

Protesters need to understand: Canada's Charter is not the U.S. Bill of Rights

MARTHA JACKMAN - CONTRIBUTED TO THE GLOBE AND MAIL

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Martha Jackman is a professor of constitutional law at the University of Ottawa.

What are we to make of the fact that Canadian protesters in front of Parliament and before the courts are demanding their U.S. constitutional rights?

Supporters of arrested Ottawa truckers complained on [Twitter](#) that police failed to read them their "Miranda rights." And [Dwayne Lich](#), husband of arrested convoy leader Tamara Lich, told the judge at his wife's bail hearing that he was relying on his "First Amendment rights."

Clearly, people are confused. Canada and the U.S. may be close allies, with the longest undefended border in the world, but we are entirely separate countries with completely different legal systems.

So let's talk about our Canadian Charter of Rights and Freedoms. Yes, it constitutionalizes individual rights. But it also permits governments to justify limits on those rights, where doing so will protect and promote competing individual and collective interests. [Section 1](#) of the Charter states that rights are subject to "reasonable limits" that are "demonstrably justified in a free and democratic society."

In other words, rights are not absolute. In complex and increasingly diverse societies such as ours, the exercise of individual rights and freedoms must, at times, be limited. The life-threatening impact of the [COVID-19](#) pandemic has underscored this.

Canada's Charter undoubtedly gives people the right to refuse unwanted vaccines. But it does not give anyone the right to put the lives and health of others at risk. The Charter may also guarantee individuals the right to disagree with or protest public health measures. But such freedoms of expression and assembly will be limited where their exercise threatens significant harm to others.

The U.S. Bill of Rights contains no equivalent to Section 1 of our Charter, and Canadians watch a lot of American police and legal dramas. This may explain why organizers and protesters at trucking blockades in Ottawa and elsewhere believe that their freedom of expression – including incessant honking, hateful speech, illegally parked trucks and indefinite occupation of city streets – is unlimited and absolute.

Many have declared they can't be arrested for violating emergencies legislation, or for wilfully ignoring local laws designed to safeguard the security, health and welfare of residents, since they are exercising Charter-protected protest rights.

They are wrong; Charter rights are not absolute. This is not exceptional: Most modern bills of rights around the world have some version of Section 1.

Critics argue that the federal Emergencies Act isn't needed, since blockades had already been dismantled elsewhere, and because Ontario and Ottawa had already declared states of emergency to deal with downtown areas taken over by protesters.

But the false belief that Charter rights and freedoms are absolute has resulted in a mass disregard for the law on an unprecedented scale. Thousands of protesters have behaved as if they enjoyed total legal

impunity. This was reinforced by the unwillingness or inability of local police and civic authorities to intervene.

This threatened not simply public health and safety, but the rule of law itself, a keystone of any democracy.

In a landmark 1987 ruling, Supreme Court Chief Justice Brian Dickson wrote that the standard by which Section 1 limits must be justified is a reminder of the very purpose of the Charter: "Canadian society is to be free and democratic."

The Emergencies Act is a product of that democratic process. Parliament and the Senate must approve its use. Any Emergencies Act measures adopted must, like any other laws in Canada, comply with the constitution.

The Charter guarantees freedom of thought and expression, security of the person, equality and other rights fundamental to a well-functioning democracy. It also allows for limits on those rights, where justified.

As the recent convoy protests demonstrate, unconstrained freedom is neither what the Charter does, nor should, guarantee.