case. The issue was whether the actual numerical limits were demonstrably justified taking into account the rights of the appellants under s. 2(a) of the *Charter*. The motion judge and this court concluded that the limits were justified.

[71] Ontario conceded in the *Trinity Bible Chapel* appeal that the restrictions on religious gatherings limited the fundamental freedom of religion protected by s. 2(a) of the *Charter*.[85] This court found that, in applying the *Oakes* test, the limit was justified under s. 1. First, the limits were directed at a pressing and substantial objective.[86] Second, the gathering limits were rationally connected to the objective because restricting contact "logically reduces the risk of transmission, particularly in congregate settings such as religious gatherings."[87] Third, the gathering limits were minimally impairing as a "tailored and balanced response to an urgent public health crisis."[88] Fourth, in balancing the salutary and deleterious effects of the

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[85] At para. 17.
[86] *Trinity Bible Chapel*, at paras. 90, 92.
[87] *Trinity Bible Chapel*, at paras. 95-96.
[88] *Trinity Bible Chapel*, at para. 125.

gathering limit on religious freedoms, this court accepted the motion judge's conclusion that "[r]eligious institutions were affected, but no more than was reasonably necessary and for no longer than was reasonably required."[89] None of these conclusions are at issue in this case. The limits on religious gatherings were fully justified.

[72] The implication for this appeal is that the court must focus on the limit, or "the infringing measure", not on the law as a whole.[90] This approach prevents the limit from being crushed under the weight of the law's benefit.

[73] The application judge's analysis in this case did not reach the actual limit at issue here – the gathering limits on the fundamental freedom of peaceful assembly under s. 2(c) of the *Charter*. To repeat, *G* required the application judge to focus on whether the specific limiting measure was justified, rather than on the law as a whole, but he did not. Instead, he focused on the law's overwhelming social good in preventing the spread of COVID-19, not on ways in which the fundamental freedom of peaceful assembly might still be accommodated in the delicate task of balancing. This was his error.[91]

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[89] *Trinity Bible Chapel*, at para. 133.
[90] *G*, at para. 108.
[91] I note in passing that Mr. Hillier raised what might be a new argument on appeal, that in his analysis, the application judge "erred in upholding government action that created a constitutionally impermissible hierarchy of rights." Any time a choice is made between rights, as is sometimes required by *Oakes*, a hierarchy is created, but that is the result of an immediate context-specific choice, and does not establish a functional hierarchy going forward.

[74] Mindful of the problem of incommensurability mentioned above, I conclude that the deleterious effects of the absolute ban on peaceful assembly, particularly outdoor political protests, during the period of April 17, 2021 to May 22, 2021, exceeded the benefits of these particular gathering limits on the spread of COVID-19. Ontario has failed to demonstrably justify these limits on the peaceful assembly rights of Mr. Hillier under s. 2(c) of the *Charter*, as required by s. 1.

E. REMEDY

[75] I would allow the appeal. The parties asked the court for the opportunity to address the remedy if the appeal were allowed. I would give Mr. Hillier ten days from the release of these reasons to provide written submissions no more than five pages in length, Ontario shall provide submissions no more than five pages in length ten days later, and Mr. Hillier's reply no more than two pages in length is to be submitted within an additional week.

[76] I would ask the parties to keep in mind some principles. The remedy must be consistent with the principles in *Schachter v. Canada*,[92] as clarified by *G*. In *G*, the Supreme Court noted that in tailoring remedies under s. 52(1) of the *Constitution Act, 1982*, courts must balance the public's interest in constitutional

[92] [1992] 2 S.C.R. 679.

compliance and the protection of *Charter* rights, on the one hand, with the benefit of laws passed by the legislature, on the other hand.[93]

[77] In determining the form a remedy should take, the court should avoid full declarations of invalidity when "the nature of the violation and the intention of the legislature allows for them."[94] The court in *G* added that: "To ensure the public has the benefit of enacted legislation, remedies of reading down, reading in, and severance, tailored to the breadth of the violation, should be employed when possible so that the constitutional aspects of legislation are preserved".[95] The court added that such a declaration "cures the law's unconstitutionality."[96]

[78] The court in *G* echoed *Schachter*'s caution that tailored remedies should only be used "where it can be fairly assumed that 'the legislature would have passed the constitutionally sound part of the scheme without the unsound part' and where it is possible to precisely define the unconstitutional aspect of the law.[97] Accordingly, the importance of the remaining legislation should be considered to avoid interfering with the legislative objective of the law.[98]

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[93] At paras. 109-11.
[94] *G*, at para. 112.
[95] At para. 112, citing *Schachter*, at p. 700; *Vriend v. Alberta*, [1998] 1 S.C.R. 493, at paras. 149-50.
[96] *G*, at para. 112.
[97] *G*, at para. 114, citing *Schachter*, at p. 697; *Attorney-General for Alberta v. Attorney-General for Canada*, [1947] A.C. 503 (P.C.), at p. 518.
[98] *G*, at para. 114, citing *Schachter*, at pp. 705-15.

[79] In a similar vein, albeit a different context, L'Heureux-Dubé J. made a trenchant comment in *R. v. O'Connor* that applies equally to the tailoring of remedies:

> It is important to recognize that the *Charter* has now put into judges' hands a scalpel instead of an axe – a tool that may fashion, more carefully than ever, solutions taking into account the sometimes complementary and sometimes opposing concerns of fairness to the individual, societal interests, and the integrity of the judicial system.[99]

F. DISPOSITION

[80] I would find that the challenged gathering limits, in effect from April 17, 2021 to May 22, 2021, violated s. 2(c) of the *Charter* in a manner that cannot be justified under s. 1. Accordingly, I would allow the appeal.

[81] The parties do not seek costs.

Released: April 7, 2025 "P.D.L."

"P. Lauwers J.A."
"I agree. B. Zarnett J.A."
"I agree. R. Pomerance J.A."

[99] [1995] 4 S.C.R. 411, at para. 69.

APPENDIX A

Reopening Ontario (A Flexible Response to COVID-19) Act, 2020

ONTARIO REGULATION 82/20

FORMERLY UNDER EMERGENCY MANAGEMENT AND CIVIL PROTECTION ACT

RULES FOR AREAS IN STAGE 1

…

SCHEDULE 4

ORGANIZED PUBLIC EVENTS, CERTAIN GATHERINGS IN SHUTDOWN ZONE

Gatherings, Stage 1 areas

1. (1) Subject to sections 2 to 4, no person shall attend,

(a) an organized public event that is held indoors;

(b) a social gathering that is held indoors, including a social gathering associated with a gathering described in clause (d);

(c) an organized public event or social gathering that is held outdoors, including a social gathering associated with a gathering described in clause (d); or

(d) a gathering, whether indoors or outdoors, for the purposes of a wedding, a funeral or a religious service, rite or ceremony of more than 10 people.

(2) A person attending an organized public event, social gathering or a gathering for the purposes of a wedding, a funeral or a religious service, rite or ceremony shall comply with public health guidance on physical distancing.

(3) For greater certainty, subsections (1) and (2) apply with respect to an organized public event, social gathering or a gathering for the purposes of a wedding, a funeral or a religious service, rite or ceremony, even if it is held at a private dwelling.

EMERGENCY MANAGEMENT AND CIVIL PROTECTION ACT

ONTARIO REGULATION 265/21

STAY-AT-HOME ORDER

…

SCHEDULE 1

Requirement to remain in residence

1. (1) Every individual shall remain at the residence at which they are currently residing at all times unless leaving their residence is necessary for one or more of the following purposes:

Work, school and child care

1. Working or volunteering where the nature of the work or volunteering requires the individual to leave their residence, including when the individual's employer has determined that the nature of the individual's work requires attendance at the workplace.

2. Attending school or a post-secondary institution.

3. Attending, obtaining or providing child care.

4. Receiving or providing training or educational services.

Obtaining goods and services

5. Obtaining food, beverages and personal care items.

6. Obtaining goods or services that are necessary for the health or safety of an individual, including vaccinations, other health care services and medications.

7. Obtaining goods, obtaining services, or performing such activities as are necessary for landscaping, gardening and the safe operation, maintenance and sanitation of households, businesses, means of transportation or other places.

8. Purchasing or picking up goods through an alternative method of sale, such as curbside pickup, from a business or place that is permitted to provide the alternative method of sale.

9. Attending an appointment at a business or place that is permitted to be open by appointment only.

10. Obtaining services from a financial institution or cheque cashing service.

11. Obtaining government services, social services and supports, mental health support services or addictions support services.

Assisting others

12. Delivering goods or providing care or other support or assistance to an individual who requires support or assistance, or receiving such support or assistance, including,

i. providing care for an individual in a congregate care setting, and

ii. accompanying an individual who requires assistance leaving their residence for any purpose permitted under this Order.

13. Taking a child to the child's parent or guardian or to the parent or guardian's residence.

14. Taking a member of the individual's household to any place the member of the household is permitted to go under this Order.

Health, safety and legal purposes

15. Doing anything that is necessary to respond to or avoid an imminent risk to the health or safety of an individual, including,

i. protecting oneself or others from domestic violence,

ii. leaving or assisting someone in leaving unsafe living conditions, and

iii. seeking emergency assistance.

16. Exercising, including,

i. walking or moving around outdoors using an assistive mobility device, or

ii. using an outdoor recreational amenity that is permitted to be open.

17. Attending a place as required by law or in relation to the administration of justice.

18. Exercising an Aboriginal or treaty right as recognized and affirmed by section 35 of the *Constitution Act, 1982*.

Multiple residences and moving

19. Travelling to another residence of the individual if,

i. the individual intends to be at the residence for less than 24 hours and is attending for one of the purposes set out in this Order, or

ii. the individual intends to reside at the residence for at least 14 days.

20. Travelling between the homes of parents, guardians or caregivers, if the individual is under their care.

21. Making arrangements to purchase or sell a residence or to begin or end a residential lease.

22. Moving residences.

Travel

23. Travelling to an airport, bus station or train station for the purpose of travelling to a destination that is outside of the Province.

Gatherings

24. Attending a gathering for the purpose of a wedding, a funeral or a religious service, rite or ceremony that is permitted by law or making necessary arrangements for the purpose of such a gathering.

25. If the individual lives alone, gathering with the members of a single household.

Animals

26. Obtaining goods or services that are necessary for the health or safety of an animal, including obtaining veterinary services.

27. Obtaining animal food or supplies.

28. Doing anything that is necessary to respond to or avoid an imminent risk to the health or safety of an animal, including protecting an animal from suffering abuse.

29. Walking or otherwise exercising an animal.

(2) Despite subsection (1), no person shall attend a business or place that is required by law to be closed, except to the extent that temporary access to the closed business or place is permitted by law.

(3) This Order does not apply to individuals who are homeless.

(4) If this Order allows an individual to leave their residence to go to a place, it also authorizes them to return to their residence from that place.

(5) The requirement in subsection (1) to remain at an individual's residence does not prevent the individual from accessing outdoor parts of their residence, such as a backyard, or accessing indoor or outdoor common areas of the communal residences in which they reside that are open, including lobbies.

(6) For greater certainty, nothing in this Order permits a business or place to be open if it is required by law to be closed.

(7) For greater certainty, nothing in this Order permits an individual to gather with other individuals if the gathering is not permitted by law.

(8) For greater certainty, individuals may only attend an outdoor organized public event or social gathering for a purpose set out in subsection (1) if the event or gathering is permitted by law.

APPENDIX B

Date	Legislation	Restrictions			
		Indoor Social Gathering / Public Event	Outdoor Social Gathering / Public Event	Indoor Religious Gatherings	Outdoor Religious Gatherings
April 17, 2021 - April 18, 2021	O.Reg. 82/20, Sch. 4, s. 1(1)	No person shall attend.	No person shall attend.	15 percent of room capacity.	Number that can maintain physical distancing.
April 19, 2021 - April 22, 2021	O.Reg. 82/20, Sch. 4, s. 1(1)	No person shall attend.	No person shall attend.	10 people.	10 people.
April 23, 2021 - May 19, 2021	O.Reg. 82/20, Sch. 4, s. 1(1)	No person shall attend.	No person shall attend.	10 people.	10 people.
May 20, 2021 - May 21, 2021	O.Reg. 82/20, Sch. 4, s. 1(1)	No person shall attend.	No person shall attend.	10 people.	10 people.