

Introduction

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About This Special Issue

In the fall of 2020, we presented members of the Queen's Law faculty with the opportunity to reflect on the myriad of ways in which the COVID-19 pandemic and the law have intersected. This special issue is a product of that reflection and suggests, in true professorial fashion, that when it comes to the question of how the pandemic has impacted various aspects of the law, the answer is: "it depends".

In offering this opportunity, we had two main goals. The first was to provide an avenue for scholarly reflection on the pandemic and the law in a manner that would be accessible to a wider audience and draw on the breadth of expertise that exists within the faculty of law. The second was to nurture the sense of community and collegiality between faculty and students that makes the Queen's Law experience unique. For over a year, students and professors have been out of physical classrooms and forced to learn and teach remotely. While this change was necessary, it created the possibility of a disconnect between teachers and pupils. To mitigate this potential scenario, we encouraged professors to co-author their essays with students.

We have grouped this collection into three categories. The essays in the first category take a theoretical perspective in analyzing the pandemic as an emergency. The pieces in the second category examine the repercussions the pandemic has had on pre-existing social ills. The final category contains essays that discuss some of the practical implications the pandemic has had on the day-to-day operating of the legal system.

A. The Pandemic as an Emergency

Professor Ashwini Vasanthakumar examines the apparent tension between the COVID-19 pandemic and the Black Lives Matter protests that arose during the summer of 2020. While a pandemic urges, and sometimes requires, people to stay at home, political protests often rely on mass congregations of people. Vasanthakumar contends that this perceived tension

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is a product of urgency bias. She asserts that the coalescence of the pandemic and the Black Lives Matter protests reveals ways in which emergencies and structural injustice are intertwined.

Drawing on Lon Fuller's parable of King Rex, Victoria Carmichael and Professor Grégoire Webber examine the pandemic through the lens of Fuller's desiderata of the rule of law. They argue that while some government responses to the pandemic may not have met rule of law criteria, these departures may be justified in a rapidly evolving situation. They conclude by proposing that achieving a legal system which upholds the rule of law is contingent on the well-being of a community's affairs.

B. The Pandemic and Pre-Existing Social Ills

Professor Lisa Kerr and Kristy-Anne Dubé discuss the varying approaches judges have taken to the law of bail, to the calculation of credit for pretrial detention, and to the law of sentencing in response to the pandemic. Kerr and Dubé critique decisions that de-emphasize the impact of COVID-19 and defer to the decisions of correctional workers. They argue that this form of judicial reasoning is not unique to the COVID-19 era and suggest that the pandemic provides crucial insight into longstanding legal debates surrounding the law of punishment.

Professor Lisa M Kelly et al. explore ways in which the pandemic has exacerbated existing inequalities in education. The authors analyze emerging trends that suggest more affluent families have been better able to cope with the difficulties caused by schooling in a pandemic when compared to lower income, and often racialized, families. By situating these trends within a much longer history of education laws, regulations, and policies that have had disproportionately negative impacts on racialized and low-income communities, the authors problematize the idea that the pandemic will be a transformative event in spurring social change.

Kevin Akrong and Professor Gail E Henderson overview changes to the regulation of alternative financial services in Ontario in response to the pandemic. They argue that the pandemic has simultaneously revealed and aggravated pre-existing inequalities in Canada's financial system.

Professor Cherie Metcalf and Meghan Huskisson-Snider explore governmental responses to the pandemic as an existential threat through the context of federalism. They suggest that these responses reveal ways in which the division of powers has been both a benefit and a hindrance in responding to COVID-19. Metcalf and Huskisson-Snider contend that the lessons learned through their analysis of the response to the pandemic also apply to Canada's response to other existential threats such as climate change.

C. The Pandemic and the Operation of the Legal System

Professor Joshua Karton explores the turn to remote hearings within the realm of commercial arbitration and argues that this pandemic-driven change will likely lead to remote hearings becoming the default option for international commercial disputes. Karton suggests that other forms of dispute resolution should look to commercial arbitration to ensure that future remote hearings are accessible, effective, and fair.

Professor Samuel Dahan and David Liang argue that while the transformation toward remote hearings has been exacerbated due to the pandemic, the roots of this transition lie in the longstanding inaccessibility of the justice system. Dahan and Liang argue that access to direct-to-public tools such as legal assistance systems powered by artificial intelligence present opportunities to alleviate access to justice concerns.

Professor Erik S Knutsen argues that policies protecting against business interruption loss can cover pandemic related losses. Like other commercial property insurance coverage, business interruption policies are triggered when there is direct physical loss of or damage to property. Knutsen suggests that the principles for interpreting insurance policies can apply in a way that cover losses caused by COVID-19.

Professor Alyssa S King suggests that changes to civil procedure in Ontario in light of the pandemic reflect pre-existing trends in what she terms “global civil procedure”. These changes include a move away from aspects of common law litigation such as orality and toward the development of online dispute resolution. King notes that while Ontario will likely continue to look to other jurisdictions when making procedural changes, the changes adopted must enhance access to justice and legality.

Conclusion

The law will undoubtedly continue to converge with the pandemic. Yet, as the essays in this special issue suggest, it is incumbent upon us to reflect on these intersections critically and remember that the pandemic is often only one of many factors to consider in assessing the current state of the law. As the editors of this collection, we hope that these essays provide readers with a point of entry into just a few of the many debates that have arisen in law as a result of COVID-19.

