IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF GUYANA

REGULAR JURISDICTION

PROCEEDINGS FOR RELIEF UNDER THE CONSTITUTION

2019-HC-DEM-CIV-FDA

BETWEEN

COMPTON HERBERT REID

Applicant

-and-

1. **DR BARTON SCOTLAND, Speaker of the National Assembly of Guyana**
2. **CHARRANDAS PERSAUD**
3. **ATTORNEY GENERAL**

Respondents

AFFIDAVIT OF SELWYN ANDREW PIETERS

I, SELWYN ANDREW PIETERS, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I have personal information and reasonable beliefs to the matters herein deposed to.

2. I am a Canadian citizen and resident of the Province of Ontario.

3. I have been a barrister and solicitor in the Province of Ontario since February 2005, in good standing.

4. I have also been a member of the Guyana Bar since July 6, 2012 and the Trinidad and Tobago Bar since July 5, 2012, in good standing.

5. As it relates to the *Citizenship Act*, I have litigated the leading case on citizenship and the required oath: McAteer v. Canada (Attorney General) 2014 CarswellOnt 10955, 2014 ONCA 578, 121 O.R. (3d) 1, 242 A.C.W.S. (3d) 772, 376 D.L.R. (4th) 258 (ONCA). A copy is attached hereto as Exhibit "A".

6. Applicants for Canadian citizenship must take a citizenship oath in order to become Canadian citizens.[1] The certificate of citizenship does not become effective until the oath is taken.[2]

7. Section 24 of the *Citizenship Act* and the associated schedule prescribe that where a person is required under the Act to take the oath of, the person shall swear or affirm:

> I swear (or affirm) that *I will be faithful and bear true allegiance to her Majesty Queen Elizabeth the Second, Queen of Canada, Her Heirs and Successors*, and that I will faithfully observe the laws of Canada and fulfill my duties as a Canadian citizen.[3]

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[1] *Citizenship Act*, R.S.C. 1985, c. C-29 (hereinafter, the "*Citizenship Act*"), s. 3(1)(c).
[2] *Ibid.*, s. 12(3).
[3] *Ibid.*, s. 24 and Schedule.

8. Applicants for Canadian citizenship who are in Canada are normally required to take the oath in front of a citizenship judge.[4]

9. Citizenship judges must follow procedures that "emphasize the significance of the ceremony as a milestone in the lives of citizens" and "administer the oath of citizenship with dignity and solemnity, allowing the greatest possible freedom in the religious solemnization or the solemn affirmation thereof".[5]

10. The applicant must be seen to take the citizenship oath.

11. After taking the oath, applicants must sign a certificate certifying that they have taken the oath.[6]

12. Any person who "for any purposes of [the Citizenship] Act makes any false misrepresentation, commits fraud or knowingly conceals any material circumstances" is guilty of an offence that is punishable by a fine and/or imprisonment.[7]

13. Persons born in Canada or born outside of Canada to a Canadian parent are not required to take the citizenship oath.[8]

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[4] *Citizenship Regulations*, SOR/93-246 (hereinafter, the "*Citizenship Regulations*"), ss. 19(1)-(2) and 20(1).
[5] *Ibid.*, s. 17(1)(a)-(b).
[6] *Citizenship Regulations*, s. 21.
[7] *Citizenship Act*, s. 29(2)
[8] *Ibid.*, s. 3(1)(a) and (b).

14. Exemptions from taking the citizenship oath may be granted to persons who are minors and to persons who cannot understand the significance of the oath for reasons of mental disability. No other exemptions are explicitly provided in the *Citizenship Act*.[9]

15. Canadians with multiple or dual citizenship are allowed to sit in the Parliament of Canada also known as the House of Commons. Attached as Exhibit "B" is an article from CBC News, dated December 10, 2017 online <https://www.cbc.ca/news/politics/dual-citizenship-mps-senators-parliament-australia-1.4439522> (date accessed: January 3. 2019)

16. **I MAKE THIS** affidavit for the purpose of providing evidence concerning the application herein and for no other or improper purpose.

Sworn before me at the City of Toronto
in the Province of Ontario, on this
3rd day of January, 2019

.....
Christopher Steinberg,
Lawyer & Notary Public
Commissioner for Taking Affidavits

JAMES CHRISTOPHER STEINBERG NOTARY PUBLIC ONTARIO

.....
Selwyn Andrew Pieters, Lawyer & Notary Public

[9] *Ibid.*, s. 5(3)(b) and (c).

This is Exhibit ___"A"___ *referred to in the Affidavit*

of **SELWYN ANDREW PIETERS**

sworn before me, this ___3rd___

day of ___January___ ***2019***

C. Steinberg

Christopher Steinberg

A Commissioner for taking Affidavits

2014 ONCA 578
Ontario Court of Appeal

McAteer v. Canada (Attorney General)

2014 CarswellOnt 10955, 2014 ONCA 578, [2014] O.J. No. 3728, 121 O.R. (3d) 1, 242 A.C.W.S. (3d) 772, 27 Imm. L.R. (4th) 216, 317 C.R.R. (2d) 106, 324 O.A.C. 163, 376 D.L.R. (4th) 258

Michael McAteer, Simone E.A. Topey and Dror Bar-Natan, Applicants (Appellants/Respondents by way of cross-appeal) and The Attorney General of Canada, Respondent (Respondent/Appellant by way of cross-appeal)

K.M. Weiler, P. Lauwers, G. Pardu JJ.A.

Heard: April 8, 2014
Judgment: August 13, 2014
Docket: CA C57775

Proceedings: affirming *McAteer v. Canada (Attorney General)* (2013), 2013 CarswellOnt 13165, 290 C.R.R. (2d) 332, 20 Imm. L.R. (4th) 121, 117 O.R. (3d) 353, 2013 ONSC 5895, E.M. Morgan J. (Ont. S.C.J.)

Counsel: Peter Rosenthal, Selwyn **Pieters**, Reni Chang, for Appellants
Kristina Dragaitis, Sharon Guthrie, for Respondent

Subject: Constitutional; Immigration; Human Rights

Related Abridgment Classifications

For all relevant Canadian Abridgment Classifications refer to highest level of case via History.

Headnote

Constitutional law --- Charter of Rights and Freedoms — Nature of rights and freedoms — Freedom of expression — Nature and scope of expression

Applicants were permanent residents of Canada who wished to become Canadian citizens — Applicants were citizens of Ireland, Jamaica and Israel respectively — Under Citizenship Act, person over 14 years old must take oath of citizenship in order to become citizen — Applicants objected to oath to Queen — Applicants argued that oath violated freedom of expression, and freedom of religion and equality under Canadian Charter of Rights and Freedoms, and that oath did not constitute reasonable limit on those rights under s. 1 of Charter — Applicants argued that requirement to swear an oath with which they did not agree curtailed their expression — Applicants brought unsuccessful application under Charter — Court found that guarantee of freedom of expression in s. 2(b) of Charter was prima facie infringed by statutory requirement that applicants recite oath to Queen — However, court also found that Queen had to be understood in context of equality-protecting Canadian institution rather than aristocratic English overlord — Applicants characterized citizenship oath in terms of traditional characterization and interpreted oath in literalist manner — Court held that applicants' beliefs about Queen reflected fundamental misapprehension — Court concluded that oath to Queen was form of compelled speech that infringed applicants' freedom of expression, but was reasonable limit on right of expression and was saved by s. 1 of Charter — Applicants appealed and Crown cross-appealed — Appeal dismissed and cross-appeal allowed — Applicants' rights were not violated — And even if rights were violated, s. 1 analysis was conducted properly and oath would be saved under s. 1.

Constitutional law --- Charter of Rights and Freedoms — Nature of rights and freedoms — Freedom of conscience and religion

Table of Authorities

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Canada (House of Commons) v. Vaid (2005), 2005 SCC 30, 2005 CarswellNat 1272, 2005 CarswellNat 1273, 333 N.R. 314, 41 C.C.E.L. (3d) 1, 252 D.L.R. (4th) 529, 28 Admin. L.R. (4th) 1, [2005] 1 S.C.R. 667, 2005 C.L.L.C. 230-016, 135 C.R.R. (2d) 189 (S.C.C.) — considered

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s. 1 — considered

s. 2(a) — considered

s. 2(b) — considered

s. 2(c) — considered

s. 2(d) — considered

s. 12 — considered

s. 15 — considered

s. 15(1) — considered

s. 27 — considered

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s. 3(1)(c) — considered

s. 5(1)(e) — referred to

s. 12(3) — considered

s. 24 — considered

s. 32(2) — referred to

Sched. — referred to

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s. 9 — considered

s. 17 — considered

s. 91 — considered

s. 91 ¶ 25 — considered

s. 92 — considered

s. 128 — considered

s. 129 — considered

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APPEAL by applicants and CROSS APPEAL by Crown from judgment reported at *McAteer v. Canada (Attorney General)* (2013), 2013 ONSC 5895, 2013 CarswellOnt 13165, 117 O.R. (3d) 353, 20 Imm. L.R. (4th) 121, 290 C.R.R. (2d) 332 (Ont. S.C.J.).

K.M. Weiler J.A.:

I. Overview

1 Permanent residents of Canada over 14 years old who wish to become Canadian citizens are required to swear an oath or make an affirmation[1]: see *Citizenship Act*, R.S.C. 1985, c. C-29 (the "Act") s. 3(1)(c). Subject to limited discretionary exceptions, s. 12(3) of the Act provides that a certificate of citizenship issued by the Minister of Citizenship and Immigration does not become effective until the oath is taken. Section 24 of the Act requires a person to take the oath in the form set out in the Schedule to the Act as follows:

> I swear (or affirm) that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Queen of Canada, Her Heirs and Successors, and that I will faithfully observe the laws of Canada and fulfil my duties as a Canadian citizen.

2 The appellants object to the following portion of the oath: "I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Queen of Canada, Her Heirs and Successors."

3 The appellants assert that the requirement in the Act to swear or affirm allegiance to the Queen in order to become a Canadian citizen is a violation of their rights under ss. 2(a) (freedom of conscience and religion), 2(b) (freedom of expression), and 15(1) (equality) of the *Charter of Rights and Freedoms*. They submit that the government cannot justify any such violation as a reasonable limit in a free and democratic society under s. 1. If successful, they seek a declaration making the impugned portion of the citizenship oath optional.

4 The application judge dismissed the appellants' application. He held that the requirement to swear an oath to the Queen did not violate their freedom of religion or equality rights and, although he found that there was a violation of the appellants' right to freedom of expression, he held it was justified under s. 1 of the *Charter*.

5 The appellants appeal the dismissal of their application and the respondent, the Attorney General of Canada, cross-appeals the finding that the oath violates the appellants' right to freedom of expression.

6 For the reasons that follow I would dismiss the appeal and allow the cross-appeal. The appellants' arguments are based on a literal "plain meaning" interpretation of the oath to the Queen in her personal capacity. Adopting the purposive approach to interpretation mandated by the Supreme Court of Canada, leads to the conclusion that their interpretation is incorrect because it is inconsistent with the history, purpose and intention behind the oath. The oath in the Act is remarkably similar to the oath required of members of Parliament and the Senate under *The Constitution Act*, 1867. In that oath, the reference to the Queen is symbolic of our form of government and the unwritten constitutional principle of democracy. The harmonization principle of interpretation leads to the conclusion that the oath in the *Act* should be given the same meaning.

7 The appellants' incorrect interpretation of the meaning of the oath cannot be used as the basis for a finding of unconstitutionality. The approach to analyzing claims under s. 2(b) was set out by the Supreme Court in *Irwin Toy Ltd. c. Québec (Procureur général)*, [1989] 1 S.C.R. 927 (S.C.C.), and requires the court to determine: 1) whether what is in issue is expression; 2) whether the purpose is to compel expression; and 3) whether there is an effect on expression that warrants constitutional disapprobation. Applying this approach, there is no issue that the oath is expression. I hold that the purpose of the oath is not to compel expression but to obtain a commitment to our form of government from those wishing to become Canadian citizens. Although the oath has an effect on the appellants' freedom of expression, constitutional disapprobation is not warranted. Thus, there is no violation of the appellants' freedom of expression. In the alternative, if there is a violation or the appellants' right to freedom of expression, it is justified under s. 1 of the *Charter*. There is no violation of the appellants' right to freedom of religion and freedom of conscience because the oath is secular and is not an oath to the Queen in her personal capacity but to our form of government of which the Queen is a symbol. Nor is the oath a violation of the appellants' equality rights when the correct approach to statutory interpretation is applied.

II. The Oath and History of the Proceedings

1. The appellants

8 Mr. Charles Roach, who initiated the present application and passed away in October 2012, was a committed republican who believed that to swear fealty to a hereditary monarch would violate his belief in the equality of human beings and his opposition to racial hierarchies. The appellant Mr. Michael McAteer is a committed republican who deposes that "taking an

oath of allegiance to a hereditary monarch who lives abroad would violate [his] conscience, be a betrayal of [his] republican heritage and impede [his] activities in support of ending the monarchy in Canada." He further deposes that taking an oath to the Queen perpetuates a class system and is anachronistic, discriminatory and not in keeping with his beliefs of egalitarianism and democracy. Similarly, the appellant Mr. Dror Bar-Natan states that the oath would violate his conscience because it is a symbol of a class system.

9 The appellant Ms. Simone Topey is a Rastafarian who regards the Queen as the head of Babylon. She deposes that it would violate her religious beliefs to take any kind of oath to the Queen. She further deposes that on account of the oath, she would feel bound to refrain from participating in anti-monarchist movements. The evidence of Mr. Howard Gomberg, a former plaintiff in these proceedings, is that taking an oath to any human being is contrary to his conception of Judaism.

10 In these reasons, I will, for the most part, not refer to the individual appellants but refer to them as a group, "the appellants".

2. Prior Roach decisions

11 This is not the first time that Mr. Roach has advanced a claim that the oath of citizenship violates his *Charter* rights. In *Roach v. Canada (Minister of State for Multiculturalism & Culture)*, [1992] 2 F.C. 173 (Fed. T.D.), Joyal J. upheld the prothonotary's decision striking out Mr. Roach's claim that the oath of citizenship violated his right to freedom of religion, freedom of expression, and was contrary to his equality rights under s. 15 of the *Charter* — the very claims advanced here.[2]

12 Mr. Roach's further appeal to the Federal Court of Appeal was dismissed by MacGuigan J.A. on behalf of himself and McDonald J.A., with Linden J.A. dissenting in part: [1994] 2 F.C. 406 (Fed. C.A.), leave to appeal to S.C.C. denied by a three-member panel of the F.C.A., (1994), 113 D.L.R. (4th) 67n (Fed. C.A.).

13 In his reasons, MacGuigan J.A. noted that the monarch as Head of State is recognized in s. 9 of the *Constitution Act, 1867*. However, because Canada is a constitutional monarchy, the Queen does not rule personally; rather, the Queen can be said to "reign" by constitutional convention, through the advice of ministers. He found that taking an oath to the Queen in no way infringed on freedom of expression or freedom of religion. He concluded, at pp. 415-16:

> Not only are the consequences [of swearing an oath of allegiance to the Queen] as a whole not contrary to the Constitution, but it would hardly be too much to say that they are the Constitution. They express a solemn intention to adhere to the symbolic keystone of the Canadian Constitution as it has been and is, thus pledging an acceptance of the whole of our Constitution and national life. The appellant can hardly be heard to complain that, in order to become a Canadian citizen, he has to express agreement with the fundamental structure of our country as it is.

14 Dissenting in part, Linden J.A. held that it was not plain and obvious that Mr. Roach could not succeed in his claims under ss. 2(b), 2(c), and 15(1) of the *Charter*. He therefore would have allowed the claim to proceed on these bases.

3. The history of the present application

15 The present application was initiated as an application under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6., for a remedy under the *Canadian Charter of Rights and Freedoms* pursuant to rule 14.05(3)(g.1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

16 The respondent moved to strike out or stay the application on three grounds:

1. There was no reasonable cause of action;

2. The proposed action was an abuse of process because the Federal Court of Canada had already disposed of the issue; and

3. In the alternative, the Federal Court of Canada was the more appropriate forum.

17 The motion judge, Belobaba J., dismissed the motion. First, having regard to the fact that the Crown did not press the point that the claim was completely unmeritorious during oral argument, and taking into consideration the dissent of Linden J.A. in the Federal Court of Appeal, he held that the claim disclosed a reasonable cause of action. Second, he rejected the argument that the application was an abuse of process partly on the basis that under the *Class Proceedings Act*, there could be dozens or hundreds of class members, the evidence would be different, and, having regard to the more than fifteen years that had passed since the prior proceeding, the *Charter* arguments would be different or at least more refined. Third, although the application concerned a challenge to the *Citizenship Act*, he held the application did not raise issues within the particular expertise of the Federal Court of Canada but was a straightforward constitutional challenge to a provision of a federal law.

18 The respondent's attempts to overturn the decision of Belobaba J. were unsuccessful. Leave to appeal to the Divisional Court was refused: (2007), 230 O.A.C. 83 (Ont. Div. Ct.). An appeal to this court was dismissed: [2008] O.J. No. 584 (Ont. C.A.).

19 In 2009, Mr. Roach moved to certify the class proceeding: *Roach v. Canada (Attorney General)* (2009) (Ont. S.C.J.). Cullity J. refused the motion and directed that an individual proceeding for declaratory relief would be a preferable procedure for resolving the common issues.

20 The appellants then brought their *Charter* challenge in the present application, which came before Morgan J. The application judge concluded that although there was a violation of s. 2(b), it was saved under s. 1. He found that there was no violation of s. 2(a) or s. 15. In reaching these conclusions, the application judge carefully considered the evolution of the Queen's role as Head of State and the history of the oath. I will refer to his reasons on each of the *Charter* issues in greater detail as part of my analysis of the issues on appeal.

III. The Issues and Standard of Review

21 The four issues raised by the parties on this appeal are:

1. Does the oath violate freedom of expression under s. 2(b)?

2. Does the oath violate freedom of conscience or religion under s. 2(a)?

3. Does the oath violate the right to equality under s. 15(1)?

4. If there are *Charter* violations, are they saved under s. 1?

22 The standard of review is correctness.

IV. Discussion of the Meaning of the Oath

23 Both before the application judge and on appeal, much of the argument focused on the meaning of the oath. As the meaning of the oath is central to the proper analysis of the appellants' *Charter* claims, I will consider this question before turning to the main issues raised by the appeal and cross-appeal.

1. The appellants' argument as to the meaning of the oath

24 The appellants submit that the plain meaning of the words "Her Majesty Queen Elizabeth the Second, Queen of Canada, Her Heirs and Successors" expresses allegiance to the Queen as an individual. They claim that the notion of personal fidelity to this foreign monarch is antiquated, undemocratic and elitist in that it perpetuates hereditary privilege and is contrary to their conception of equality. For similar reasons, they object to pledging allegiance to the Queen's heirs and successors, even if those successors prove to be benevolent rulers or never become head of state at all.

25 They assert that the requirement that the Queen be Anglican makes the oath supportive of one religion to the exclusion of all others, and that they are constrained by their religious or conscientious beliefs from swearing an oath to any person or to a foreign monarch. They further submit that the oath is antithetical to minorities' identities and rights and is a divisive message forced into the mouths of those wishing to become Canadians. The appellants also assert that the oath is political belief discrimination under s. 15 of the *Charter* and that it discriminates against them on account of their non-citizen status, place of national origin and religious beliefs.

26 The appellants have sworn affidavits attesting to their subjective interpretations of the oath. They assert that if they took the oath, they would feel constrained from advancing their goal of abolishing Canada's constitutional monarchy in favour of a republic.

27 If the appellants' interpretation of the meaning of the oath to the Queen is accepted, it will go a long way towards holding that their *Charter* rights have been violated. If, on the other hand, the court rejects the appellants' interpretation, as did the application judge, the opposite conclusion is equally true.

2. A purposive approach to interpretation is required

28 The appellants take a "plain-meaning" approach to interpretation. At the same time, they fairly acknowledge that some

courts have suggested that this is not the correct approach. The current state of the law recognizes that meaning flows at least partly from context and that a statute's purpose is an integral element of that context: see Pierre-André Côté, *The Interpretation of Legislation in Canada*, 3rd ed. (Scarborough: Carswell, 2000), at p. 387.

29 The question as to how a statutory provision should be interpreted has been answered definitively by the Supreme Court of Canada. On numerous occasions the court has adopted the approach to statutory interpretation espoused by E.A. Dreidger as the only approach, namely:

> [T]he words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

See *Rizzo & Rizzo Shoes Ltd., Re*, [1998] 1 S.C.R. 27 (S.C.C.), at para. 21; *NAV Canada c. Wilmington Trust Co.*, 2006 SCC 24, [2006] 1 S.C.R. 865 (S.C.C.), at para. 36; *Xeni Gwet'in First Nations v. British Columbia*, 2014 SCC 44, [2014] S.C.J. No. 44 (S.C.C.), at para. 108.

30 Recently, when the Supreme Court of Canada adopted the "plain meaning" of the text in the *Reference re Supreme Court Act, R.S.C. 1985 (Canada)*, 2014 SCC 21, [2014] S.C.J. No. 21 (S.C.C.), it did so because the majority's opinion was that the underlying purpose of s. 6 was consistent with the plain meaning of the text. The majority held, at para. 48:

> Section 6 reflects the historical compromise that led to the creation of the Supreme Court. Just as the protection of minority language, religion and education rights were central considerations in the negotiations leading up to Confederation, the protection of Quebec through a minimum number of Quebec judges was central to the creation of this Court. A purposive interpretation of s. 6 must be informed by and not undermine that compromise.
>
> [Citations omitted.]

31 As this statement indicates, in determining the intention of Parliament, the history that led to the creation of the provision informs a purposive approach to interpretation. Further, in determining parliamentary intent, courts are reluctant to accept interpretations that violate the notions of rationality, coherence, fairness or other legal norms: Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed. (Markham: LexisNexis, 2008).

32 A "plain-meaning" approach to interpretation is inappropriate because it fails to recognize the history and the context in which the oath exists in this country. As I will discuss, these factors point to a much different understanding of the oath than the one advanced by the appellants and leads to the conclusion that their interpretation is inconsistent with the history, purpose and intention behind the oath.

a. Historical perspective on the oath to the Queen

33 The appellants argue that the Queen is a symbol of hereditary privilege that connotes British ethnic dominance in Canada and is antithetical to minorities' rights.

34 The application judge observed that the appellants' objections to the oath are borne out of their insistence on a "plain-meaning" interpretation that is divorced from Canada's history and evolution as a nation. I agree. The history of the Crown and its role in Canada, outlined below, supports the application judge's conclusion.

35 British rule was cemented on September 8, 1760, when Governor Vaudreuil surrendered New France to a British invasion force by the Articles of Capitulation. Until a definitive treaty was signed, New France was under military occupation and rule. The definitive treaty, the Treaty of Paris, was signed three years later in 1763 between England, France and Spain.

36 Steps towards democratization soon began. The Royal Proclamation of 1763 gave the colonies the power to summon a General Assembly and gave the representatives of the people the power to make laws for the public peace, welfare and good government of the colony. In the meantime, all persons inhabiting the colonies were governed by the laws of England. The laws of England at the time required persons not born in Great Britain to swear an oath of allegiance to the King that contained specific provisions rejecting the Catholic faith. The oath was required before these individuals could obtain the privileges of British subjects, such as the right to vote and to hold office.

37 An imperial statute, the *Quebec Act, 1774*, 14 Geo. III, c. 83, replaced the oath of allegiance with one that no longer made reference to the Protestant faith. Thus, the oath in the *Quebec Act* was a compromise that recognized the religious freedom of French Canadians.

38 A few decades later, the "loyalists" came to Canada out of a desire to remain loyal to the Crown after the American Revolution. However, their loyalty should not be confused with blind allegiance to authority. As the application judge noted, at para. 75, "the loyalists shared with their counterparts to the south the ethos of dissent against authority — albeit democratic rather than revolutionary dissent." These loyalists brought with them the "important idea of lawful opposition," that is, the concept that one can remain loyal to the Crown while still expressing dissent: Constance MacRae-Buchanan, "American Influence on Canadian Constitutionalism", in J. Ajzenstat, ed, *Canadian Constitutionalism: 1791-1991* (Canadian Study of Parliament Group: 1991), at pp. 153-54. They brought with them to Canada the idea that factions, partisanship and dissent help strengthen the nation and that allegiance to the Queen does not preclude opposing views: MacRae-Buchanan, at p. 154. Shortly thereafter, the *Constitutional Act, 1791*, 31 Geo. III, c. 31, divided Quebec into two provinces, Upper Canada and Lower Canada, which were separated by the present-day boundary between Ontario and Quebec. The *Constitutional Act* repealed portions of the *Quebec Act* dealing with the powers and composition of the council, and it made provision for an elected assembly. Other portions of the *Quebec Act* were not repealed.

39 Conflict between the elected assembly on the one hand and the Governor and the appointed council on the other led to rebellion in Upper and Lower Canada in 1837. After it had been put down, Lord Durham recommended the institution of responsible government. He also recommended the union of the two Canadas. These recommendations were implemented by the Canadas. These recommendations were implemented by the *Union Act*, 1840, 3 & 4 Vict, c. 35. The two provinces were known as the Province of Canada.

40 At that time, the Parliament of Westminster functioned as a Parliament for the United Kingdom and as an Imperial Parliament, that is, as the legislative body for the overseas territories of the British Empire. However, the colonies were given the power to pass their own laws pertaining to naturalization, subject to the usual confirmation by the Crown: *An Act for the Naturalization of Aliens*, 1847, 10 & 11 Vict., c. 83. Statutes pertaining to the Province of Canada, Nova Scotia and New Brunswick all contained an oath of allegiance as a requirement for naturalization: *Report of the Royal Commissioners for Inquiring into the Laws of Naturalization and Allegiance* (London: George Edward Eyre & William Spottiswoode for Her

Majesty's Stationary Office, 1869), at Appendix, pp. 10-12.

41 With Confederation the *Constitution Act, 1867*, was passed. The preamble to the *Constitution Act, 1867*, gave Canada: "a Constitution similar Principle to that of the United Kingdom."

42 Some pertinent provisions of the structure of the government of Canada set out in the *Constitution Act, 1867* are:

> **9.** The Executive Government and Authority of and over Canada is hereby declared to continue and be vested in the Queen.
>
> **17.** There shall be One Parliament for Canada, consisting of the Queen, an Upper House styled the Senate, and the House of Commons.

43 Each member of the Senate or House of Commons of Canada is required by s. 128 of the *Constitution Act, 1867* to take the oath contained in Schedule 5 of that *Act* before taking his or her seat. The oath prescribed in Schedule 5 of the *Constitution Act, 1867*, which is clearly constitutional, is remarkably similar to the oath of allegiance to which the appellants object. The wording of that oath is as follows:

> I *A.B.* do swear, That I will be faithful and bear true Allegiance to Her Majesty Queen Victoria.
>
> *Note. The Name of the King or Queen of the United Kingdom of Great Britain and Ireland for the Time being is to be substituted from Time to Time, with proper Terms of Reference thereto.*

44 The power to legislate respecting "naturalization and aliens" was granted to the federal parliament in s. 91(25). The Dominion of Canada continued to have the power to repeal or alter naturalization legislation: *Constitution Act, 1867*, s. 129. However, pursuant to the *Colonial Laws Validity Act*, 1865, 28 & 29 Vict., c. 63, that legislation could not be inconsistent with the laws of Great Britain.

45 The restriction on repealing or amending pre-Confederation imperial statutes was removed by the *Statute of Westminster*, 1931, 22 Geo. V, c. 4. It enabled Canada to pass laws that were previously precluded by the *Colonial Laws Validity Act*. Thus, the *Statute of Westminster* was a significant development for Canadian sovereignty, in that it permitted Canada to pass laws that were inconsistent with certain British laws for the first time.

46 Canadians are no longer British citizens: see *Citizenship Act*, s. 32(2).

47 The *Constitution Act, 1982* completed the "Canadianization" of the Crown. As the Supreme Court has explained, "the proclamation of the *Constitution Act, 1982* removed the last vestige of British authority over the Canadian Constitution": *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217 (S.C.C.), at para. 46.

48 The evolution of Canada from a British colony into an independent nation and democratic constitutional monarchy must inform the interpretation of the reference to the Queen in the citizenship oath. As Canada has evolved, the symbolic meaning of the Queen in the oath has evolved. The Federal Court of Appeal in *Roach* read the reference to the Queen as a reference not to the person but to the institution of state that she represents. MacGuigan J.A., for the majority, indicated at p. 416 that the oath, properly understood, required a citizenship applicant to simply "express agreement with the fundamental structure of our country as it is."

49 The application judge noted, at para. 60, that "Her Majesty the Queen in Right of Canada (or Her Majesty the Queen in Right of Ontario or the other provinces), as a governing institution, has long been distinguished from Elizabeth R. and her predecessors as individual people."

50 I agree with the application judge's comments. Viewing the oath to the Queen as an oath to an individual is disconnected from the reality of the Queen's role in Canada today. During the heyday of the Empire, British constitutional theory saw the Crown as indivisible. At that time, there was no need to distinguish between the sovereign's role as an individual and as the head of the executive; nor was there any need in unitary Great Britain to differentiate between the roles that the Crown plays: see The Hon. Bora Laskin, *The British Tradition In Canadian Law* (London: Stevens & Sons, 1969), at pp. 117-119.

51 However, as Canada developed as an independent federalist state, the conception of the Queen (commonly referred to as the Crown)[3] evolved. Unlike the unitary role of the Crown at the height of the British Empire, its role in Canada is divided into three distinct roles. First, the Queen of Canada plays a legislative role in assenting to refusing assent to, or reserving bills of the provincial legislature or Parliament — a role that is performed through the Governor General and the Lieutenant Governors. Second, the Queen of Canada is the head of executive authority pursuant to sections 9 and 12 of the *Constitution Act, 1867*. Third, the Queen of Canada is the personification of the State, i.e., with respect to Crown prerogatives and privileges: Laskin, at pp. 119-20. "The law and learning of Crown privileges and immunities came to the colonies as received or imposed English law, and through section 129 of the British North America Act [which continues the laws in force in Canada, Nova Scotia or New Brunswick at the date of Union] they were absorbed in the Canadian federation." Laskin, at 120. Thus, English constitutional law, which had gradually subjected nearly all royal prerogative power to parliamentary sovereignty, made its way into Canada.[4] Moreover, the Crown may for some purposes fall within provincial power under s. 92 of the *Constitution Act, 1867*, and for other purposes fall within federal power under s. 91. For the purposes of Canadian federalism, the Crown therefore cannot be viewed as a single indivisible entity: Laskin, at p. 119. The Crown is "separate and divisible for each self-governing dominion or province or territory": *R. v. Secretary of State for Foreign & Commonwealth Affairs*, [1982] Q.B. 892 (Eng. C.A.), at 917, per Lord Denning.

52 As the application judge noted, the Queen of Canada fulfils these varying roles figuratively, not literally. The Hon. Bora Laskin explains, at pp. 118-19, that "Her Majesty has no personal physical presence in Canada.... [O]nly the legal connotation, the abstraction that Her Majesty or the Crown represents, need be considered for purposes of Canadian federalism. The fact that Interpretation Acts whether the federal Act or provincial Acts, give the term "Her Majesty" or the Crown" a personal meaning, is [an] anachronism." The oath to the Queen of Canada is an oath to our form of government, as symbolized by the Queen as the apex of our Canadian parliamentary system of constitutional monarchy.

53 The nature of the oath and its purpose was described by Linden J.A., with whom the majority agreed on this point, as follows in *Roach*, at pp. 422-25:

Through an oath or affirmation, a person attests that he or she is bound in conscience to perform an act or to hold to an

ideal faithfully and truly. "An oath relies on the individual's inner sense of personal worth and what is right." [Citations omitted.]

. . .

As I stated in *Benner v. Canada (Secretary of State)*, [1994] 1 F.C. 250 (C.A.), at page 281:

> Swearing an oath as a prerequisite to citizenship is a common practice followed in many countries. It is, in essence, a simple inquiry as to whether an individual is committed to the country and shares the basic principles or ideals upon which the country was founded.

54 Although the Queen is a person, in swearing allegiance to the Queen of Canada, the would-be citizen is swearing allegiance to a symbol of our form of government in Canada. This fact is reinforced by the oath's reference to "the Queen of Canada," instead of "the Queen." It is not an oath to a foreign sovereign. Similarly, in today's context, the reference in the oath to the Queen of Canada's "heirs and successors" is a reference to the continuity of our form of government extending into the future.

3. The interpretation given to a statutory provision must produce harmony both within the statute itself and in legislation dealing with the same subject matter

55 The principle of harmonization in statutory interpretation presumes a harmony, coherence and consistency between statutes dealing with the same subject matter: *R. v. Ulybel Enterprises Ltd.*, 2001 SCC 56, [2001] 2 S.C.R. 867 (S.C.C.), at para. 52; *Bell ExpressVu Ltd. Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559 (S.C.C.), at para. 27.

56 The oath to the Queen is expressly required by the Constitution for those wishing to take a seat in the Senate or as a member of Parliament: *Constitution Act 1867*, s. 128 and sched. 5; Robert Marleau & Camille Montpetit (eds.), *House of Commons Procedure and Practice of Commons Procedure and Practice*, 2000 ed (Montreal: Chenelière/McGraw-Hill, 2000), at p. 176.

57 The *Charter* cannot be used to attack the requirement that members of Parliament and of the Senate take an oath to the Queen because one part of the Constitution, the *Charter*, cannot be used to abrogate another part of the Constitution, such as the pre-existing *British North America Acts*, (1867 to 1975) now the *Constitution Acts*: see *Canada (House of Commons) v. Vaid*, 2005 SCC 30, [2005] 1 S.C.R. 667 (S.C.C.), at para. 30.

58 Inasmuch as the oath for members of Parliament is specifically required by the Constitution, and the Constitution cannot itself be unconstitutional, the harmonization principle and the legal norms of rationality and coherence suggest that the oath to the Queen in the *Citizenship Act* cannot be a violation of rights under the *Charter*.

59 Insofar as members of Parliament are concerned, "[w]hen a Member [of Parliament] swears or solemnly affirms allegiance to the Queen as Sovereign of Canada, he or she is also swearing or solemnly affirming allegiance to the institutions the Queen represents, including the concept of democracy": Marleau & Montpetit, at p. 176.

60 Democracy is an unwritten constitutional principle. The unwritten constitutional principles inform and sustain our Constitution, the roles of our political institutions and the scope of rights and obligations in our country: Secession Reference, at paras. 47-54. Democracy is the very principle that permits citizens to advocate for change to our governing institutions, including the monarchy.

61 The harmonization principle supports the interpretation that the oath to the Queen of Canada in the *Citizenship Act* is the response to the implicit inquiry of whether the prospective citizen is willing to abide by this country's form of government, a democratic constitutional monarchy, unless and until it is changed. The appellants' argument ignores this principle of statutory construction.

4. Conclusion regarding the interpretation of the oath

62 Applying a purposive and progressive approach to the wording of the oath, with regard to its history in Canada and the evolution of our country, leads to the conclusion that the oath is a symbolic commitment to be governed as a democratic constitutional monarchy unless and until democratically changed. Inasmuch as the oath to the Queen is a requirement in the Constitution for members of Parliament and is seen as an oath to our form of government, the harmonization principle supports the conclusion that the oath to the Queen in the *Citizenship Act* be given a consistent interpretation. This interpretation of the oath, as a symbolic commitment to our form of government and the unwritten constitutional principle of democracy, is supported by the legal norms of rationality and coherence.

V. The Charter Claims

63 The appellants' claims that their rights under the *Charter* have been violated are based on their misconception of the meaning of the oath to the Queen as an individual. Earlier in these reasons, I held that the reference to the Queen in the oath was a reference to our form of government. The appellants' incorrect understanding of the meaning of the oath to the Queen is not the basis by which to judge the constitutionality of their application. In *R. v. Khawaja*, 2012 SCC 69, [2012] 3 S.C.R. 555 (S.C.C.) McLachlin C.J. held, at para. 82:

> [A] patently incorrect understanding of a provision cannot ground a finding of unconstitutionality.

64 The words of McLachlin C.J. apply equally to this case. In deciding whether the appellants' rights have been violated under the *Charter* I cannot therefore adopt their interpretation as to the meaning of the oath.

1. Freedom of expression

65 The appellants argue that the oath violates their right to freedom of expression in two ways. First, they argue that it compels them to convey a message with which they disagree. Second, they state that it constrains their future expression by precluding them from working towards the abolition of the monarchy.

66 The application judge held that because the oath conveys meaning, it *prima* facie falls within the scope of the guarantee in s. 2(b). He noted that the s. 2(b) guarantee includes the right to refrain from expressing objective, uncontested

facts. The application judge agreed with the appellants that the requirement to take the oath places a burden on them that is coercive. Accordingly, he held that the statutory requirement that the appellants recite an oath to the Queen in order to acquire citizenship was a prima facie violation of freedom of expression that was only permissible if shown to be a reasonable limit on the right to freedom of expression under s. 1 of the Charter.

67 As I have indicated, the Attorney General cross-appeals the application judge's finding that the oath violates s. 2(b). The Attorney General argues that the oath does not truly associate the appellants with a message with which they disagree and that the appellants have ample opportunity to publicly disavow any association with the message that they attribute to the oath. The Attorney General further argues that the oath does not deprive the appellants of a meaningful opportunity to express themselves; therefore, despite the finding that the oath is "forced expression," it does not violate s. 2(b).

68 With respect, I disagree with the application judge's conclusion that the appellants' freedom of expression has been violated. For the reasons that follow, I would hold that the requirement to recite an oath to the Queen of Canada in order to become a Canadian citizen does not violate the appellants' right to freedom of expression and would allow the Attorney General's cross-appeal on this issue.

a. The method for analyzing the appellants' rights under s. 2(b)

69 The approach to analyzing claims under s. 2(b) was set out by the Supreme Court in *Irwin Toy Ltd. c. Québec (Procureur général)*, *supra*. *Irwin Toy* requires the court to answer three questions when dealing with an allegation that a person's freedom of expression has been violated. The first question is whether the activity in which the plaintiff is being forced to engage is expression. The second question is whether the purpose of the law is aimed at controlling expression. If it is, a finding of a violation of s. 2(b) is automatic. If the purpose of the law is not to control expression, then in order to establish an infringement of a person's *Charter* right, the claimant must show that the law has an adverse effect on expression. In addition, the claimant must demonstrate that the meaning he or she wishes to convey relates to the purposes underlying the guarantee of free expression, such that the law warrants constitutional disapprobation.

70 Applying these principles to cases involving allegations of compelled speech, such as this one, "[i]f the government's purpose was to put a particular message into the mouth of the plaintiff ... the action giving effect to that purpose will run afoul of s. 2(b). If, on the other hand, the government's purpose was otherwise but the effect of its action was to infringe the plaintiff's right of free expression, then the plaintiff must take the further step and demonstrate that such effect warrants constitutional disapprobation": *Lavigne v. O.P.S.E.U.*, [1991] 2 S.C.R. 211 (S.C.C.), at p. 267.

i. The oath is expression but its purpose is not to control expression

71 There is no issue that the oath is expressive activity and that, prior to becoming a Canadian citizen, the *Act* obliges the appellants to take the oath. The next question to be addressed is whether the purpose of the oath is to control freedom of expression.

72 The application judge held, at para. 85, that the purpose of the oath "is the strictly secular one of articulating a commitment to the identity and values of the country." He went on to note, at para. 104, that:

> [T]he plurality judgment by Bastarache J. [in *Lavoie v. Canada*, 2002 SCC 23, [2002] 1 S.C.R. 769] emphasized, at para. 57, that "citizenship serves important political, emotional and motivational purposes ... it fosters a sense of unity and shared civic purpose amongst a diverse population." In much the same way, the oath of citizenship is an articulation of the value-laden glue of which those bonds are composed.

73 The purpose of the oath is to inquire into prospective citizens' willingness to accept the rights and responsibilities of citizenship. In exchange for the privileges of Canadian citizenship, the would-be citizen solemnly promises to be loyal to the values represented by Canada's form of government and to accept the responsibilities of citizenship.

74 The substance of the oath and the history of its evolution also support the conclusion that the oath does not have a purpose that violates the *Charter*. The substance of the oath reflects the Queen's constitutional status, and the circumstances giving rise to the oath flow from this country's foundational documents. More importantly, the oath promotes the unwritten constitutional principles of the rule of law and democracy, as well as the values for which this country stands. Protecting freedom of expression is one of the features of modern democracy: *Dolphin Delivery Ltd. v. R.W.D.S.U., Local 580*, [1986] 2 S.C.R. 573 (S.C.C.), at p. 583. Rather than undermining freedom of expression, the oath amounts to an affirmation of the societal values and constitutional architecture of this country, which promote and protect expression. All of these factors "unequivocally point to a purpose which, far from violating the Charter, flows from it": *Reference re Same-Sex Marriage*, 2004 SCC 79, [2004] 3 S.C.R. 698 (S.C.C.), at para. 43.

ii. Is the effect of the oath to control expression, and if so, is that effect worthy of constitutional disapprobation?

75 The oath has an incidental effect on expression in that it compels prospective citizens to say the words of the oath in order to attain the status of Canadian citizen. However, this effect is not worthy of constitutional disapprobation. I say this for five reasons.

76 First, the appellants have the opportunity to publicly disavow what they consider to be the message conveyed by the oath. The opportunity to publicly disavow a message is relevant to the determination of whether there is a s. 2(b) violation. In *Lavigne*, at p. 279, Wilson J. (with whom L'Heureux-Dubé and Cory JJ. agreed) stated that "this Court has already accepted that public identification and opportunity to disavow are relevant to the determination of whether s. 2(b) has been violated." The Supreme Court came to a similar conclusion in *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038 (S.C.C.). These factors are important because, as Wilson J. noted in *Lavigne*, at pp. 279-80:

> If a law does not really deprive one of the ability to speak one's mind or does not effectively associate one with a message with which one disagrees, it is difficult to see how one's right to pursue truth, participate in the community, or fulfil oneself is denied.

77 The appellants submit that the reasons of Wilson J. do not represent the majority opinion of the court.[5] I note, however, that in *Khawaja*, McLachlin C.J. implicitly accepted the relevance of considering whether the legislation in issue has the effect of "chilling" or impairing freedom of expression in determining whether there had been a violation of s. 2(b). The opportunity to disavow the message is relevant to the determination of whether a chilling effect will occur.

78 In this case, the application judge found, at paras. 73 and 79, that the appellants were not prohibited from expressing

their own opinions:

> [T]he notion that the citizenship oath represents a restriction on dissenting expression, including any expression of dissent against the Crown itself, is a misapprehension of Canadian constitutionalism and Canadian history. Differences of opinion freely expressed are the hallmarks of the Canadian political identity, and have been so since the country's origins.
>
> . . . . .
>
> [N]ot only is advocating abolition of the monarchy explicitly permitted, *Committee for the Commonwealth of Canada, supra*, but the prospect of separation from the United Kingdom and secession of a province both form the subject of legitimate legal discourse. *Reference re Resolution to Amend the Constitution ("Patriation Reference")*, [1981] 1 S.C.R. 753; *Reference re Secession of Québec*, [1988] 2 S.C.R. 217. Moreover, a political party dedicated to constitutional fracture can form Her Majesty's Loyal Opposition in Canada's Parliament. David E. Smith, *Across the Aisle: Opposition in Canadian Politics* (Toronto: University of Toronto Press, 2013) at 85-86.

79 The appellants, as respondents to the cross-appeal, concede that they have the opportunity to disavow what they characterize as the objectionable elements of the oath. They note that Mr. Charles, a former plaintiff in this proceeding who had taken the oath of the citizenship, has publicly recanted the oath to the Queen while, at the same time, confirming the remainder of the oath. Mr. Charles was informed by the Minister of Citizenship and Immigration that his recantation had no effect on his citizenship status. However, the appellants state that:

> It is true ... that citizenship applicants are legally free to disavow the oath. However, the Appellants have affirmed that they would feel morally bound not to do so. In addition, to acquire citizenship they must be seen to be taking the oath to the Queen in a public ceremony. Thus disavowal would be a public display of hypocrisy.

80 The appellants' subjective belief that, in taking the oath, it would be hypocritical for them to work within the bounds of democracy to change our form of government cannot be used to trump the objective fact that they are entirely free to express their opinions. It is not enough for the appellants to say that their right to freedom of expression has been infringed and that they feel subjectively inhibited from expressing their opinions.

81 Second, as I have indicated, the appellants' beliefs reflect a fundamental misapprehension of what the Queen of Canada symbolizes and, as McLachlin C.J. stated in *Khawaja*, at para. 82, "cannot ground a finding of unconstitutionality". I would add that none of the cases cited by the appellants in support of their position that freedom of speech is violated under s. 2(b) deal with the effect of a claimant's misunderstanding or misinterpretation of a provision on the assertion of the right.

82 Third, if the reference to the Queen in the oath were eliminated, or made optional for the appellants, such a remedy would only be a superficial cure for the appellants' complaint. Because the Queen remains the head of our government, any oath that commits the would-be citizen to the principles of Canada's government is implicitly an oath to the Queen. The reference in the oath to the laws of this country necessarily includes the very foundation for the enactment of those laws — the *Constitution Acts* — and would be an indirect reference to the Queen. Thus, the appellants' real complaint would not be addressed.

83 Fourth, it cannot be denied that the Queen is part of Canada's cultural heritage. One of the responsibilities of citizenship is protection of Canada's cultural heritage: see *Citizenship Regulations*, SOR/93-246, ss. 15(2)(b)-(c); and s.

5(1)(e) of the Act. The appellants have not challenged these regulations nor any part thereof.

84 Finally, the appellants' argument also gives no weight to Parliament's constitutional responsibility to make decisions on citizenship for the broader national interest and the promotion of that national interest by an oath to the Queen of Canada.

b. Conclusion on s. 2(b)

85 The oath is expressive activity that falls within the ambit of s. 2(b). I conclude that the purpose of the oath is not to compel expression; rather, its purpose is to inquire into the would-be citizen's commitment to our form of government.

86 Accepting that there is an effect on the appellants' freedom of expression, it does not warrant constitutional disapprobation of the oath for the following five reasons: 1) the appellants have the ability to freely express their dissenting views as to the desirability of a republican government; 2) the effect on their freedom of expression flows from their misunderstanding of the nature of the oath to the Queen of Canada and a patently incorrect interpretation cannot ground a finding of unconstitutionality; 3) the remedy sought by the appellants only addresses their concern at a superficial level and does not resolve their real concern; 4) the appellants' argument would ignore the role of the Queen as part of Canada's cultural heritage and 5) purposively interpreted, the reference to the Queen of Canada is a symbolic reference to our form of government, a democratic constitutional monarchy, which promotes *Charter* values. The fact that the broader public interest is furthered by the oath strengthens my conclusion that there is no s. 2(b) violation.

87 Accordingly, for the reasons I have given, I would allow the cross-appeal and hold that the appellants' right to freedom of expression under s. 2(b) is not infringed. Having regard to this conclusion, I need not, strictly speaking, address the question of justification under s. 1. However, in the event that I am wrong in my conclusion and the appellants' freedom of expression has been violated under s. 2(b), I would hold, as did the application judge, that the violation is justified under s. 1 of the *Charter*, for the reasons below.

2. Limitation on the appellants' freedom of expression is justified under s. 1 of the Charter

88 Alternatively, if the oath does violate s. 2(b), any such violation is justified. In assessing whether the oath is a reasonable limit under s. 1 of the *Charter*, the onus shifts to the Attorney General to establish that the oath serves a sufficiently important objective, that the measure used to achieve the objective is rationally connected to the objective, and that the means used impairs the appellants' rights as little as possible. Finally, there must be proportionality between the effects of the required oath and its objective: *R. v. Oakes*, [1986] 1 S.C.R. 103 (S.C.C.).

89 The appellants submit that the application judge erred in not examining whether there was some pressing and substantial objective achieved specifically by the impugned portion of the citizenship oath respecting the Queen, as opposed to the rest of the citizenship oath.

90 The Supreme Court has recognized that "a measure of leeway" must be accorded to governments: *Hutterian Brethren of Wilson Colony v. Alberta*, 2009 SCC 37, [2009] 2 S.C.R. 567 (S.C.C.), at para. 35. The limit on a right need not be perfectly calibrated when judged in hindsight; it need only be "reasonable" and "demonstrably justified": *Hutterian Brethren*,

This is Exhibit ___"B"___ *referred to in the Affidavit*

of **SELWYN ANDREW PIETERS**

sworn before me, this ___3rd___

day of ___January___ ***2019***

C. Steinberg

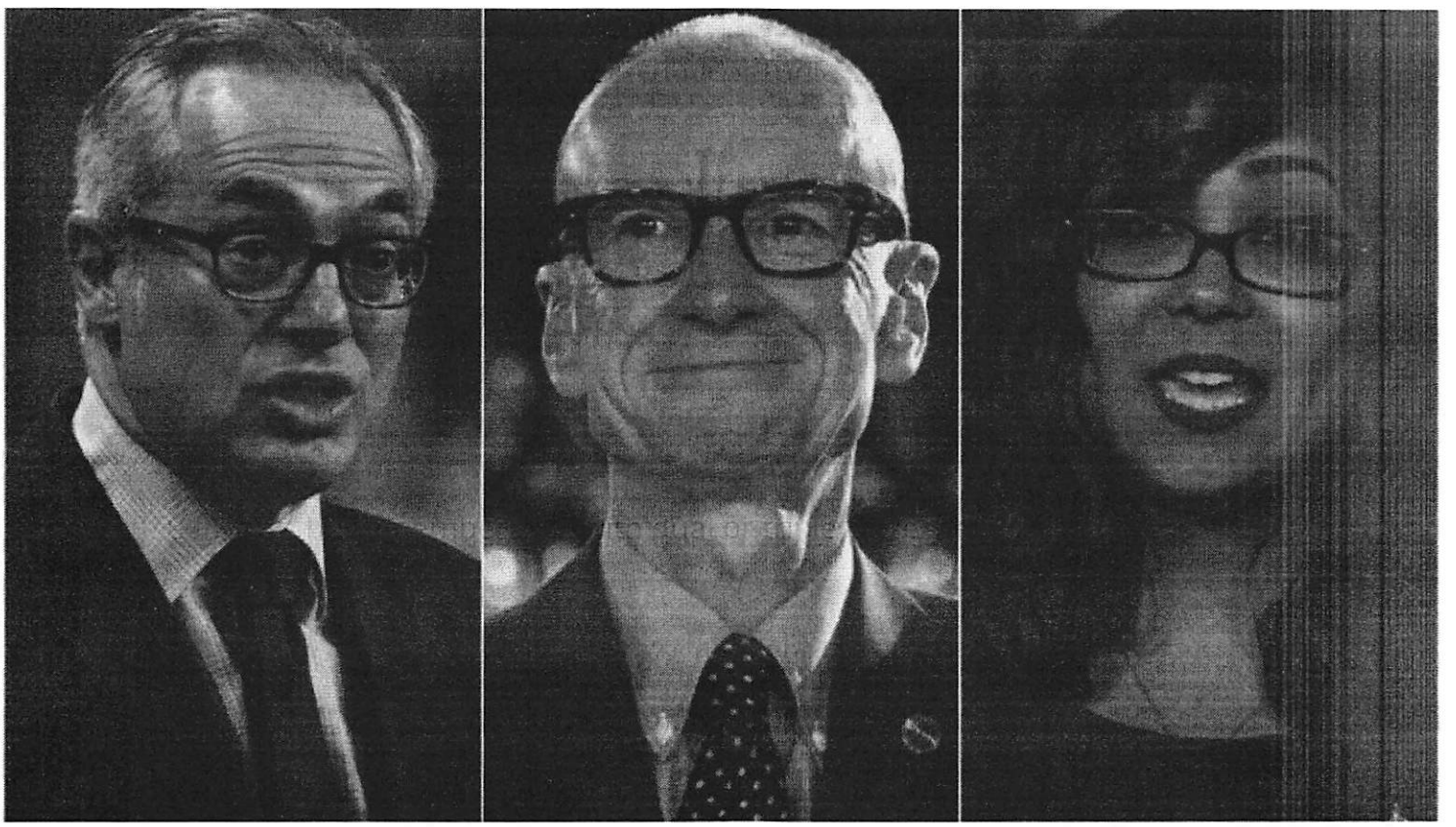
Christopher Steinberg

A Commissioner for taking Affidavits

As Australia ousts MPs with dual citizenship, Canada's Parliament embraces many in its ranks

At least 56 foreign-born members, 22 with dual or triple citizenship, hold seats in House of Commons, Senate

Kathleen Harris · CBC News · Posted: Dec 10, 2017 5:00 AM ET | Last Updated: December 10, 2017



Conservative MP Tony Clement, left, Independent Sen. Tony Dean and Liberal MP Iqra Khalid are among more than 22 parliamentarians who hold dual citizenship. (Canadian Press)

As a dual citizenship debacle rocks Australia's political world, Canada's Parliament embraces sitting MPs and Senators who were born around the world and hold dual, or even triple, citizenship.

There are now at least 56 sitting parliamentarians — 44 MPs and 12 senators — born in countries outside Canada, according to information from the Library of Parliament and websites.

At least 22 of them have citizenship from other countries, CBC News confirmed through queries to parliamentarians' offices.

That figure does not include MPs and senators who hold citizenship through descent, naturalization or marriage.

Canadian MPs hold citizenship from various countries, including Afghanistan, Lebanon, Portugal, Poland, Pakistan, Syria, the United States and the United Kingdom.

- **Australian deputy PM disqualified due to dual citizenship**
- **Why is there a parliamentary gender gap?**

That dual citizenship would disqualify them from holding office in Australia, where Section 44 of the Constitution bars anyone who is a citizen of a "foreign power" from sitting in Parliament.

Several Australian parliamentarians have been forced to resign, produce documentation, or had their case sent to the High Court for review, leaving Prime Minister Malcolm Turnbull's government without its majority and facing a possible early election.

Politicians of all stripes are scrambling to prove they have never held other citizenship or have renounced it in what is being called a constitutional crisis.

Dual citizens welcome in Canada's parliament

In Canada, the only requirements for seeking a seat in the House of Commons are that you are a Canadian citizen, at least 18 years old, and not serving prison sentence of more than two years. To be a senator in Canada, an individual has to be at least 30 years old, a resident of the province they represent, and own property worth at least $4,000 in that province.

Liberal MP Salma Zahid, who holds Canadian, U.K. and Pakistani citizenships, does not judge any other country's rules around who is qualified to serve. But she says she is proud that Canada's government, which has 338 seats in the House of Commons and 105 in the Senate, reflects its population.

"Other than our Indigenous nation, everyone else came to Canada from somewhere else," she said. "It's really amazing to see such a big diversity in the House of Commons, because it really is important that people see themselves represented."

Born around the world

Zahid was born in England while her father was studying at university, so holds U.K. citizenship by birth. Her family returned to Pakistan three months later, where she was naturalized as a Pakistani citizen, then she received Canadian citizenship after immigrating to Canada as an adult with her husband and son.

Many Canadian parliamentarians born in countries such as India and China have had their citizenship terminated, either by choice or due to citizenship revocation rules of those countries.

Some MPs and senators who hold dual citizenship are:

- Conservative MP Ziad Aboultaif (Lebanon).
- Liberal MP Omar Alghabra (Syrian citizenship, born in Saudi Arabia).
- Liberal MP Faycal El-Khoury (Lebanon).
- Liberal MP Andy Fillmore (United States).
- Liberal MP Peter Fonseca (Portugal).
- Conservative MP Peter Kent (United Kingdom).
- Liberal MP Iqra Khalid (Pakistan).
- Conservative MP Tom Kmiec (Poland).
- Liberal MP Michael Levitt (United Kingdom).
- Liberal MP Alexandra Mendes (Portugal).

- Liberal MP Maryam Monsef (Afghanistan citizenship, born in Iran).
- Liberal MP Eva Nassif (Lebanon).
- Conservative MP Alex Nuttall (United Kingdom).
- Liberal MP Pablo Rodriguez (Argentina).
- Liberal MP Marwan Tabbara (Lebanon).
- Conservative Sen. Salma Ataullahjan (Pakistan).
- Independent Sen. Tony Dean (United Kingdom).
- Independent Sen. Rosa Galvez (Peru).
- Liberal Sen. Mobina Jaffer (United Kingdom citizenship, born in Uganda).

Others, like Liberal MP Gary Anandasangaree, who was born in Sri Lanka, NDP MP Jenny Kwan, who was born in Hong Kong, and Green Party leader Elizabeth May, who was born in the U.S., told CBC News they aren't even certain of their citizenship status from their countries of birth.

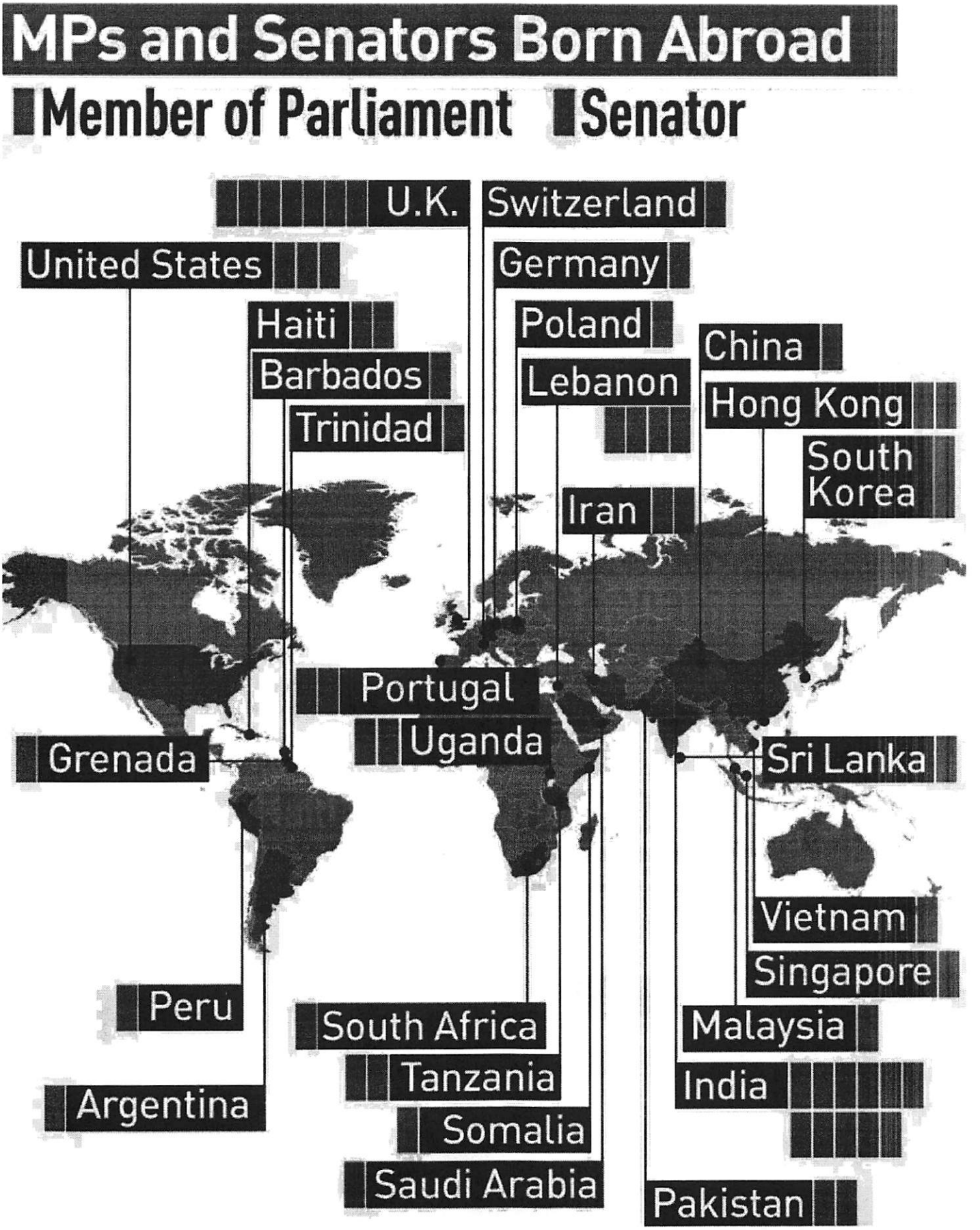
No knowledge of citizenship status

Anandasangaree has no idea if he holds citizenship from Sri Lanka, but said if he does, he would gladly renounce it.

Conservative MP Peter Kent, who was born in the U.K. to Canadian parents working there, didn't know he had British citizenship until he was an adult and applied for a Canadian passport.

NDP MP Randall Garrison, who came to Canada 44 years ago, assumed his U.S. citizenship was automatically rescinded because he did not meet several requirements for continued citizenship. He only learned that was not the case when taking part in a parliamentary delegation to Washington in March 2017, when he was told he was ineligible to enter the U.S. on a Canadian passport because he was a U.S. citizen.

He was eventually allowed in on a one-time basis and a red-flagged file, and it cost him $3,000 to later sort out the administrative requirements.



CBC NEWS **Source: Library of Parliament**

Conservative MP and former cabinet minister Tony Clement was four years old when his family immigrated to Canada from the U.K.

His family was actually bound for Australia, but his father made a spontaneous decision to choose Canada instead because of a rude Australian immigration officer. That twist of fate afforded him a life of public service in Canada, as dual citizenship would have disqualified him from elected office in Australia.

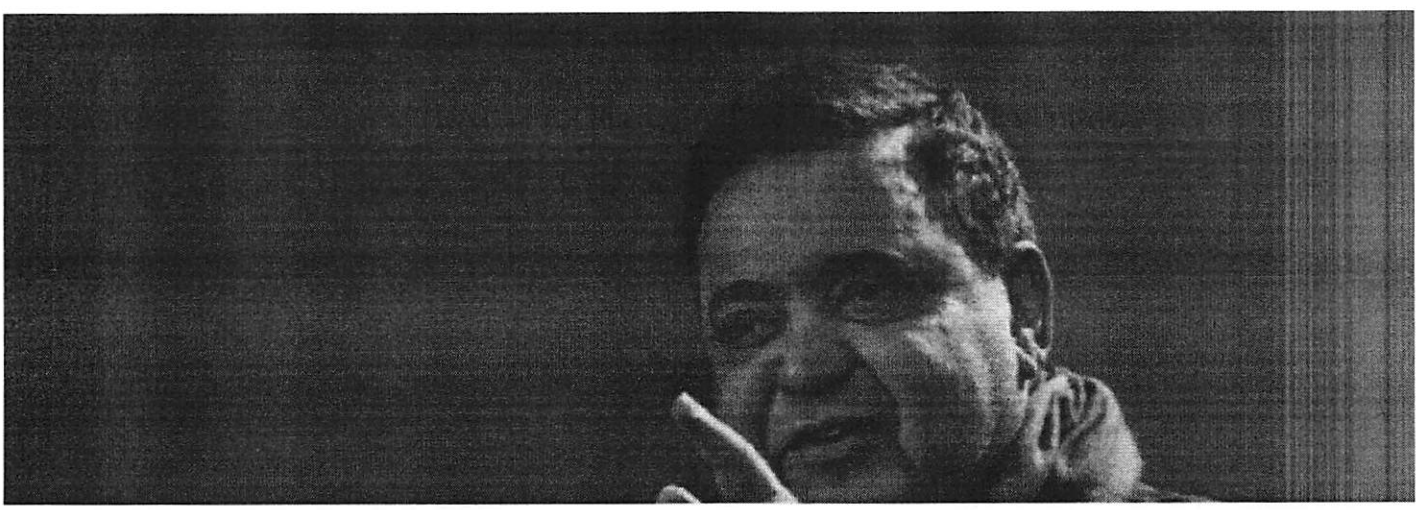
Clement believes people should not be excluded based on birthplace, and said the "sole responsibility" of an MP is to represent the people and interests of Canada.

"To the extent there is any clash between our country and another country's interests, we always have to support Canada's interests and Canada's values," he said.

But his Conservative colleague Deepak Obhrai disagrees.

He gave up his citizenship from Tanzania, and raised concerns that elected officials could be susceptible to divided loyalties and foreign influence by holding dual citizenship. He is opposed to it in principle.

"I believe people who look for dual nationality, it is for self interest, either for business reasons, tax reasons, health reasons, seeking safety, whatever," he said. "In my opinion, most of these people do not get Canadian citizenship because they love Canada, it is because of convenience."



Conservative MP Deepak Obhrai is opposed to MPs holding dual citizenship, saying it could divide their loyalties. (Jacques Boissinot, Canadian Press)

Obhrai's view may not represent the majority, but political controversies over dual citizenship have erupted in Canada in past.

In 2012, then-NDP leadership hopeful Tom Mulcair was forced to defend his Canadian and French dual citizenship. At the time, Stephen Harper said it was up to Mulcair to use his own "political judgment" when questions arose, stating: "In my case, as I say, I'm very clear. I'm a Canadian and only a Canadian."

Former Liberal leader Stéphane Dion faced a similar controversy in 2006, when he was forced to publicly affirm his loyalty to Canada because he held French citizenship, as his mother was born in France.

Past controversies

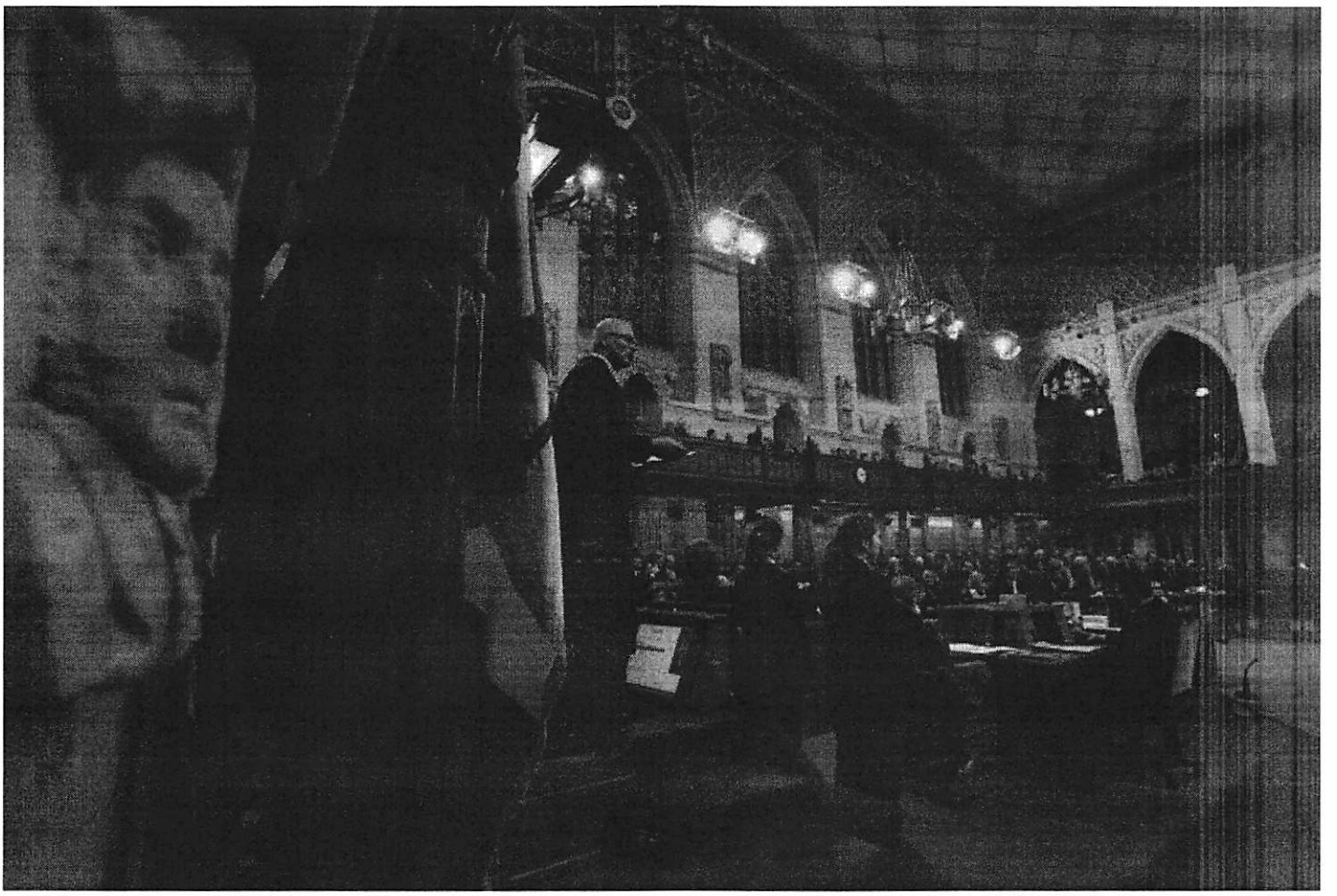
At the time, NDP leader Jack Layton said a party leader should "hold only Canadian citizenship" and that it's "better to remain the citizen of one country."

Before that, Michaëlle Jean renounced the French citizenship she acquired for family reasons before she was sworn in as Governor General and commander-in-chief of the Canadian Forces in 2005.

The dual citizenship fiasco continues to escalate in Australia, with more parliamentarians called into question.

Rodney Smith, a professor in the department of government and international relations at the University of Sydney, does not anticipate any change to the constitutional requirement.

"I think the major parties will just live with the fact that they have to vet candidates much more carefully now," he said. "To be fair, the major parties do this. Candidates themselves are a large part of the problem, since some resent the checking, or are blasé about it."



Canada's parliament includes 56 members who were born in other countries, and 22 MPs and Senators who hold dual or triple citizenship. It's a much different situation than in Australia, where MPs are barred if they hold dual citizenship. (Sean Kilpatrick/The Canadian Press)
