FROM:

Psam Frank

TO:

hon. David Eby, Q.C.
BC Attorney General
Room 232 Parliament Buildings
Victoria, BC V8V 1X4
email: AG.Minister@gov.bc.ca
phone: (250) 387-1866

Honourable Minister,

I previously contacted the office of the BC Attorney General in 2014 regarding a grievance I have with the Crown. I have copied below two paragraphs of the reply I received.

“This letter constitutes a specific refusal by the Government of British Columbia and any other officials of the Government of British Columbia to whom your correspondence may refer to accept, agree to or be bound by the alleged legal outcomes asserted in that correspondence. It also constitutes a general reservation of the rights of the Government of British Columbia and its officials in response to your correspondence.

“That refusal and reservation of rights also apply to anything in or arising from any similar correspondence that you may have sent to officials of the Government of British Columbia in the past, or that you may send to them in the future, without any need for future response by any such official.”

After a great deal of further work trying to find ways to have my grievance addressed, I have now written a document which I am considering having published in the BC Gazette to illustrate why I believe that it is unlawful for the government to show no concern for my grievance.

Given that the previous letter I sent to the Attorney General was received by your predecessor, Suzanne Anton, I thought perhaps the status of the Justice Ministry’s position on my grievance might never have been brought to your attention. Perhaps you might like to assess my grievance before it is published in case you see merit to it that your predecessor did not.

I have included in the following pages a full description of my grievance and I hope to hear a response from you if you agree with my assertion that the previous Attorney General’s response was not in accordance with the law.

Psam Frank

Proposed BC Gazette Submission

This is notice to all British Columbians that federal and provincial governments have refused to adhere to the law, and continue to do so. To compel these governments to cease their violation of the law has been estimated by a professional constitutional lawyer (Monique Pongracic-Speyer of Ethos Law Group, in a discussion on December 8, 2016) to require between one hundred thousand and one million dollars in legal expenses to bring the matter before the courts so that the government may be ordered to do so.

This is also a request for assistance from anybody who believes that the denial of constitutional rights is not something for which anybody should need to have money to seek remedy.

Following is a description of how the law is being violated by these governments.

Section 3 of the *Constitution Act, 1982* states that "[e]very citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein." Also referred to herein as "section 3 Charter rights".

An electoral system has been developed and used for nearly ten years in which these rights are available to be exercised at all times. Meanwhile, the electoral system used by federal and provincial governments gives citizens the ability to exercise these rights once every several years and the rest of the time these rights are not available to be exercised.

Section 24 of the *Constitution Act, 1982* states that anyone whose rights or freedoms have been denied or infringed may apply to a court of competent jurisdiction to receive a remedy that "the court considers appropriate and just in the circumstances".

The Supreme Court of Canada (SCC) has stated in *Sauvé v Canada* [para 11] that it is the court's "consistent view that rights shall be defined broadly and liberally". It is more broad and liberal to say that the periods of time between elections are periods of denial of section 3 Charter rights, as per section 24 of the *Constitution Act, 1982* than it is to say that during the periods of time between elections, the rights do not exist, as might be argued by people who prefer section 3 Charter rights to be denied for periods of time.

Section 1 of the *Constitution Act, 1982* (which shall be referred to as "s.1" herein) states that limits may be imposed upon the constitutional rights and freedoms of Canadians if those limits "can be demonstrably justified in a free and democratic society", but other than that, the Constitution "guarantees" them.

The SCC has stated in *R v Oakes* [para 63] that s.1 "states explicitly the exclusive justificatory criteria (outside of s. 33 of the *Constitution Act, 1982*) against which limitations on those rights and freedoms must be measured". Section 33 of the *Constitution Act, 1982* —known as "the notwithstanding clause"— states that it is applicable only to sections 2 and 7 to 15 of the *Canadian Charter of Rights and Freedoms*. Section 3 is not included. Therefore s.1 is the exclusive justificatory criteria. If it is not satisfied then the government must by law fulfil its guarantee to provide citizens a means to have the sustained periods of denial of their section 3 Charter rights ceased.

The means to make section 3 Charter rights available to all citizens to exercise at any time that they each wish is known as an *interactive electoral system* (IES). In the IES, each voter has one vote that may be cast for any candidate at any time that the voter wishes and changed to any other candidate at any time after that, with no deadline or finish date.

If a citizen is a member of an organization that uses the IES to choose its legislative representatives, and the citizen is allowed to pay their taxes to that organization, instead of to governments that deny section 3 Charter rights for periods of time, then that citizen would no longer be denied their section 3 Charter rights in relation to decisions about how their taxes are to be spent. If no more appropriate and just remedy can be suggested, then unless the justificatory criteria stated in s.1 can be fulfilled, this remedy should be adhered to by the government, and if it refuses to, then the courts should — according to "the supreme law of Canada", as the Constitution is described in section 52 of the *Constitution Act, 1982* — order the government to do so.

The SCC stated in *R v Oakes* [para 69] that the government, in order to show that a limit on a constitutional right "can be demonstrably justified in a free and democratic society" as per s.1, must state an objective that is achieved by the limit on the right, and that it is "necessary, at a minimum, that an objective relate to concerns which are pressing and substantial in a free and democratic society before it can be characterized as sufficiently important".

The SCC stated further in *R v Oakes* [para 70] that a limit on a constitutional right, in order to satisfy s.1, must satisfy three components of a "proportionality test": (1) it "must be rationally connected to the objective", (2) it "should impair 'as little as possible' the right or freedom in question", and (3) "there must be a proportionality between the effects of the measures which are responsible for limiting the Charter right or freedom, and the objective which has been identified as of 'sufficient importance'".

The SCC stated in *R v Oakes* [para 67] that the standard of proof that must be achieved to satisfy s.1 is "proof by a preponderance of probability", the civil standard, as opposed to the criminal standard, "proof beyond a reasonable doubt". The SCC also stated in *R v Oakes* [para 66] that "[t]he onus of proving that a limit on a right or freedom guaranteed by the Charter is reasonable and demonstrably justified in a free and democratic society rests upon the party seeking to uphold the limitation".

One further relevant quote from the SCC in *Sauvé v Canada* [para 59] is that "[w]hen basic political rights are denied, proof of additional harm is not required". Even if being denied the right to vote for several years at a time does no harm at all to Canadians, the supreme law of the nation still requires the government to either prove that the denial of this right is justifiable or have its denial ceased.

After ten years of usage of the IES in an organization with several dozen members, no objective has been observed to be compromised by making the right to vote available to all voters at all times as compared to any organization of similarly sized membership that denies this right for sustained periods of time. Clearly if there is any objective achieved by denying section 3 Charter rights for periods of time, it would not become apparent until the size of the electorate using the IES were to reach a certain threshold.

If a measure to provide citizens a means to have the periods of denial of their section 3 Charter rights ceased were in any way irreversible, then certainly if the measure were implemented, it would be possible that the number of citizens choosing to avail themselves of that measure could increase to the point that the threshold were reached, and then the objective would be irreversibly compromised. Therefore, if a measure is irreversible, then it is rationally connected to an objective, even if available observations do not provide a preponderance of probability that the objective is achieved, to withhold the measure and uphold the continuity of the denial of the right or freedom in question.

The measure being asked is that citizens of Canada who are members of an organization that uses the IES be allowed to have their taxes received by that organization instead of conventional governments that deny section 3 Charter rights for sustained periods of several years at a time. This measure is in no way irreversible. If the measure is provided and the number of citizens availing themselves of the measure increases to the extent that it becomes apparent that usage of this system by a sufficiently large electorate reveals a preponderance of evidence that some objective achieved by the denial of section 3 Charter rights for periods of time is compromised when those denials are ceased, then those citizens can be required to resume paying their taxes to existing conventional governments and the money they have previously paid to the organization that uses the IES can be repossessed.

If the measure is reversible, and the evidence thus far that the IES compromises any pressing and substantial objectives falls short of a preponderance, then the SCC's requirement that a right should be impaired as little as possible should compel the government to provide the remedy. Therefore any member of government who is made aware of this denial and the suggested remedy should, according to the supreme law of Canada, exercise whatever capacities that are endowed in their office to participate in the procurement of this remedy for citizens who desire it. Failure to do so would be in contravention of the law.

In 2014, a letter was sent to the BC Attorney General outlining the denials of section 3 Charter rights and asking for some form of remedy to these denials. The Attorney General's response was dated February 14, 2014. Two paragraphs of this response are copied below.

"This letter constitutes a specific refusal by the Government of British Columbia and any other officials of the Government of British Columbia to whom your correspondence may refer to accept, agree to or be bound by the alleged legal outcomes asserted in that correspondence. It also constitutes a general reservation of the rights of the Government of British Columbia and its officials in response to your correspondence.

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The BC *Attorney General Act*, in section 2, states that the Attorney General:

- "is her Majesty's Attorney General for British Columbia"
- "is the official legal adviser of the Lieutenant Governor and the legal member of the Executive Council"
- "must see that the administration of public affairs is in accordance with law"

If the person with that job description is not willing to uphold the law nor even explain in any detail how the allegations of unlawful conduct by the government are lacking in merit, then it appears as if nobody in the Province is remiss in failing to trust the government. A government that forces citizens to follow laws and yet does not follow the law itself is firmly grounded in hypocrisy, something not typically regarded as an ethical nor honourable trait. The Attorney General's response shows that the government is knowingly breaking the law and failing at its guarantee, as opposed to inadvertently.

Now here is a description of the organization that is asking for this remedy. This organization uses the IES to choose its legislative representatives: the Interactive Sovereign Society (ISS). The usage of the word "sovereign" in the society's name originates in large part from the fact that most governments in the world today — and most certainly the government of Canada, given the usage of the words "free and democratic society" in s.1 in the Constitution— base their claim of sovereignty on being democratic. Therefore an organization that is more democratic than the government of Canada has more claim to sovereignty, based on the Constitution of Canada, than the existing de facto government of the nation. This can be further ascertained by looking at several other SCC quotes from its *Reference re Secession of Quebec*, listed below.

> "Democracy is a fundamental value in our constitutional law and political culture." [para 61]
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> "It is, of course, true that democracy expresses the sovereign will of the people." [para 66]
>
> "[A] sovereign people exercises its right to self-government through the democratic process." [para 64]
>
> "[D]emocracy is fundamentally connected to substantive goals, most importantly, the promotion of self-government." [para 64]

> “[A] functioning democracy requires a continuous process of discussion.” [para 68]
>
> “‘[T]he Canadian tradition’, the majority of this Court held in *Reference re Provincial Electoral Boundaries (Sask.)*, [1991] 2 S.C.R. 158, at p. 186, is ‘one of evolutionary democracy moving in uneven steps toward the goal of universal suffrage and more effective representation’. Since Confederation, efforts to extend the franchise to those unjustly excluded from participation in our political system — such as women, minorities, and aboriginal peoples — have continued, with some success, to the present day.” [para 63]

If the government of Canada includes principles of democracy in the foundations of its claim of sovereignty, then by that reasoning, the ISS’s sovereignty may have superior foundations. Certainly giving citizens the ability to exercise their democratic rights at any time that they each wish instead of only when occasionally given permission by authorities can be considered a more democratic form of collective mutual legislation.

An additional foundation for the usage of the word “sovereign” in the name of the ISS is that the ISS Constitution claims that the ISS is “founded upon the principle of the sovereignty of the individual”. This principle can be seen to have some legitimacy in Canada by looking at another quote from the SCC, in *Reference re Secession of Quebec* [para 67]: “[t]he consent of the governed is a value that is basic to our understanding of a free and democratic society”. A person who denies consent to an existing government and asks instead to be governed by an alternative complete and concise method of writing and adjudicating laws, one that is more democratic than the presently imposed government, is exercising a measure of personal sovereignty and, in so doing, respecting the individual sovereignty of one’s fellow resident’s in one’s land by supporting their greater enfranchisement and inclusion in the legislative process.

One further illustration of the legitimacy of the principle of individual sovereignty in Canada is another quote from the SCC’s *Sauvé v Canada* decision [para 44]: “laws command obedience because they are made by those whose conduct they govern”. By this reasoning, if one form of governance offers a person more say in how laws are made than another, then the latter form of governance has less ethical justification to command a person into obedience of its laws than the former. The ability to participate in a law making process is a manifestation of one’s individual sovereignty. That’s what sovereignty is: the ethical right to make

laws. Requiring a government to give people a say in how their laws are made is an ethical recognition of people's sovereignty, and a group of people cannot have sovereignty if each of them does not have some measure of sovereignty as an individual.

If any other organization exists, or is created, in Canada that uses a form of election in which section 3 Charter rights are always available to be exercised, then the ISS has already made it known that its members do not contest that they may be required to give their taxes to that alternative organization instead of the ISS as a remedy for denials of section 3 Charter rights, depending upon whether another organization has more consistency with the Constitution of Canada than the ISS in its composition or architecture. However, until another such organization is brought forward, the only known remedy for the sustained periods of denial of section 3 Charter rights is for citizens of Canada to be provided the opportunity to join the ISS and give their taxes to the ISS.

The ISS has also made it clear that citizens of Canada may become members of the ISS and yet still give their taxes to the government of Canada if they prefer, thus giving them a say in how ISS members' taxes are spent and yet allowing them to continue to give their taxes to a government that is more consistent with their own personal wishes about how their taxes are used. Such members would not be required to contribute any funds whatsoever to the ISS.

Federal and provincial governments in Canada refuse to abide by the law, as illustrated herein, and the people who object to this violation do not have the funds to summon the professional legal representation necessary to bring the matter before the courts so that the government can be ordered to obey the law.

The simplest way to help get the government to fulfil its guarantee, as required by the supreme law, is to become a member of the ISS, which requires no fee and no obligation beyond viewing the principles of the ISS and assuring that they are consistent with the lawful manner in which you conduct yourself, and if not, ask the ISS to amend its principles to meet your satisfaction. The full agreement of becoming an ISS member can be found at www.issociety.org by clicking on the "constitution, principles, and charter" tab, or by contacting the chief assistant to the ISS Secretary by email at psamfrank@gmail.com or phone 604-765-1496, or by contacting the ISS Secretary by mail:

ISS Secretary
#105 - 2929 Nootka St
Vancouver, BC V5M 4K4

Another way that you would be helping in this cause is to say out loud to people, in conversation, that you know beyond any doubt that the government of Canada is breaking the law, and that you can explain how.

Some final words for you to contemplate are from the most recent SCC decision involving section 3 Charter rights: Frank v Canada, from 2019, right at the beginning of the reasons the SCC gives for its decision: “any limit on the right to vote must be carefully scrutinized and cannot be tolerated without a compelling justification”. That’s what the “supreme law” says, according to the Supreme Court of Canada: **any limit**. How should any other law in Canada be expected to be upheld if that one isn’t?