

## Canadian Charter of Rights and Freedoms and the 'Supremacy of God'

### The Honourable A. Brian Peckford P.C.

*The Hon. A. Brian Peckford, P.C. was the Premier of Newfoundland during the development of the Charter of Rights and Freedoms in 1981 and the Constitution Act of 1982. He is the only living First Minister who participated in the crafting and signing of the Charter, which is considered the central element of Canada's Constitution. The following is an excerpt from one of his recent articles on the Charter and quoted here with his permission. The complete article—including several other key points—may be found on his blog at: [Peckford42.wordpress.com](https://Peckford42.wordpress.com)*

"Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:"

These are the very first words of the Charter—and note at the end the punctuation mark—a colon! This tells the reader to anticipate what comes next, especially with the first word being "whereas."

Therefore, these phrases—"the supremacy of God" and "the rule of law"—were meant to give a framework in which the other following parts of the Charter were to be considered.

What has happened in the last few years is that Government has implemented mandates and lockdowns, through public health orders and other similar means, while ignoring and failing to consider these important phrases in any of their decisions. Indeed, they brashly claim that these actions are consistent with the Charter, and conform with its provisions.

The courts also have obligingly given credence to this Government behaviour by allowing these deliberate acts of omission, saying the Governments' actions are within the Constitution.

But they could only say this because they performed a trick—they left out the FRAMEWORK CONCEPTS through which the rest of the Charter was to be considered. There is nothing in the constitution that says the Governments or the Courts could ignore the opening words of Part 1 of the Charter!!

So we have a violation of the charter. This is an act of omission.

Neither the Governments (federal and provincial) nor the Courts are at liberty to select what parts of the Constitution they will use to set public policy or render a judgement. If that were true we all could select what laws we want to follow. We all know there would be no civilized society, no rule of law, if that were to happen.

Governments are obligated to see to it that any new policy or program meets all of the provisions of the Charter of Rights and Freedoms . . . and the Courts must do the same when rendering judgements based on the Charter.

In one court case back in 1983 a Provincial Court Judge in Alberta named Stevenson addressed the opening words of the Charter, saying that "the Charter does not recognize any particular denomination, and (noticeable by its absence) it does not refer to a *Christian* God." This statement is apparently what other courts have relied on as we see referenced in a recent Alberta court decision!

But these judges are jumping to convenient conclusions; in fact, the First Ministers who approved this wording—"the supremacy of God"— were all Christians . . . we believed it to be **self-evident** that we were referring to the God of the Bible. We knew of no other.

We only knew a Judaeo-Christian God!!!!!!

Many of you will remember that the US Declaration of Independence begins with these words: "We hold these truths to be **self-evident**, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness . . ."

Some things are (and should be) self-evident. But now one judge has the temerity to tell me AND NINE OTHER FIRST MINISTERS (WHO WERE ALL CHRISTIANS) what God WE WERE referring to in 1981 when WE signed the Charter?

SO WE HAVE THE SINS OF OMISSION BY MOST GOVERNMENTS AND COURTS AND THE SIN OF COMMISSION BY ONE PROVINCIAL COURT JUDGE IN ALBERTA and QUOTED IN A COUPLE OF OTHER CASES.

Even if one could get past this—and let's for argument's sake say that we could—there is the issue of intent: what did the authors of the Charter intend when they approved Section 1 of the Charter?

*Section 1 of The Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

Some have tried to claim that this section gives Governments and Courts the latitude to take away rights and freedoms—as they did through mandates, lockdowns and regulations—in an alleged health emergency . . . without the need for those violations to be "demonstrably justified." (Which they never were).

However, the intent of the authors was that this could only be used if the country's existence was in peril, such as in war or insurrection. There was no such situation in the last three years with this pandemic.

How do I know that was the intent of the authors of the Charter? Because I was there. My signature is on it.

And look at Section 4 (2): "In time of **real or apprehended war, invasion or insurrection**, a House of Commons may be continued by Parliament and a legislative assembly may be continued by the legislature beyond five years if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be."

That's how we were thinking. And that's how the provisions of the Charter should be applied. I know. I was there.

## **Footnotes**

<sup>1</sup> [qweri.lexum.com/w/calegis/schedule-b-to-the-canada-act-1982-uk-1982-c-11-en](http://qweri.lexum.com/w/calegis/schedule-b-to-the-canada-act-1982-uk-1982-c-11-en)

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