

POLICY BRIEF: KEEPING ONTARIO'S PLACES OF WORSHIP OPEN DURING EMERGENCIES

Andrew P.W. Bennett and Andreae Sennyah

April 2022

ISSUE

Throughout the COVID-19 pandemic, faith communities in Ontario faced restrictions and closures to mitigate the spread of the virus. The restrictions imposed on places of worship were often more stringent than those applied to retail businesses, despite the fact that freedom of conscience and religion are fundamental freedoms. This unequal and occasionally arbitrary treatment failed to recognize the distinct role of faith communities and the essential nature of public worship.

RECOMMENDATION

Cardus recommends that Ontario's *Emergency Management and Civil Protection Act* be amended to create a distinct category for the treatment of religious services, rites, and ceremonies (including weddings and funerals). This amendment should require emergency orders that restrict religious worship be the same as, or less restrictive, than the next least-restricted category during an emergency. 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).

In amending the Act, due consideration should also be given to the constitutional provision in section 1 of the *Constitution Act, 1982* that any limits imposed on fundamental freedoms, such as freedom of conscience and religion, be reasonable and demonstrably justified. The legislation should be amended to require that new or extended emergency orders be published with a rationale. This rationale must explain the rational connection between the order and the policy objective.

BACKGROUND

The pandemic posed considerable challenges to faith communities who, when confronted by the reality of the first wave, had to severely restrict public worship, faith education, social outreach, and other activities in the interest of public health. With the waxing and waning

of the pandemic over the past two years, faith communities have met these challenges in innovative ways, but not without significant costs. The consequences of restrictions included the inability to meet religious obligations and disconnection within the community.

There has been considerable debate around whether faith communities should be classified as “essential services” under provincial emergency powers legislation. The primary question was if this designation could offer faith communities greater latitude to operate in times of pandemic or other crisis, so as to sustain public worship and to minister to others.

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 to gain their insights on this question. 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.

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 of the size of the religious 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.

This arbitrary and unequal treatment revealed an inability to appreciate the objective difference of public worship, which is a constitutionally protected fundamental freedom under freedom of conscience and religion. Fundamental freedoms are the highest order of rights, while other activities, such as shopping or purchasing alcohol, are not constitutionally guaranteed. The inability among provincial officials to appreciate this distinction was certainly not malicious in the vast majority of cases. It instead points to an ignorance of the nature of faith communities and the role of public worship.

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. 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 also requires public worship in the presence of the Sikh scriptures (the *Guru Granth Sahib*) which is only found in Sikh temples (*gurdwaras*).

The chart below summarizes the differential treatment of essential and non-essential retail 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 persons indoors Max 10 people permitted 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

POLICY DETAILS

The *Emergency Management and Civil Protection Act* is Ontario’s emergency legislation. During the early stages of the pandemic, the province’s emergency orders were administered under this Act.

1. Guarantee Distinct Treatment of Religious Services

Cardus recommends that section 7.0.2 of the Act 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 clarity, this means that outright closures of places of worship would not be allowed if any other public or private place is allowed to remain open. 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.

2. Protect Against Arbitrariness and Jurisdictional Confusion

Cardus further recommends that section 7.0.2 of the Act 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 would 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*. As such, Cardus recommends that if subsequent legislation is introduced to continue emergency orders, the new legislation should also contain the above protections for faith communities.

Ontario's emergency legislation already stipulates that emergencies should be governed in a way that is consistent with the *Canadian Charter of Rights and Freedoms* and that emergency orders should be made in a way that "limits their intrusiveness." As the spirit of this legislation was not adhered to during the COVID-19 pandemic, Cardus recommends these amendments to ensure that freedom of conscience and religion are robustly protected in any future emergency.

ABOUT CARDUS

CARDUS is a non-partisan think tank dedicated to clarifying and strengthening, through research and dialogue, the ways in which society's institutions can work together for the common good.

CARDUS.CA

CONTACT

ANDREW BENNETT, Program Director, Religious Freedom
tel: 613 241 4500 x 510, abennett@cardus.ca

ANDREAE SENNYAH, Director of Policy
tel: 905 528 8866 x 710, asennyah@cardus.ca

DANIEL PROUSSALIDIS, Director of Communications
tel: 613 241 4500 x 508, dproussalidis@cardus.ca