

Preamble

The 'preamble' usually refers to the words that preface an act of Parliament or the legislatures. Here, we refer to the opening words contained in each of Canada's constitutional texts. Preambles typically are used to state the general object or purpose of a law.^[1] Unlike the provisions of a law, preambles are generally not intended to have any real force and effect. Still, judges occasionally will resort to the preamble to help in understanding the constitutional guarantees that follow.

The preamble to the *Constitution Act, 1867* contains four sentences. The most important declares that "the Provinces of Canada, Nova Scotia, and New Brunswick have expressed their Desire to be federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in principle to that of the United Kingdom."^[2] The modern *Constitution Act, 1982* has a short preamble, which states "Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law."^[3]

Writing in the late nineteenth century, the English legal scholar Albert Venn Dicey wrote that, "if preambles were intended to express anything like the whole truth," the 1867 preamble should have declared that it was a constitution similar in principle to that of the United States.^[4] Dicey saw more similarities between the U.S. and Canada - in its federal arrangement, difficulty of amendment, and necessity for judicial review - than between Canada and the United Kingdom.^[5] Canadian scholars responded that these were superficial resemblances. Rather, it was in the nature of Parliamentary government that Canada's constitution was similar in principle to the United Kingdom's.^[6]

Though the preambles likely were not intended to have much significance, they have become increasingly important. The Supreme Court of Canada suggested that the reference in the 1867 Act to "a Constitution similar in principle to that of the United Kingdom" is the foundation for Canada's implied bill of rights.^[7] The same phrase was invoked by the Court to secure independence for provincial court judges from provincial legislatures.^[8] The reference to "the rule of law" in the 1982 preamble, the Court has noted, reflects "an unwritten postulate which forms the very foundation of the Constitution of Canada."^[9] Though an abstract notion, it may "give rise to substantive legal obligations" that governments are bound to obey as they are other constitutional provisions.^[10]

^[1] Elmer A Dreidger, *The Composition of Legislation* (Ottawa: The Queen's Printer, 1957) at 93-94.

^[2] *Constitution Act, 1867* (UK) 30 & 31 Vict, c 3, reprinted in RSC 1985, App II, No 5.

^[3] *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

^[4] AV Dicey, *Introduction to the Study of the Law of the Constitution*, 5th ed (London: MacMillan, 1897) at 157.

[5] *Ibid* at 157-160.

[6] WHP Clement, *The Law of the Canadian Constitution*, 3rd ed (Toronto: Carswell, 1916) at 335.

[7] *Reference Re Alberta Statutes*, [1938] SCR 100, [1938] 2 DLR 81 at 145-146; *Saumur v Quebec (City of)*, [1953] 2 SCR 299, [1953] 4 DLR 641 at 330; *Switzman v Elbling*, [1957] SCR 285, 7 DLR (2d) 337 at 306, 326-328; Peter C Oliver, ““A Constitution Similar in Principle to that of the United Kingdom”: The Preamble, Constitutional Principles, and a Sustainable Jurisprudence” 224-226.

[8] *Reference re Remuneration of Judges of the Provincial Court (PEI)*, [1997] 3 SCR 3, 150 DLR (4th) 577 at paras 94, 96, 99-105.

[9] *Reference re Manitoba Language Rights*, [1985] 1 SCR 721, 19 DLR (4th) 1 at para 66.

[10] *Reference re Secession of Quebec*, [1998] 2 SCR 217, 161 DLR (4th) 385 at para 54.