# CHARTER LITERACY: ARE CANADIANS AWARE OF THEIR RIGHTS AND FREEDOMS?

JACK JEDWAB

Jack Jedwab is the President of the Association for Canadian Studies and the Canadian Institute for Identities and Migration. Holding a PhD in Canadian History from Concordia University, he taught at Université du Québec à Montréal and McGill University. He has taught courses on the history of immigration in Quebec, on ethnic minorities in Quebec, on official language minorities in Canada and on sport in Canada. He has also authored essays for books, journals and newspapers across the country, in addition to being the author of various publications and government reports on issues of immigration, multiculturalism, human rights and official languages.

## INTRODUCTION

Canadian lawyer and scholar John Peters Humphrey played a significant role in drafting of the United Nations' Universal Declaration of Human Rights. The UDHR provided a list of articles outlining everyone's universal human rights and influenced hundreds of international human rights conventions and declarations, amongst them Canada's human rights laws — and most notably, the 1982 *Canadian Charter of Rights and Freedoms*.

The year 2023 marked 75 years for the UDHR, which has given rise to much debate over diverging national identities, customs, traditions, conventions, values and politics. Taken together, these issues have led to varying interpretations of enshrined rights in various countries over the course of the UDHR's existence.

Discussion and debate over the meaning and application of human rights within Canada can sometimes be viewed as a microcosm of many

such global conversations. To the extent that many nations have been reticent to follow the global guidance offered by the UDHR, so too are country sub-governments frequently unwilling to follow national guidelines. This has resulted in many instances of internal/domestic jurisdictional disputes over questions of rights. In the case of Canada, the provinces have occasionally expressed concerns that the country's Charter of Rights does not sufficiently take into account distinct language identities and purported differences in values arising from diverging views around the place of religion in society. Hence, in Canada, the status of minorities is often the focus of public debate.

During the deliberations in 1948, the framers of the UDHR were hesitant to include references to the protection of minorities. As the UDHR was being drafted, Humphrey observed that the wording around the protection of minorities was not supported and in the decades that ensued this remained the case, as there was a persistent view in the UN that, "if everyone is treated alike [equally] there is no need for special measures to protect minorities." As Humphrey added: "... The argument quite misses the point, for, if linguistic, racial and religious minorities are to preserve their distinctive characteristics, they may need something more than equality." (Humphrey, 1983).

Decades later, in December 1992, the UN General Assembly adopted by consensus the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. This declaration, which builds on Article 27 of the International Covenant for Civil and Political Rights, is based on the premise found in its preamble that the promotion and protection of the rights of persons belonging to minorities "contribute to the political and social stability of States in which they live."

Engaging in national conversations about the wellbeing of citizens is enhanced by knowledge of human rights. What follows offers insights into the state of such awareness globally, with a particular focus on knowledge about the *Canadian Charter of Rights and Freedoms*.

## KNOWLEDGE ABOUT HUMAN RIGHTS: IN CANADA AND AROUND THE WORLD

A 2018 survey conducted by the firm IPSOS in 28 countries reveals that some 56 per cent of respondents say that they know about human rights generally. The four countries where respondents purport to know most about human rights generally are Turkey (79%), South Africa (76%), Malaysia (73%) and China (71%). Americans land eighth on the list at (65%) and Canadians rank 15th (57%). The Ipsos survey also asks whether people feel that laws protecting human rights make a difference in their lives. Overall, 53 per cent of respondents respond in the affirmative, with residents of South Korea (75%), China (70%), Turkey (69%) and India (69%) most likely to agree that human rights make a difference in their lives.

On this question, the Ipsos survey finds Americans in 10th place (59%); just behind respondents from the U.S. are those from Russia and the United Kingdom (58%). It is not entirely clear as to what might be concluded from the above responses to the 2018 Ipsos survey, as countries like Russia and China, amongst others, are not seen by most Americans and Canadians as setting a good

example regarding respect for human rights. Nor does the Ipsos survey[1] offer insight into what is meant by either general knowledge of human rights or how individuals see such rights making a difference in their lives.

The Ipsos survey raises a fundamental question about citizens' awareness of human rights both at the international level and in their own countries. What follows is an examination of how well Canadians are acquainted with select provisions of the country's own Charter of Rights.

In April 1982, the course of Canadian history was profoundly altered with the introduction of the Charter of Rights and Freedoms. The adoption of the Charter was an important milestone for the protection and promotion of human rights. The values and principles it embodied were widely seen as essential for building and sustaining democracy and for outlining the fundamental freedoms of Canadians. The Charter, among its many impacts, offered guidance for interaction between citizens of diverse origins.

Dominique Clément, a University of Alberta sociologist who specializes in the history of human rights, has stated that, "…awareness of human rights is greater than ever, while its meaning has expanded enormously since the postwar era."[2]. He describes human rights awareness and affirmation as a largely post-1970s phenomenon and points to a widening definition of what constitutes a human right (he offers a healthy environment as an example of something thought of as a right today that was not previously considered as such).

Others observe that, in Canada, human rights awareness has led to a slow but inevitable reckoning over the country's own historic abuses. In an October 2020 *Globe and Mail* article about Canada's historical human rights record, Toronto Metropolitan University history professor Jennifer Tunnicliffe (a contributor to this volume) stated that "young people now are much more willing to be critical and think differently about Canada in ways that hopefully will make a change."[3]

How aware are Canadians of the country's Charter of Rights and Freedoms? To test such awareness, a Leger/Association for Canadian Studies survey asked whether Canadians have read the Charter of Rights. The survey reveals that about one in three Canadians say they have read the Charter. Those survey respondents between the ages of 18 and 34 were more likely to say they have read the document (43%) in contrast those over the age of 55, with just one in four in the older age bracket saying they've done so (see Table 1).

## CHARTER KNOWLEDGE AND THE SUPREMACY OF GOD

The UDHR mentions neither God nor nature. But the debate over there being a reference to God in the UDHR was one of the most controversial

1 www.ipsos.com/en-us/news-polls/global-advisor-human-rights-2018

2 Morrow, 2020.

3 Morrow, 2020. www.theglobeandmail.com/featured-reports/article-from-outlier-to-champion-canadas-uneven-record-on-human-rights

**TABLE 1. I HAVE READ/NOT READ THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS – BY AGE COHORT**

| | TOTAL | 18–34 | 35–54 | 55+ |
|---|---|---|---|---|
| Read the Canadian Charter of Rights and Freedoms | 33% | 43% | 36% | 25% |
| Did NOT read the Canadian Charter of Rights and Freedoms | 62% | 51% | 60% | 70% |
| I don't know / I prefer not to answer | 5% | 6% | 4% | 5% |
| NET | 100% | 100% | 100% | 100% |

Source: Leger Survey for the Association for Canadian Studies, September 25–29, 2023.

**TABLE 2. CANADA IS FOUNDED UPON PRINCIPLES THAT RECOGNIZE THE SUPREMACY OF GOD AND THE RULE OF LAW BY AGE COHORT**

| | TOTAL | 18–34 | 35–54 | 55+ |
|---|---|---|---|---|
| Canada is founded upon principles that recognize the supremacy of God and the rule of law | 38% | 33% | 36% | 44% |
| Canada is NOT founded upon principles that recognize the supremacy of God and the rule of law | 37% | 41% | 38% | 33% |
| I don't know / I prefer not to answer | 25% | 26% | 26% | 23% |
| NET | 100% | 100% | 100% | 100% |

Source: Leger Survey for the Association for Canadian Studies, September 25–29, 2023.

issues that emerged during the drafting process, according to Humphrey. Several countries do make reference to God in their constitutions and Canada is no exception in this regard, as the opening line in the Canadian Charter of Rights and Freedoms stipulates that "Canada is founded upon principles that recognize the supremacy of God and the rule of law."

As observed in the Table below, just as many Canadians agree as disagree — despite the Charter's explicit validation of the concept — on whether "Canada is founded upon principles that recognize the supremacy of God and the rule of law." Paradoxically those Canadians in the younger age cohorts — more of whom say they have read the Charter — are less likely than older Canadians to agree that Canada is founded upon principles recognizing the supremacy of God and the rule of law.

Our contention is that the expression of disbelief that the supremacy of God and rule of law are part of the Charter is related to what respondents deem desirable. It is probable that those Canadians who prefer a more secular vision of Canadian society reject the proposition (see Table 2).

It is worth noting that Canada's francophones are also far more likely than non-francophones to disagree with the idea that Canada is founded upon principles that recognize the supremacy of God and the rule of law. Other surveys that point to the more secular perspective held by francophones in Quebec in particular more so than others very likely explains the gap in the response to the proposition (see Table 3).

**TABLE 3. CANADA IS FOUNDED UPON PRINCIPLES THAT RECOGNIZE THE SUPREMACY OF GOD AND THE RULE OF LAW (BY MOTHER TONGUE – FRENCH, ENGLISH AND OTHER)**

| | FRENCH | ENGLISH | OTHER |
|---|---|---|---|
| Canada is founded upon principles that recognize the supremacy of God and the rule of law | 25% | 41% | 45% |
| Canada is NOT founded upon principles that recognize the supremacy of God and the rule of law | 49% | 35% | 29% |
| I don't know / I prefer not to answer | 26% | 24% | 26% |
| NET | 100% | 100% | 100% |

Source: Leger Survey for the Association for Canadian Studies, September 25–29, 2023.

As the table below reveals, about one in three Canadians who say that they've read the Charter disagree with the idea that Canada is founded upon principles that recognize the supremacy of God and the rule of law, and nearly one of five in that group say they don't know (see Table 4).

## THE CHARTER AND LIMITS ON RIGHTS AND FREEDOMS

The Canadian Charter of Rights and Freedoms includes a notwithstanding clause and its presence has been the subject of much controversy. The Charter stipulates that legislatures in Canada have the power to override certain portions of the Charter for five-year terms when passing legislation. Most recently, it has been used in Quebec under Bill 21 to shield the law that prohibits the wearing of religious symbols in selected roles in the public sector. The clause acts, therefore, as a limit to the exercise of certain rights and freedoms. Yet another example of how 'rights' can be limited pertains to restrictions on freedom of expression if legislators determine that said expression constitutes hate speech. While most Canadians recognize that the government of Canada can limit rights and freedoms, a substantial percentage of respondents to the survey either disagree with the idea or don't know that it is the case. As observed in the Table below, amongst those Canadians that say they have read the Charter of Rights and Freedoms, some 30 per cent say they do not believe that the government can limit rights and freedoms and another 15 per cent say they don't know. The percentage is higher amongst those saying that they have not read the Charter (see Table 5).

**TABLE 4. I HAVE READ/NOT READ THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS; AND CANADA AND CANADA IS/IS NOT FOUNDED UPON PRINCIPLES THAT RECOGNIZE THE SUPREMACY OF GOD AND THE RULE OF LAW**

| | READ THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS | DID NOT READ THE CANADIAN CHARTER OF RIGHTS |
|---|---|---|
| Canada is founded upon principles that recognize the supremacy of God and the rule of law | 47.7% | 34.4% |
| Canada is NOT founded upon principles that recognize the supremacy of God and the rule of law | 33.5% | 39.2% |
| I don't know / I prefer not to answer | 18.8% | 26.4% |
| Total | 100% | 100% |

Source: Leger Survey for the Association for Canadian Studies, September 25–29, 2023.

**TABLE 5. I HAVE READ/NOT READ THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS; AND CANADA AND THE GOVERNMENT OF CANADA CAN/CANNOT LIMIT RIGHTS AND FREEDOMS**

| | TOTAL | READ THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS | DID NOT READ THE CANADIAN CHARTER OF RIGHTS |
|---|---|---|---|
| The government of Canada can limit rights and freedoms | 55% | 65% | 51% |
| The government of Canada CANNOT limit rights and freedoms | 30% | 24% | 33% |
| I don't know / I prefer not to answer | 15% | 11% | 15% |
| Total | 100% | 100% | 100% |

Source: Leger Survey for the Association for Canadian Studies, September 25–29, 2023.

## AMERICAN INFLUENCE ON CANADIAN VIEWS OF RIGHTS AND FREEDOMS

"Peace, order and good government" is a phrase that is used in Section 91 of Canada's *Constitution Act*. But the phrase serves as a counterpart of sorts to the U.S. constitutional mantra — written into the 1776 Declaration of Independence — of each individual's right to "life, liberty and the pursuit of happiness." Yet, whether one purport to be or not to be Charter literate, nearly all Canadians believe that everyone in the country has the right to life, liberty and the pursuit of happiness. On the surface it is entirely conceivable that such words are sufficiently innocuous that agreement with the phrase is not particularly worrisome. But the strong association of the phrase with American constitutional principles suggests a further degree of unfamiliarity with the Canadian constitution among Canadian citizens (see Table 6).

## WHICH RIGHTS DO CANADIANS THINK ARE MOST IN NEED OF PROTECTION?

Humphrey observed that the rights of minorities were the source of debate during the drafting of the UDHR, and ultimately it was decided not to use the term minorities in the Declaration. At that time, the national states that controlled the United Nations were more interested in assimilating their minorities — sometimes called nation-building —rather than in helping them retain their identities. With its 1982 Constitution, Canada attempted to break with a legacy of assimilation, although some would argue otherwise. Guarantees to language minorities and support for the preservation and promotion of the multicultural heritage of Canadians — as enshrined within the Charter — provide evidence of the direction to which the Charter aspired. Yet, when asked in 2023 which rights Canadians consider to be most in need of protection, they were less likely

## TABLE 6. I HAVE READ/NOT READ THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS; AND EVERYONE IN CANADA HAS/DOES NOT HAVE THE RIGHT TO LIFE, LIBERTY AND THE PURSUIT OF HAPPINESS

| EVERYONE IN CANADA HAS THE RIGHT TO LIFE, LIBERTY AND THE PURSUIT OF HAPPINESS | TOTAL | READ THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS | DID NOT READ THE CANADIAN CHARTER OF RIGHTS |
|---|---|---|---|
| Yes | 88% | 85% | 91% |
| No | 9% | 13% | 7% |
| I don't know / I prefer not to answer | 3% | 2% | 2% |
| Total | 100% | 100% | 100% |

Source: Leger Survey for the Association for Canadian Studies, September 25–29, 2023.

## TABLE 7. I HAVE READ/NOT READ THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS; AND RANK IN ORDER WHICH YOU THINK ARE MOST IN NEED OF PROTECTION IN CANADA

| OF THE FOLLOWING, PLEASE RANK IN ORDER WHICH YOU THINK ARE MOST IN NEED OF PROTECTION IN CANADA | TOTAL | READ THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS | DID NOT READ THE CANADIAN CHARTER OF RIGHTS |
|---|---|---|---|
| Freedom of expression/speech | 17% | 19% | 16.5% |
| The right to privacy | 14% | 11% | 15% |
| Gender equality | 13% | 11% | 13% |
| The right to vote | 12% | 11% | 13% |
| Protection from racial discrimination | 12% | 13% | 11% |
| Indigenous rights | 8% | 10% | 7% |
| Sexual orientation (2SLGBTQIA+) | 6% | 6% | 6% |
| Freedom of religion/conscience | 5% | 6% | 5% |
| Freedom of peaceful assembly | 5% | 5% | 4% |
| Minority language rights | 3% | 4% | 3% |
| Other/ I Don't know | 5% | 4% | 6% |

Source: Leger Survey for the Association for Canadian Studies, September 25–29, 2023.

to select rights that are directly associated with minority protections. The ACS-Leger survey sees freedom of expression and the right to privacy as the top answers of Canadians when asked what requires most protection. Indigenous and language minorities were lower on the list of Canadians' priorities. It is worth noting that the differences with respect to which rights need most protection do not give rise to noteworthy differences between those purporting to have read the Charter and those saying they haven't read it (see Table 7).

## CONCLUSION

The conclusions of the Leger-ACS survey raise questions about what might be described as Charter literacy, as well the state of education about human rights in the country. On some issues, respondents may be speaking to their preferences rather than to what is written in the Charter of Rights and Freedoms. To the extent that there is a link between knowledge about the Charter and a citizen's ability to defend their rights, the survey suggests a potential problem that would greatly benefit from further research. Canadians' lack of knowledge about human rights in Canada and elsewhere may also make them ill-equipped to meaningfully engage in debates about the many complicated rights issues affecting their lives and the overall well being of society. As an educator, it is safe to assume that John Humphrey would have endorsed efforts to expand collective knowledge about human rights and enhance thoughtful discussion about them.

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