

RECENT ONTARIO DECISION REVISITS PRAYER IN GOVERNMENT PROCEEDINGS

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A. INTRODUCTION

In *Allen v. Corporation of the County of Renfrew*,¹ the Honourable Justice Hackland of the Superior Court of Justice (Ontario) had occasion to determine whether Council for the Corporation of the County of Renfrew (“Council”) had violated the freedoms of a local resident who occasionally attended Council meetings by opening its meetings with a “non-denominational” prayer that conveyed a religious, though not specifically Christian, message.

Mr. Allen, a member of the Humanists Association of Canada, and who described himself in the litigation as a “Secular Humanist,” objected to the use of the non-denominational prayer to open Council meetings. The basis for his objection to the non-denominational prayer was that it expressed conviction in a deity, and thereby violated his rights to freedom of conscience and religion protected under the *Canadian Charter of Rights and Freedoms, 1982* (“Charter”). In support of his claim, Mr. Allen submitted an expert statement to the Court indicating that the humanist beliefs that he held constituted a “religion from an academic perspective.” In this regard, it was Mr. Allen’s position that the Council’s non-denominational prayer, in assuming the existence of God and by calling on the blessings of God, constituted the imposition of a state

¹ (2004) 69 O.R. (3d) 743.

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sanctioned belief in a God. The expert statement of Dr. Gualtieri submitted by Mr. Allen provided the opinion that:

Any activity which claimed to be non-sectarian in the sense of encompassing all religions (i.e. symbolically mediated world-and-value-views) in a pluralist society would have to accommodate the Humanist phenomenon.

The Renfrew County Council prayer is clearly theistic: it is not non-sectarian since it intrinsically excludes the Humanist and other analogous, modern, secular movements. Its use within the official agenda of the Renfrew County Council effectively discriminates, at some levels, against those whose faith is not formed by its supernaturalistic, theistic symbols and cosmology.

B. THE DECISION

Addressing the question of whether Council's opening prayer was a coercive effort to compel religious observance, Justice Hackland noted that Council had very recently implemented the practice of opening Council meetings using the non-denominational prayer in order to reflect compliance with the decision of the Ontario Court of Appeal in *Freitag v. Penetanguishene (Town)*² ("Freitag"), which found that the Town of Penetanguisheine had violated the Charter protected rights of Mr. Freitag to freedom of conscience and religion by opening its Council meetings with a Christian prayer.

Despite the evidence of Mr. Allen's expert witness, and in accordance with the principles reflected in the precedent ruling of Freitag, Justice Hackland stated:

With due respect to the applicant's submission, I do not accept the proposition that the mere mention of God in a prayer in a governmental meeting, accompanied by the implication God is the source of the values referred to in the prayer, can be seen as a coercive effort to compel religious observance. The current prayer is broadly inclusive and is nondenominational, even though the reference to God is not consistent with the beliefs of some minority groups. In a pluralistic society, religious, moral or cultural values put forward in a public governmental context cannot always be expected to meet with universal acceptance.

In coming to this conclusion, Justice Hackland also noted that the very preamble of the Charter contains a specific reference to the supremacy of God. Justice Hackland then went on to discuss the importance of

² (1999), 47 O.R. (3d) 301.

preambles as “*helpful interpretive device[s]*,” citing the Honourable Chief Justice Lamer’s comments in a 1997 Supreme Court of Canada decision that “*the preamble...recognizes and affirms the basic principles which are the very source of the substantive provisions of the ... Act.*”³

Having concluded that the purpose for Council’s recital of the opening prayer was not to “impose a Christian or other denominational religious stamp on the proceedings,” Justice Hackland considered whether this was the effect of its recital. In his decision, Justice Hackland cited the seminal decision of Justice Dickson in *R. v. Big M Drug Mart Ltd.* as follows:

The constitution shelters individuals and groups only to the extent that religious beliefs or conduct might reasonably or actually be threatened. For a state-imposed cost or burden to be proscribed by s. 2(a) it must be capable of interfering with religious belief or practice. In short, legislative or administrative action which increases the cost of practising or otherwise manifesting religious beliefs is not prohibited if the burden is trivial or insubstantial.⁴

In summary, Justice Hackland concluded that the “non-denominational” prayer is not “in substance a religious observance, coercive or otherwise,” and did not compel Mr. Allen to engage in a Christian practice, as was the case in *Freitag*. As a final comment regarding the contravention of sec 2(a) of the Charter, Justice Hackland stated:

The mere mention of God in the prayer in question is not in this Court’s opinion, sufficient in its effect on the applicant to interfere in any material way with his religious beliefs.

Finally, Justice Hackland concluded that the practice of reciting the non-denominational prayer to open Council meetings is also protected by section 1 of the Charter, as it could be “*justified as a reasonable limit prescribed by law which can be demonstratively justified in a free and democratic society.*” In defence of this conclusion it was noted that the Council’s bylaws require that a prayer be recited and may imply a reference to God.

³ *Reference Re: Public Sector Pay Reduction Act* (1997) 150 S.L.R. (4th) 577.

⁴ [1985] 1 SCR 295.

C. COMMENTARY

In his decision dismissing Mr. Allen's application, Justice Hackland determined that even if the practice of reciting the prayer violated the applicant's freedoms under section 2(a) of the Charter, it was protected by section 1. In spite of this clear protection provided under section 1 of the Charter, Justice Hackland engaged in a lengthy interpretation of the issues pertinent to section 2(a), and supporting the proposition that the recognition of God--albeit a non-denominational reference to God--plays an important role in governmental forums and functions, and that such a role is worthy of protection. In concluding that the non-denominational prayer used by the Council does not violate section 2(a) of the Charter, Justice Hackland pointed out that key Canadian legal documents, such as the *Constitution Act*, 1867, explicitly reflect a recognition that God forms an integral cornerstone in our legal history, and that the Charter itself explicitly acknowledges God's supremacy in the preamble, which begins with the statement: "Whereas Canada is founded upon principles that recognize the supremacy of God and rule of law." Justice Hackland further noted the prevalence of references to God in prayers recited in the Ontario Legislature, and the House of Commons; in our National Anthem, and other anthems; in coats of arms, oaths and many other governmental contexts.

It is too often forgotten that the core freedoms which are now enshrined in the Charter first found their true expression as a direct result of demands for religious freedom. The preamble to the Charter further recognizes that those freedoms arise directly from, and form a reflection of, the supremacy of God, and our society's willingness to recognize that supremacy. Religion has recently been described by the Supreme Court of Canada in *Syndicat Northcrest v. Anselem*⁵ as typically involving

...a particular and comprehensive system of faith and worship. Religion also tends to involve the belief in a divine, superhuman or controlling power. In essence, religion is about freely and deeply held personal convictions or beliefs connected to an individual's spiritual faith and integrally linked to one's self-definition and spiritual fulfillment, the practices of which allow individuals to foster a connection with the divine or with the subject or object of that spiritual faith.

That God still plays a role in the lives of a majority of Canadians was identified by Michael Adams in his book *Sex in the Snow; Canadian Social Values at the End of the Millennium*⁶ where he noted that 83 % of Canadians polled indicated that they believed in God. While such evidence is not presented to advocate a

⁵ [2004] S.C.C. No. 47.

⁶ Adams, Michael. *Sex in the Snow, Canadian Social Values at the End of the Millennium* (1997) Viking Press.

tyranny of the religious majority over an atheistic or secular minority, it does underscore the importance that the belief in a deity plays in the greater Canadian Society as a whole. To have ruled that the “non-denominational” prayer should be removed because it referenced God would have effectively rewrote the Charter’s preamble to read “Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law, God can no longer be mentioned in public forums for fear that such recognition might offend someone.” Such a ruling would have resulted in the imposition of a new “religion” of human secularism on all Canadians. This important ruling affirms the fundamental connection that presently exists between the recognition of the supremacy of God and the freedoms and rights espoused by our Charter.

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