

Lady Deborah Chambers, QC: Baby, where did our rights go?

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23 February 2022 Tensions rise in camp freedom, the OCR set to rise and Western leaders make moves to stop Russia in the latest New Zealand Herald headlines. Video / NZ Herald

NZ Herald
By Lady Deborah Chambers, QC

OPINION

The emergency legislation in response to Covid-19 giving our Government the right to control our freedom of movement is no longer demonstrably justified in removing the fundamental rights to which New Zealanders are entitled.

The New Zealand Bill of Rights Act 1990 provides in section 18 that everyone lawfully in New Zealand has the right of freedom of movement and residence in New Zealand. It also provides that every New Zealand citizen has the right to enter New Zealand and the right to leave New Zealand. The Act states that it is intended to affirm, protect and promote human rights and fundamental freedoms in New Zealand.

Section 5 of the Act provides that the rights and freedoms in the Bill of Rights are "subject only to such reasonable limits" as can be "demonstrably justified in a free and democratic society". Section 5 is the section used by our Government to justify the never-ending emergency powers in response to Covid-19.

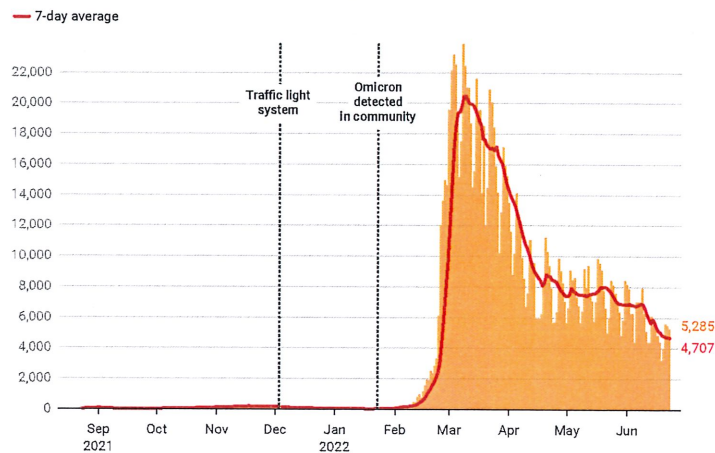
However, section 5 in operation appears to be interpreted as broad enough to drive several trucks through. Our Government has removed our fundamental freedom of movement in a way that no other previous government has done. If the Government's actions are justified under section 5, then that section needs to be narrowed and strengthened.

New Zealand succeeded in keeping the virus largely out of the country through closed borders and quarantine provisions while we did not have vaccines. But as we all know Omicron has crashed through and is forcing our politicians belatedly and, one would have to say, extremely reluctantly, to accept reality.

It is clear, as it has been for almost two years, where pandemic management is going in this country.

The incessant and futile attempts to impose Covid-19 zero strategies will continue to fall away against the inevitable path towards endemic Covid-19. The never-ending onslaught of emergency powers and inane rules should be replaced now with sensible precautions, encouraged but not legislated by the Government, with an ongoing concentration of treatments, vaccinations, and health resourcing.

Daily new Covid-19 community cases



Counts based on the Ministry of Health's daily 1pm update
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Instead, our Government has continued - against international trends - to impose even more draconian measures in response to the Covid-19 pandemic.

The announcement on January 26 required anyone known to be infected to lock themselves in their homes for 14 days. Anyone else in the house automatically becomes classified as a close contact and must also isolate for the same period and then for an additional 10 days as well. If in those last 10 days any of the previously uninfected close contacts in your house test positive, then the whole process starts again.

On February 14, phase 2 was announced reducing the length of self-isolation slightly to 10 days and seven days for close contacts, regardless of testing negative for "non-critical workers".

If Omicron spreads as quickly here as it has in other countries, it seems possible that at some point nearly every household will be forced into isolation. The new rules incentivise New Zealanders to simply not get tested and not use the Covid tracer App.

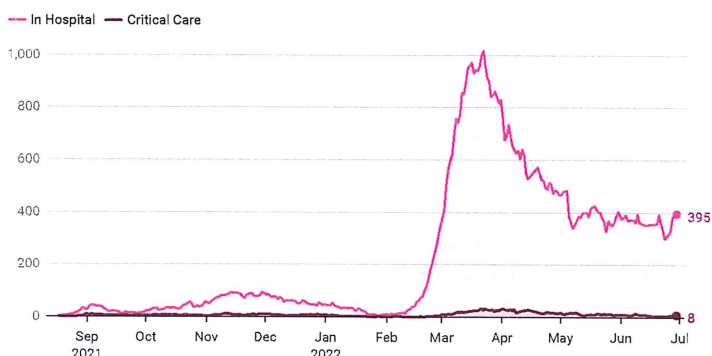
The closed borders continue, at least until the end of this month. The mandatory managed isolation system restricting New Zealanders' rights to enter New Zealand including those triple-jabbed and testing negative when people in our community with Covid can isolate at home cannot be demonstrably justified as reasonable.

These restrictions ride roughshod over our fundamental freedoms and are out of step with the current global position. The situation has changed since the start of the pandemic.

The Government's Covid-19 laws restricting freedom of movement are no longer demonstrably justified for the following reasons.

Three shots of the vaccine cut the risk of death from Covid-19 by 95 per cent in those 50 or older. And in the over 90 per cent of New Zealanders who have two doses of the Pfizer vaccine, the chances of dying are less than 0.1 per cent for people who actually get Covid-19.

How many people with Covid-19 are in hospital?



Critical Care includes Intensive Care (ICU) and High Dependency Units (HDU)
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There are now very effective treatments for Covid-19. New research confirms that adults who are fully vaccinated against Covid-19 rarely die from the disease.

It is not justified to restrict the fundamental rights of other New Zealanders when we know that it is only a particular group in our community who are vulnerable to a low risk of death from this disease. The better approach in terms of human rights is that citizens who are vulnerable be more cautious and aware.

We have more data on Covid-19 than virtually any other disease on the planet. It is accessible to anyone that has a smartphone. According to the World Health Organisation, the Omicron variant is only life-threatening for unvaccinated elderly and people with underlying conditions. The most pertinent risk is age, but also people with diabetes, the obese, and those with compromised immune systems.

The average age of Covid deaths is still higher than the average life expectancy. We do not need a government to talk to us like we are 5-year-olds over these risk factors. New Zealanders know them. New Zealanders know whether they are part of a vulnerable group and should be trusted to act accordingly and take that into account in the decisions they make about their lives without having the Government use that as an excuse to become authoritarian.

Secondly, we are one of the most vaccinated nations on the planet with more than 90 per cent of eligible adults double-jabbed. We have an excellent medical system, no doubt with surge capacity which is not even being close to being needed, at least at the moment.

I predict the main problem for the health system will be staff forced from work by over-the-top isolation rules. We will be sending healthy nurses and doctors home from hospitals because they have been in close proximity to - wait for it - sick people.

We could cripple other workplaces with similar precautions, leaving some supermarket shelves empty. We are already seeing this in Queenstown, where most hospitality businesses are expected to be closed because of the Government's new self-isolation requirements.

Thirdly, the emergency regulations taking away our freedom of movement fail to properly balance social, educational, economic, and even other medical damage in favour of an obsessive focus on Covid-19 to the exclusion of all else. This is why health bureaucrats and epidemiologists should only ever have been a key source of advice, not dictators of Government policy.

I do not doubt that the Government genuinely thinks it is taking these extreme measures for all the right reasons, but the Government's rulemaking is no longer proportionate to the risk and does not meet the requirements of the section 5 exemption. The "nanny knows best routine" is no longer justified.

Fourthly, to those who say that our Government's refrain that they are entitled to claim credit for "keeping people safe" and go even further and demand a continuation of this protection pretense, I say this: It is not the Government's role to attempt to prevent all death at any cost.

If that was the Government's role, then we would see: Cigarette sales banned completely. Cancer is the leading cause of death in New Zealand with some 10,000 deaths per year; a tax, if not outright banning, on all food products containing high levels of fat and sugar and the banning of all alcohol. Heart disease is the second leading cause of death with about 5000 deaths a year; much greater resources put into preventing suicide, which is the second leading cause of death amongst New Zealand males. It is hard to believe that suicide rates have not rapidly increased during the last two years; a ban of all driving of motor vehicles, which is the fifth-highest cause of death amongst New Zealand men; and unrestricted access to intensive care beds when required. We have never had that because the country cannot afford it.

The obese, smokers, heavy drinkers, and motorcyclists all impose a disproportionate burden on the health system. But Government policy is that New Zealanders have freedom of choice in regard to these issues. New Zealanders and our governments have tolerated these deaths and have undertaken a balancing exercise including non-financial costs as against personal choice.

The Treasury states that some \$62.1 billion of funding has been allocated to the Covid-19 response and recovery. The Government has received a warning from the OECD that the superannuation age needs to rise to keep post-Covid debt levels down to a sustainable level. The debt, like the restrictions, will result in our young people suffering. They will pay the highest price burdened by the appalling economic cost of the Government response to this disease.

Some New Zealanders are far more risk-averse than others. I recognise that.

Part of the reason large elements of the public are entranced by the unachievable goal of permanent insulation from Covid-19 is that our politicians have raised expectations that our Government cannot meet by using paranoia and political one-upmanship.

Some New Zealanders will not be happy until they ruin another school year or chalk up another \$60 billion in debt and ruin the early careers of so many young people weighing them down with taxation for decades to come. Those views are not a justification for overriding the fundamental rights of other New Zealanders.

If you are very risk-averse, then the answer is simple: you choose to take the steps you wish to take to avoid infection. The answer is not that our Government removes fundamental freedoms by emergency regulations when we are now in a very different position from when we first faced Covid-19 without vaccines, little knowledge, and a much stronger variant.

Our leaders assure us we are no longer in elimination mode. They urged us to get vaccinated so we could dispense with the restrictions on our fundamental freedoms, but still, we are overwhelmed with onerous and illogical rules and restrictions.

The Danish government said last week when announcing it would lift all Covid-19 restrictions relying on high vaccine rates "with Omicron not being a severe disease for the vaccinated we believe it is reasonable to lift restrictions. The broad spread of the Omicron variant is also expected to lead to a more robust and long-lasting immunity helping the country fend off future waves."

That numerous governments are removing all restrictions when facing the same pandemic while ours continues to severely restrict our rights to freedom of movement is telling evidence that our Bill of Rights has failed to be at all effective or even influential on Government policy.

Most media are addicted to Covid-19 catastrophism, down-playing or ignoring the social and economic costs. Fear is even better than sex at selling newspapers. Oppositions have been too timid to call it out, preferring to profit from outrage and trepidation, preferring to complain about a bungled vaccination rollout when we have one of the highest vaccination rates in the world and one of the lowest fatality rates.

It is time we elevated civil rights as a key component to decision-making. So far, the influence of the Bill of Rights has been zip.

Are our human rights to be protected? Is the guarantee of our freedom of rights to be so easily watered down by section 5 of the Act so that the Bill of Rights is meaningless?

The pandemic has provided a stress test for the freedom of movement guaranteed to us and the results are not pretty.

The most common way people give up their rights is by thinking that they do not have any. New Zealanders should be justifiably proud and be prepared to defend the New Zealand Bill of Rights Act. It is time we did.

Nothing strengthens authoritarianism so much as silence.

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