

EMERGENCY PREPAREDNESS: A PLAN FOR PLACES OF WORSHIP TO STAY OPEN

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Issue

During the pandemic, places of worship in Ontario faced stringent restrictions and outright closures. While the imperative of containing the spread of COVID-19 was understandable, places of worship often faced unequal and arbitrary treatment during the public health emergency. Ontario's faith communities were largely cooperative in adhering to pandemic restrictions, but by early 2021 some faith leaders began [sounding the alarm](#), pointing to blatant inequalities between the treatment of places of worship and businesses.

Earlier this year, the Government of Ontario released its [Plan to Stay Open](#). The plan included a suite of measures to increase healthcare capacity and production of health supplies, such as masks and vaccines. This plan is meant to shore up the healthcare system in preparation for future public health crises. While emergency preparation measures are surely necessary, the question remains: if or when another crisis hits, what is Ontario's plan to *keep* places of worship open?

Background

Fundamental Freedoms

Freedom of conscience and religion is the first freedom guaranteed by the *Canadian Charter of Rights and Freedoms* section 2(a). It affirms and guarantees Canadians' freedom to adhere to their most deeply held beliefs and to act based on those beliefs. Freedom of conscience and religion relates to other freedoms enumerated in section 2 (b) to (d) that protect freedom of expression, peaceful assembly, and association -- all of which are predicated on the notion that human beings have certain deeply held beliefs and desires and wish to govern their private and public lives according to them.

In a pluralistic society, these deeply held beliefs often differ but the *Charter* guarantees the freedom to freely express those beliefs in public. It is important to note that these freedoms are not bestowed upon us by the state. The state must respect and uphold them, keeping them from undue infringement and ensuring that they are subject only to such reasonable limits as can be demonstrably justified in a free and democratic society.

It follows that the first of our fundamental freedoms should be given the highest regard, especially during emergencies. Emergency situations involve deeply human experiences of fear, loss, and despair, and often involve questions of life and death. In these situations, religious communities are more important than ever. Given the vital role they play for the spiritual health and wellbeing of their communities, places of worship in particular should be free to provide spiritual care (within reasonable limits) during an emergency.

Section 7.0.2 (1) of Ontario's [Emergency Management and Civil Protection Act](#) states “[t]he purpose of making orders under this section is to promote the public good by protecting the health, safety and welfare of the people of Ontario in times of declared emergencies in a manner that is subject to the *Canadian Charter of Rights and Freedoms*.” The recommendations that follow simply bring this legislation in line with the intent of section 7.0.2 (1).

Unequal Treatment

The unequal treatment of faith communities is best exemplified by Ontario's [Roadmap to Reopen](#), announced in May 2021. Retail businesses had significantly less restrictive capacity limits than places of worship under this plan, often without any consideration for the size of the buildings themselves. At Step One, essential retail businesses and liquor stores could operate at 25 percent *capacity*, while indoor religious services were limited to 10 *people*. Consider, for example, Toronto's St. Michael's Cathedral Basilica that can accommodate 1,200 people. Under Step One restrictions, when 300 people (or 25 percent capacity) could have been accommodated safely, only 10 people were allowed to participate.

The chart below summarizes the differential treatment of retail businesses compared to religious services under Ontario’s reopening plan:

Sector	Before Step One	Step One	Step Two	Step Three
Retail	Essential retail at 25% capacity	Essential retail at 25% capacity Non-essential retail at 15% capacity	Essential retail at 50% capacity Non-essential retail at 25% capacity	Essential and non-essential retail open with capacity limited to permit 2m physical distancing
Liquor stores	Open at 25% capacity, with restricted hours	Open at 25% capacity	Open at 50% capacity	Open with capacity limited to permit 2m physical distancing
Weddings, funerals and religious services, rites, and ceremonies	Max 10 people indoors Max 10 people outdoors	10 persons indoors Outdoor permitted with capacity limited to permit 2m physical distancing	Indoor permitted at 15% capacity Outdoor permitted with capacity limited to permit 2m physical distancing	Larger indoor services, rites, and ceremonies Outdoor permitted with capacity limited to permit 2m physical distancing

Recommendations

1. Active Engagement with Faith Communities

The inability among provincial officials to appreciate the importance of in-person religious services was certainly not malicious in the majority of cases. It instead points to an ignorance of the nature of faith communities, the role of public worship, and the vital importance of the constitutionally protected freedoms of conscience and religion. Given this gap in understanding, the provincial government should establish permanent faith community advisory boards and ensure that they are consulted on an ongoing basis, especially during emergencies.

In 2021 an [Angus Reid Institute poll](#), conducted in partnership with Cardus, assessed the impact of restrictions on Canadians who regularly attended religious services before the pandemic. The results showed that 49% of those surveyed were eager to return to in-person worship, with 50% reporting a reduced sense of connection to their religious communities. Notably, a majority of respondents said that they would have attended in-person services had their place of worship been open.

For many religious traditions, communal worship is an absolute necessity, not simply an option which at times of crisis can be abandoned in favour of virtual participation. In the same Angus Reid poll, 40% of respondents said that the physical experience of religious services or rituals cannot be replicated virtually.

For example, the sacramental worship of Catholic and Orthodox Christians obliges active, in-person participation in the celebration of the Eucharist (Holy Communion) on Sundays and feast days. For Jews, no worship can take place without a *minyan* (Orthodox: 10 Jewish men who have had their *bar mitzvah*, Conservative/Reform: a combination of 10 men or women). Likewise, Sikhism requires public worship in the presence of the Sikh scriptures (the *Guru Granth Sahib*) which is only found in Sikh temples (*gurdwaras*).

As Cardus notes in our report [Reasonable Limits: How Far Does Religious Freedom Go in Canada?](#) by Dr. Dwight Newman, it is imperative that policymakers actively engage with religious communities to better understand the impacts of restrictions on religious freedom:

[I]n the context of an increasingly secularized society, there needs to be creative outreach on how to avoid imposing unreasonable limits on religious freedom. Given that secularized decision-makers often do not understand the religious-freedom implications of what they are doing, there should be better education, better dialogue, and more involvement in the public square among representatives of faith communities, so that these issues may be better understood. At the same time, around particular policies, there is also a role for direct engagement and consultation with faith communities. In a number of COVID contexts, public officials who talked with faith communities in advance of implementing new policies—after the first days of urgent emergency in March 2020, when such conversation may not have been as feasible—have been able to develop policies with fewer adverse effects on religious freedom, by being better informed about religious freedom and about creative alternative approaches. Pre-infringement engagement with faith communities can play an important role and is an approach to be significantly developed in achieving better compliance with the principles of reasonable limits.

2. Guarantee Distinct Treatment of Religious Services

There has been considerable debate about whether faith communities should be classified as essential services under provincial emergency powers legislation. To determine whether this was the best policy approach to uphold freedom of religion, Cardus consulted Roman Catholic bishops, Evangelical and Reformed pastors, Anglican priests, senior Orthodox and Conservative rabbis, Muslim leaders, and representatives of the Sikh and Bahá'í communities across Ontario. Informed by this consultation, Cardus is of the view that the designation of faith communities as “essential services” at times of crisis is insufficient and does not consider the distinctive and fundamental role of faith communities in the common life of the province.

Instead, Section 7.0.2 of the [Emergency Management and Civil Protection Act](#) should be amended to create a separate category for how emergency orders apply to religious services, rites, and ceremonies (including weddings and funerals). Under this new category, religious activity should be guaranteed the least restrictive limits during an emergency. These limits should be the same as, or be less restrictive than, the next least-restricted institution under an emergency order. For example, if essential retail businesses are given the greatest latitude (i.e., 25 percent capacity), places of worship should receive the same or less restrictive treatment (i.e., 25 percent capacity or higher). Amendments should be worded to allow a broad interpretation that could apply to any future emergency, health-related or otherwise. This recommendation ensures that freedom of conscience and religion are given distinct consideration, consistent with their status as fundamental freedoms.

3. Protect Against Arbitrariness and Jurisdictional Confusion

Section 7.0.2 of the [Emergency Management and Civil Protection Act](#) should also be amended to ensure that any limits placed on public worship are proportionate and reasonable. The amendments should require that emergency orders applicable to religious services, rites, and ceremonies include a rationale when they are filed and published. The rationale must stipulate clearly how the emergency order achieves the policy objective.

Orders extended every 14 days under section 7.0.8 should be required to include an updated rationale justifying the extension. Failure to publish the rationale in *The Ontario Gazette* would be a violation of the Act. Further, the Act should be reviewed to ensure that any powers held by or delegated to municipalities or other individuals during an emergency uphold protections for faith communities. This recommendation ensures that freedom of conscience and religion are not unduly infringed by arbitrary measures or jurisdictional confusion.

When the state of emergency (declared in March 2020) ended, Ontario's public health orders [continued](#) under the [Reopening Ontario \(A Flexible Response to COVID-19\) Act, 2020](#). If subsequent legislation is introduced to continue emergency orders, the new legislation should also contain the above protections for faith communities.

Conclusion

The Government of Ontario has recognized the need to prepare for future emergencies, particularly by bolstering the health system. While these preventative measures are needed, emergency planning must also consider how to protect our most fundamental freedoms *during* an emergency.

The key takeaways are:

- (1) In-person worship is critical for the adherents of many faith communities. Canadians who regularly attended religious services before the COVID-19 pandemic affirm the importance of this.
- (2) Where gaps of understanding exist, governments should establish permanent mechanisms to consult with faith communities, even and especially during times of crisis.
- (3) While government has the authority to impose limits on certain fundamental freedoms, Ontario's emergency legislation should be amended to ensure that limits on religious freedom are reasonable.

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