

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

MICHAEL MCATEER, SIMONE E.A. TOPEY AND DROR BAR-NATAN

Applicants
(Appellants)

- and -

THE ATTORNEY GENERAL OF CANADA

Respondent
(Respondent)

**APPEAL BOOK AND COMPENDIUM
OF THE APPELLANTS**

November 12 2013

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Court of Appeal File No.: C57775
Superior Court File No.: 05-CV-301832-PD3

COURT OF APPEAL FOR ONTARIO

BETWEEN:

MICHAEL MCATEER, SIMONE E.A. TOPEY
and DROR BAR-NATAN

Applicants/Appellants

-and-

THE ATTORNEY GENERAL OF CANADA

Respondent/Respondent

COURT OF APPEAL FOR ONTARIO
FILED / DÉPOSÉ
OCT 17 2013
REGISTRAR / GREFFIER
COUR D'APPEL DE L'ONTARIO

NOTICE OF APPEAL

THE APPELLANTS, Michael McAteer, Simone E.A. Topey and Dror Bar-Natan, APPEAL to the Court of Appeal from the judgment of Mr. Justice Edward Morgan of the Ontario Superior Court of Justice dated September 20, 2013 made at Toronto.

THE APPELLANTS ASK that the judgment of the Ontario Superior Court Justice be set aside, and that judgment be granted as follows:

- i) The appeal be allowed;
- ii) This Honourable Court issue declarations that requiring applicants for Canadian citizenship to take an oath or affirmation that contains the phrase "*I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the*

- 2 -

Second, Queen of Canada, Her Heirs and Successors" contravenes the rights enshrined in sections 2(a), 2(b) and 15(1) of the *Canadian Charter of Rights and Freedoms* and that those contraventions are not saved by section 1 of the *Charter*.

- ii) Such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS OF APPEAL are as follows:

1. The Superior Court Justice made errors of law, errors of fact, and errors of mixed fact and law.
2. The Superior Court Justice erred in his interpretation of section 2(a) of the *Charter*.
3. The Superior Court Justice erred in applying principles appropriate to section 1 analysis to his consideration of section 2(a) of the *Charter*.
4. The Superior Court Justice erred in holding that "In taking the position that the mere recitation of the oath is an infringement of her subjectively held religious belief, Ms. Topey runs up against the settled notion that the rights of some cannot be a platform from which to strike down rights of others:"
5. The Superior Court Justice considered the freedom of religion claim of one of the Applicants but erred in failing to consider the freedom of conscience claims of the two other Applicants.

6. The Superior Court Justice erred in his section 1 analysis.
7. The Supreme Court Justice erred in holding that the impugned portion of the oath had only one meaning and, in particular, in ignoring the evidence of what citizenship applicants might be told is the meaning.
8. The Superior Court Justice erred in holding that there is a "prevalent view that eschews 'plain meanings' as an approach to legal texts."
9. The Superior Court Justice erred in his interpretation and application of section 15 of the *Canadian Charter of Rights and Freedoms* and, in particular, erred in failing to consider the Applicants' claim of discrimination on the basis of national origin.
10. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

- (a) The Court of Appeal's jurisdiction over this matter is established by s. 6(1)(b) of the *Courts of Justice Act*, R.S.O. 1990, c. C43;
- (b) This matter originated as an application before the Ontario Superior Court of Justice under Rule 14 of the Ontario Rules of Civil Procedure;
- (c) The Order appealed from is a final order of the Superior Court of Justice and is not an order referred to in s. 19(1)(a) of the *Courts of Justice Act*; and

- (d) This is not a matter on which leave to appeal is required.

October 15, 2013

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Applicants/Appellants

-and-

ATTORNEY GENERAL OF CANADA

Respondent/ Respondent

Court File No. 05-CV-301832 CP 00

Court of Appeal File No. C5777S

COURT OF APPEAL FOR ONTARIO
Proceeding commenced at TORONTO

NOTICE OF APPEAL

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Court file no.

COURT OF APPEAL FOR ONTARIO

BETWEEN:

**MICHAEL MCATEER, SIMONE E. A. TOPEY and
DROR BAR-NATAN**

Applicants/

**Appellants in
appeal and
Respondents in
cross-appeal**

and

ATTORNEY GENERAL OF CANADA

Respondent/

Respondent in appeal and

Appellant in cross-appeal

NOTICE OF CROSS-APPEAL

THE RESPONDENT CROSS-APPEALS in this appeal and asks that the part of the judgment holding that the impugned "citizenship oath" violates s. 2(b) of the *Canadian Charter of Rights and Freedoms* be set aside, and that that part of the judgment be substituted by an order that the "citizenship oath" does not violate s. 2(b) of the *Charter*.

THE GROUNDS OF APPEAL are as follows:

1. That the Superior Court Justice erred in the application of facts and the law in finding that the appellants' freedom of expression guaranteed under s. 2(b) of the *Charter* was violated.

October 24, 2013

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(Court file no.)

MICHAEL MCATEER ET AL.

Appellants

AND

ATTORNEY GENERAL OF CANADA

Respondent

COURT OF APPEAL FOR ONTARIO

Proceeding Commenced at Toronto

NOTICE OF APPEAL

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Court File No.: 05-CV-301832

ONTARIO
SUPERIOR COURT OF JUSTICE

| | | |
|----------------|---|-------------------------------------|
| THE HONOURABLE |) | FRIDAY, THE 20 th DAY OF |
| |) | |
| JUSTICE MORGAN |) | SEPTEMBER, 2013 |

BETWEEN:

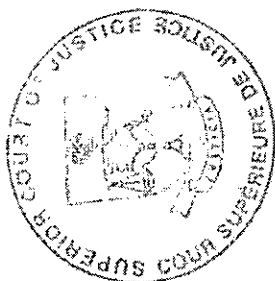
MICHAEL McATEER, SIMONE E.A. TOPEY
and DROR BAR-NATAN

Applicants

-and-

THE ATTORNEY GENERAL OF CANADA

Defendant



JUDGMENT

THIS APPLICATION was heard July 12, 2013, in the presence of lawyers for
all parties,

ON READING THE NOTICE OF APPLICATION AND THE EVIDENCE FILED BY
THE PARTIES and on hearing the submissions of the lawyers for the parties,

1. THIS COURT ORDERS that the application is dismissed.
2. THIS COURT ORDERS, on consent, that there shall be no order as to costs.

ENTERED AT TORONTO
ON OCT 10
LE/DAVID LE REGISTRE NO:

NOV 07 2013

A handwritten signature, likely of the Registrar, R. Littleman.

NOV 06 2013

A handwritten signature, likely of the Registrar, R. Littleman.

R. Littleman, Registrar
Superior Court of Justice

MCATEER, Michael, et al

Applicants

-and-

ATTORNEY GENERAL OF CANADA

Respondent

Court File No. 05-CV-301832 CP 00

ONTARIO

SUPERIOR COURT OF JUSTICE
Proceeding commenced at TORONTO

JUDGMENT

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CITATION: McAteer et al. v. Attorney General of Canada, 2013 ONSC 5895
 COURT FILE NO.: 05-CV-301832-PD3
 DATE: 20130920

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Michael McAteer, Simone E.A. Topey, and
 Dror Bar-Natan

Applicants

– and –

The Attorney General of Canada

Defendant

*Peter Rosenthal, Michael Smith, Selwyn
 Pieters, and Reni Chang, for the Applicants*

*Kristina Dragaitis and Ned Djordjevic, for
 the Defendant*

HEARD: July 12, 2013

MORGAN J.

[1] Under section 3(1)(c) of the *Citizenship Act*, RSC 1985, c C-29 (the “Act”), a person over 14 years old must take an oath of citizenship in order to become a Canadian citizen. Section 12(3) of the Act provides that a certificate of citizenship issued to a new Canadian by the Minister of Citizenship and Immigration does not become effective until the oath is taken.

[2] The form of oath is authorized and set out in section 24 of the Act and the Schedule thereto, 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 fulfill my duties as a Canadian citizen.

[3] The Applicants submit that the oath to the Queen violates sections 2(b) (freedom of expression), section 2(a) (freedom of religion), and section 15(1) (equality rights) of the *Canadian Charter of Rights and Freedoms, Constitution Act, 1982*, Schedule B to the *Canada*

Act, 1982 (UK), 1982, c 11 (the "*Charter*"). They further submit that the oath does not constitute a reasonable limit on those rights under section 1 of the *Charter*. The Respondent takes the position that what the Applicants are seeking is a positive right to citizenship, which is not a right protected by the *Charter*; accordingly, the Respondent submits that the oath to the Queen does not violate any of the constitutional rights of the Applicants.

[4] For the reasons that follow, the Application is dismissed. The oath to the Queen, as required by the Act, is a form of compelled speech that *prima facie* infringes the Applicants' freedom of expression under section 2(b) of the *Charter*. At the same time, the oath is a reasonable limit on the right of expression and is therefore saved by section 1. The oath does not violate either section 2(a) or section 15(1) of the *Charter*.

I. The Applicants' claims

[5] All three of the Applicants are permanent residents of Canada who wish to become Canadian citizens. Other than their failure to take the oath of citizenship, they have each resided in Canada for more than the number of years required to become new citizens and depose that they have otherwise qualified for citizenship under the Act.

[6] The Applicant, Michael McAteer, immigrated to Canada from Ireland. He deposes that his family fought for Irish independence from the British Crown and that he holds republican beliefs that prevent him from 'taking an oath of allegiance to a hereditary monarch who lives abroad...' He further states in his affidavit that swearing an oath to the Queen, as required by the Act, would amount to "a betrayal of my republican heritage and impede my activities in support of ending the monarchy in Canada."

[7] The Applicant, Simone Topey, immigrated to Canada from Jamaica. She explains in her affidavit that she adheres to the Rastafarian faith. She deposes that to Rastafarians, the "current society is Babylon" and that the Queen is regarded as the "head of Babylon". She further states that it would violate her religious belief to take an oath to the person who is the head of such a society.

[8] The Applicant, Dror Bar-Natan, immigrated to Canada from Israel. He deposes that the oath is "repulsive" to him because "it states that some people, the royals and their heirs, are born with privilege." He further states that "it is a historic remnant of a time we all believe has passed", and that it would violate his belief in equality of all persons to swear allegiance to "a symbol that we aren't all equal and that some of us have to bow to others for reasons of ancestry alone."

[9] The Application was initiated by Charles Roach, a prominent Ontario lawyer who passed away in October 2012. He had immigrated to Canada from Trinidad and Tobago in 1955 and became a lawyer in 1963. Cullity J. set out the salient features of Mr. Roach's case in a reported decision in his judgment denying certification of the present claim as a class action. *Roach v Canada (Attorney General)* (2009), 74 CPC (6th) 22, at paras 18-21; *aff'd* 84 CPC (6th) 276 (Ont Div Ct).

[10] In 1988, Mr. Roach was informed by the Law Society of Upper Canada that he had to become a citizen by July 1, 1989 in order to continue practicing law in Ontario. Mr. Roach applied for citizenship at the time and went so far as to attend a citizenship ceremony, during which he asked the presiding judge whether he could become a citizen without swearing an oath to the Queen. He received a negative answer whereupon, due to his conscientious objection, he refused to take the oath and the certificate of citizenship was withheld from him.

[11] As it turned out, before the expiry of the Law Society's deadline the Supreme Court of Canada rendered its decision in *Andrews v Law Society of British Columbia*, [1989] 1 SCR 143 striking down the requirement of Canadian citizenship for those seeking to be called to the bar. Under amendments to the *Law Society Act* that came into force on February 27, 1989, the criteria for admission to the Ontario bar were amended to bring the law into compliance with the *Andrews* ruling. Mr. Roach was therefore permitted to continue practicing law despite not having sworn the requisite oath to become a citizen of Canada.

[12] It is fair to say that Mr. Roach's stance as an objector to the oath, although not successful in its previous legal iterations, see *Roach v Canada (Minister of State for Multiculturalism & Culture)* (1994), 113 DLR (4th) 67 (Fed CA); *Roach v AG Canada, supra*, brought prominence to the issue at hand. He was very active in the political movement to abolish the monarchy for Canada. In addition, the case of Charles Roach illustrates that there are real costs to a long-time member of Canadian society remaining a permanent resident rather than becoming a citizen. As Cullity J. pointed out, at para 22 of his judgment:

He has turned down an invitation to apply for appointment as a provincial judge because of a requirement to take the oath of allegiance, he is unable to vote or run for public office, he is no longer eligible for Canada Council grants that, as a poet, he previously received, and he is unable to travel on a Canadian passport.

II. Legislative history

[13] Although the concept of Canadian citizenship itself originated in 1947 with the *Canadian Citizenship Act*, SC 1946, c 16, s 1 (the "1947 Act"), the taking of an oath to the sovereign by new subjects of the Crown pre-dates Confederation. The *Québec Act*, 1774, 14 Geo III c 83, enacted in the wake of the transfer of Lower Canada from the French monarch to the English Crown, took into account the sensitivities of the Roman Catholic population of Québec to the fact that the form of oath at the time made reference to the Protestant faith. It provided a secular alternative for the first oath specific to persons newly naturalized in Canada: "*I [name] do sincerely promise and swear, that I will be faithful, and bear true Allegiance to his Majesty King George...*"

[14] An oath to the Queen as a condition of naturalization across the country was introduced in the very first parliamentary session following Confederation. Section 4(2) of *An Act respecting Aliens and Naturalization*, 31, V, c 66 (1869), provided that every alien, in order to be naturalized as a British subject resident in Canada, had to swear (or affirm) "*that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, as lawful Sovereign of the United Kingdom of Great Britain and Ireland, and of the Dominion of Canada...*"

[15] The requirement of taking an oath to the Queen as a condition of citizenship was re-enacted and imposed on every applicant for citizenship, whether a British subject or not (except for a limited class of British subjects who had already been resident in Canada for 5 years and were 'grandfathered' as automatic Canadian citizens), when Canadian citizenship was first introduced in the 1947 Act. Thirty years later, the oath was once again reconfirmed in the revisions brought about by the *Citizenship Act*, SC 1974-75-76, c 108. It is this version of the Act that contains the oath of citizenship in its current form.

[16] As for the Queen's stature as head of state, the ancient common law recognized the monarch as the repository of English sovereignty prior to the Norman conquest. The courts elaborated on and confirmed monarchical authority in the late middle ages in response to a series of questions posed to them by Richard II. See Stanley Bertram Chrimes, "Richard II's questions to the judges 1387", 72 *Law Q Rev* 365-90 (1956). This took into account the limits on royal powers imposed by Magna Carta, 1215, which was itself followed by the gradual emergence of *habeas corpus* and other relevant enactments and common law restraints on royal power. See 9 W. Holdsworth, *A History of English Law* 112 (1926). With all of this, the courts nevertheless confirmed in *Godden v Hales* (1686), 2 Shower 475 (KB) that the Crown sits at the sovereign apex of the legal and political system.

[17] The monarch as head of state was further entrenched by the *Act of Settlement, 1701*, 12 & 13 Will III, c 2, which set out the rules for succession to the Crown of the United Kingdom (Great Britain and Scotland). This conception of sovereignty and executive authority was inherited by Canada in the *Constitution Act, 1867*, 30 & 31 V, c 3, section 9, which provides that, "[t]he Executive Government and Authority of and over Canada is hereby declared to continue and be vested in the Queen". The role of Her Majesty as sovereign has also been reinforced in section 41(a) of the *Constitution Act, 1982*, which requires unanimity of the federal and all provincial legislatures in order to enact any amendment to the constitutional status of "the office of the Queen, the Governor General and the Lieutenant Governor of a province".

[18] Of course, sovereign powers in the Anglo-Canadian tradition reside not in the executive alone but in the legislature as well, as reflected in William Blackstone's articulation of the "king-in-parliament". Sovereignty, according to this view, vests "in the king's majesty, sitting there in his royal political capacity, and the three estates of the realm; the lords spiritual, the lords temporal...and the commons". W. Blackstone, *I Commentaries* 149. Again, this conception of executive and legislative sovereign authority was inherited by Canada in its founding constitution. Section 17 of the *Constitution Act, 1867* provides that, "[t]here shall be One Parliament for Canada, consisting of the Queen, or Upper House styled the Senate, and the House of Commons."

[19] Actual royal power, certainly, has "gradually relocated from the Monarch in person to the Monarch's advisors or ministers". *Black v Canada (Prime Minister)* (2001), 199 DLR (4th) 228, at para 32 (Ont CA). Nevertheless, the Queen retains authority over "the prerogative of mercy, the grant of honours, the dissolution of Parliament and the appointment of ministers" and other matters commensurate with her stature as national sovereign, *Council of Civil Service Unions v. Minister for the Civil Service*, [1985] 1 AC 374, 418 (HL), even if most of the prerogative

powers are today exercised on advise of the Prime Minister and subject to the *Charter*. *Canada (Prime Minister) v Khadr*, [2010] 1 SCR 44, at para 36.

[20] The preamble to the *Statute of Westminster, 1931*, 22 Geo V, c 4 (UK) identifies Canada as one of “His Majesty’s Governments”. Likewise, the recently enacted *Succession to the Throne Act, 2013*, SC 2013, c 6 describes Canada as one of “the Realms of which Her Majesty is Sovereign”. In Canada’s system of constitutional monarchy, the sovereign, like all institutions of state, exercises power within constitutional limitations. But there is no doubt that Her Majesty the Queen is Queen of Canada, the embodiment of the Crown in Canada, and the head of state. *Royal Title and Styles Act*, RSC 1985, c R-12, section 2.

III. Freedom of Expression

[21] As the Supreme Court of Canada pointed out in one of its earliest judgments under section 2(b) of the *Charter*, “[t]he content of expression can be conveyed through an infinite variety of forms of expression: for example, the written or spoken word, the arts, and even physical gestures or acts.” *Irwin Toy Ltd. v Québec (Attorney General)*, [1989] 1 SCR 927, at para 43. Certain behaviours such as a labour strike, *Reference Re Public Service Employee Relations Act (Alta.)*, [1987] 1 SCR 313, acts of criminal violence, *RWDSU v Dolphin Delivery Ltd.*, [1986] 2 SCR 573, at 588, and the display of commercial wares, *R v Sharma* (1991), 77 DLR (4th) 334, at para 19 (Ont CA), have been specifically excluded from the ambit of the constitutional right; otherwise, “s. 2(b) of the *Charter* embraces all content of expression irrespective of the particular meaning or message sought to be conveyed.” *R v Keegstra*, [1990] 3 SCR 697.

[22] Accordingly, “if the activity conveys or attempts to convey a meaning, it has expressive content and *prima facie* falls within the scope of the guarantee”. *Irwin Toy*, *supra*, at p. 969. Protected speech therefore includes not only the spoken word but the choice of language, *Ford v Québec (Attorney General)*, [1988] 2 SCR 712, and the right to receive or hear expressive content as much as the right to create it. *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, [2000] 2 SCR 1120. Section 2(b) also guarantees the right to possess expressive material regardless of how repugnant it may be to others or to society at large. *R v Sharpe*, [2001] 1 SCR 45.

[23] Most significantly, “[f]reedom of expression encompasses the right *not* to express views.” *Rosen v Ontario (Attorney General)* (1996), 131 DLR (4th) 708, at para 16 (Ont CA) [emphasis added]. As explained by Lamer J. (as he then was) in *Slaight Communications Inc. v Davidson*, [1989] 1 SCR 1038, at para 95, “[t]here is no denying that freedom of expression necessarily entails the right to say nothing or the right not to say certain things. Silence is in itself a form of expression which in some circumstances can express something more clearly than words could do.” A statutory requirement whose effect is “to put a particular message into the mouth of the plaintiff” would run afoul of section 2(b) of the *Charter*. *Lavigne v Ontario Public Service Employees Union*, [1991] 2 SCR 211, at 267.

[24] Indeed, the right not to express the government’s preferred point of view extends to those who oppose socially positive messages such as health warnings, *RJR McDonald Inc. v Canada*

(*Attorney General*), [1995] 3 SCR 199, at para 124, and includes even the right to refrain from expressing objective, uncontested facts. *Slaight Communications*, *supra*, at para 95. As Chief Justice Lamer explained in *Committee for the Commonwealth of Canada v Canada*, [1991] 1 SCR 139, at para 18, individuals are not only protected from having to articulate a message with which they disagree, but are also guaranteed the correlative right not to have to listen to such a message.

[25] The Applicants submit that imposing on them, as a condition of citizenship, a requirement to swear an oath with which they do not agree curtails their expression in the very way that the courts have said it may not be curtailed. As Cullity J. pointed out in *Roach v AG Canada*, *supra*, at para 22 quoted above, the burden that the oath places on their speech, or their desire not to speak the words prescribed in the Act, is a rather steep one. In a celebratory statement issued in 2011, the then Minister of Immigration and Citizenship reconfirmed the weight of that burden, declaring that “[f]ew things in this world are more precious to us than our Canadian citizenship.” *Statement – Minister Kenney celebrates Citizenship Week*, Citizenship and Immigration Canada, October 17, 2011, <http://www.cic.gc.ca/english/department/media/statements/2011/2011-10-17.asp>.

[26] Despite the Respondent’s surprising argument to the contrary in its factum, the inability to become a citizen is not the kind of “state-imposed cost or burden [that is]...not prohibited [because]...the burden is trivial or insubstantial.” *R v Edwards Books and Art Ltd.*, [1986] 2 SCR 713, at para 97. The fact that the Applicants can remain in the country as permanent residents does not devalue the benefit that they are unable to access without speaking words they do not wish to speak. Iacobucci J. put as high a price as possible on it in *Benner v Canada (Secretary of State)*, [1997] 1 SCR 358 at para 68: “I cannot imagine an interest more fundamental to full membership in Canadian society than Canadian citizenship.” The burden on the Applicants’ speech – putting citizenship out of their grasp – is real and substantial.

[27] The Respondent contends that the Applicants’ *Charter* claim in effect seeks a “positive right” rather than a “negative right”, and that section 2(b) guarantees only the latter form of right. Quoting the Supreme Court of Canada in *Baier v Alberta*, [2007] 2 SCR 673, at para 41, the Respondent submits that here “what is sought is ‘positive government legislation or action as opposed to freedom from government restrictions on activity in which people could otherwise freely engage...’”

[28] It is literally correct to say, as the Respondent does in its factum, that “the status of citizenship is not an ‘activity’ in which [the Applicants] could otherwise freely engage without government enablement”. That, however, does not mean that the burden imposed on their expression is not a coercive one.

[29] L’Heureux-Dubé J. pointed out in *Haig v Canada (Chief Electoral Officer)*, [1993] 2 SCR 995, at para 79, that “[t]he distinctions between...positive and negative entitlements, are not always clearly made, nor are they always helpful.” That observation certainly describes the arguments made here.

[30] On one hand, the Respondent is right that the Applicants' *Charter* challenge strives to attain a legislative change permitting them to access a government-created "platform" – the hallmark of an unprotected "positive right". *Baier, supra*, at para 36. On the other hand, the Applicants' challenge strives to avoid being coerced into words of fidelity to the Queen – the "platform" of citizenship is not the goal of their speech/silence but rather represents the club or carrot which the government holds out to them.

[31] The current challenge is analogous to that in *Libman v Québec (Attorney General)*, [1997] 3 SCR 569, where the challenger sought to fundraise for his cause during the Québec referendum. The governing regulations denied him the benefit of access to any officially sanctioned committee that would permit regulated expenses to be incurred during the referendum period. As with the present Applicants, the challenger sought to express his view (there through funding a political cause, here through non-reference to the Queen in the citizenship oath), independent of any government activity – but was denied a government-created benefit if he did so.

[32] While the positive/negative question can thus be looked at in two ways – i.e. either as an access-to-platform claim or a denial-of-benefit claim – the courts have already determined that citizenship criteria are subject to *Charter* scrutiny. It does not matter that there is no constitutional right to citizenship *per se*. See *Lavoie v. Canada*, [2000] 1 FC 3, at para 11 (Fed CA); *aff'd* [2002] 1 SCR 769. *Charter* challenges to citizenship criteria or to the citizenship application process do not seek citizenship, they seek an end to a burden imposed on a recognized *Charter* right. Citizenship cannot, in effect, be a prize that the Act rewards to applicants who give up a right such as freedom of expression that exists outside of the citizenship process.

[33] It is as much of a *Charter* violation to compel speech by denying a statutory benefit as it is to censor speech by imposing a statutory punishment; the former "positive"-looking right is really just the flip side of the latter "negative"-looking right. A person who cannot access the benefit of citizenship as a consequence of a rights-infringing provision in the Act deserves a constitutional remedy unless the impugned provision is saved by section 1. *Augier v Canada (Minister of Citizenship and Immigration)*, [2004] FC 613, at para 25 (Fed TD).

[34] Accordingly, the guarantee of freedom of expression contained in section 2(b) of the *Charter* is *prima facie* infringed by the statutory requirement that the Applicants recite an oath to the Queen in order to acquire citizenship. The oath of citizenship is a form of compelled speech that is only permissible if it can be shown to be a reasonable limit on the right of expression within the meaning of section 1 of the *Charter*.

IV. The citizenship oath as a reasonable limit on expression

[35] Since the Applicants have established that the Act's requirement of an oath to the Queen is a *prima facie* breach of section 2(b) of the *Charter*, it is for the Respondent to show that it the oath is, in the words of section 1, demonstrably justifiable in a free and democratic society. Needless to say, the proof at this stage of the analysis need not be definitive; indeed, it probably could not be in the usual courtroom sense of the word "proof". The Supreme Court of Canada

has acknowledged that, “[d]ecisions on such matters must inevitably be the product of a mix of conjecture, fragmentary knowledge, general experience and knowledge of the needs, aspirations and resources of society”. *McKinney v University of Guelph*, [1990] 3 SCR 229, at 301.

[36] Nevertheless, the court is mandated under section 1 to investigate the justifications for a *Charter* breach. The present case does not, of course, involve criminal justice or entail the potential incarceration of any person, but rather represents a choice made by Parliament in fashioning the process of citizenship acquisition. It therefore need not, and probably could not, be “tuned with great precision in order to withstand judicial scrutiny”. *R v Edwards Books & Art Ltd.*, [1986] 2 SCR 713, at 776. The Respondent must, however, provide what McLaghlin CJC has called a “reasoned demonstration” that the breach is a justifiable one. *RJR MacDonald*, *supra*, at para 129.

[37] In order to establish a section 1 justification, the Respondent must first establish that there is a sufficiently important objective sought to be accomplished by the measure in issue – i.e. the oath. *Reference re sections 193 & 195.1(1)(c) of the Criminal Code (Canada) (Prostitution Reference)*, [1990] 1 SCR 1123, at para 90. It must then demonstrate that this measure is designed to achieve its objective, and is not based on arbitrary, unfair, or irrational considerations. Following that, the Respondent must show that, even if rationally connected to its objective, the oath impairs “as little as possible” the Applicants’ right or freedom. *R v Big M Drug Mart Ltd.*, [1985] 1 SCR 295, at para 139. Finally, the Respondent must then explain to the court’s satisfaction the “proportionality between the effects of the [required oath]..., and the objective which has been identified as of ‘sufficient importance’”. *R v Oakes*, [1961] 1 SCR 103, at para 70.

a. The pressing and substantial objective

[38] Counsel for the Respondent describes the objective of the citizenship oath as follows:

The purpose of the oath requirement including an oath of allegiance to the Queen is to ensure a public, symbolic avowal of commitment to this country’s constitutionally entrenched political structure and history, during the solemnities of the citizenship ceremony, as a condition of acceding to full membership in the Canadian polity. The language of the oath reflects Canada’s current political reality and constitutional order.

[39] The Applicants respond by submitting polling data suggesting that for contemporary Canadian society the Queen may not serve the symbolic function that the oath seeks to reinforce. In oral argument, counsel for the Applicants supported this approach by asking, rhetorically, why it is pressing and substantial objective to swear allegiance to the Queen as opposed to an oath to Canada or its constitution. Similar sentiments are expressed by the Applicants in their affidavits. Each indicate that they object to the monarch finding her way into the citizenship oath, but that they would have no objection to swearing an oath to Canada or its laws.

[40] With respect, the argument presented by the Applicants does not establish the conclusion that they draw. Nothing in the Applicants’ argument takes issue with, or counters, the objective

of ensuring during the citizenship ceremonies “a public, symbolic avowal of commitment” to the country and its established order. Indeed, the Applicants and the Respondents appear to share that objective, but each seeks to achieve it with a different form of words.

[41] The Applicants may disagree with the oath as a viable method of accomplishing the legislative objective. That disagreement will be discussed below in terms of whether the means used by Parliament are appropriate or proportional to the ends it seeks to accomplish. However, as indicated above, the Applicants take no real issue with the legislative objective of expressing commitment to the country, or with its characterization as pressing and substantial; frankly, it is difficult to see how anyone could argue with the pressing and substantial nature of that objective, given the context of the Act in which the oath is set out and the ceremony at which it is administered.

b. The oath as a rational measure

[42] The Applicants argue that the Queen stands for social hierarchy and elitism, and that there is no rational basis for her presence in a statement of allegiance to the nation. Their contention is that the notion of personal fidelity to the monarch is so antiquated and antithetical to modern Canada that the oath alienates new Canadians more than it reflects their membership in the polity or binds them to it in a community of status. They therefore argue that it is an arbitrary and irrational way to accomplish the stated objective that motivates the citizenship oath.

[43] The Applicants’ affidavit material addresses this view, describing their perception of the monarchy as essentially undemocratic, inequalitarian, and a figure that runs counter to what they conceive as the essence of Canadian society. They also submit statistical data showing that the percentage of new Canadians of British descent has decreased dramatically since the early decades after Confederation, and they surmise that the personal oath to a monarch of British heritage sends a divisive and elitist rather than a unifying and all-inclusive message.

[44] The Applicants may not be in favour of the continuing historic arrangement, but in analyzing the rationality of Parliament’s choice of an oath to the Queen one cannot ignore the fact that the monarch is Canada’s constitutional head of state. Whereas in analyzing the *prima facie* infringement of their rights the Applicants are entitled to insist on remaining silent even with respect to objectively unassailable facts, in making a section 1 rational connection argument those objective facts – the foremost of which is the Queen’s constitutional status – must be taken into account.

[45] In *Chainnigh v Canada (Attorney General)*, 2008 FC 69, the Federal Court had occasion to consider, and dismiss, similar arguments in the context of a Canadian Forces officer who challenged various expressions of loyalty required during the course of his military service. As Barnes J. put it, at para 49, “the fact remains that our present ties to the British monarchy are constitutionally entrenched and unless and until that is changed there is legitimacy within our institutional structures for demanding, in appropriate circumstances, expressions of respect and loyalty to the Crown.”

[46] It is certainly rational for Parliament to have embraced an oath that references in a direct way Canada's official head of state. Whatever problems the Applicants think are associated with the monarchy, it is not irrational for Parliament to have selected a figure that has been throughout the country's history, and continues to be until the present day, a fixture of its constitutional structure.

[47] Whether or not there is reliable polling data to suggest what Canadians' current attitude toward the Queen might be is not a relevant consideration here. By way of analogy, French and English are Canada's official languages, and given their constitutionally entrenched status it is rational for Parliament to require the oath of citizenship in either of those languages. That would remain true even if polling data could be produced showing that some other language has become more prevalent among new Canadians.

[48] The constitution contains universal rights that exist in most liberal societies, such as freedom of expression, as well as "a unique set of constitutional provisions, quite peculiar to Canada", that in many ways define the nation. *Attorney General of Québec v Québec Protestant School Boards*, [1984] 2 SCR 66, at 79. Among the latter are any number of clauses that privilege foundational aspects of Canadian society: French-English bilingualism, common law-civil law bijuridicalism, a parliamentary system, federalism, aboriginal treaty rights, and the status of Her Majesty, to name but a few. It would be entirely rational for Parliament, if it so desired, to fashion an oath of citizenship that referenced any such defining element established by the country's most fundamental law.

c. The minimal impairment of rights

[49] While the citizenship oath is a rational choice, is it one that impairs expression as little as possible?

[50] To reiterate what was said at the outset of the section 1 discussion, this inquiry is not an exact science. The Supreme Court of Canada has observed that, "[t]he analysis under s. 1 of the *Charter* must be undertaken with a close attention to context." *Thomson Newspapers Co. v Canada (Attorney General)*, [1998] 1 SCR 877, at para 87. Thus, while the Court has made it clear that "Parliament is not required to choose the absolutely least intrusive alternative", *R v Downey*, [1992] 2 SCR 10, at 37, the question remains whether there is some other method available that would be less intrusive on the Applicants' rights but "which would achieve the objective as effectively". *R v Chaulk*, [1990] 3 SCR 1303, at 1341.

[51] The Applicants' affidavits are replete with descriptions of how reference to the Queen is contrary to their conception of equality and democracy, how it perpetuates hereditary privilege, how it connotes British ethnic dominance in Canadian society, and how it is antithetical to minorities' identity and rights. They concede that some form of oath might be acceptable, but they submit that it must contain a message that they can pronounce in good conscience so that their right to free expression is not so severely impaired. As it is, the Applicants state that while they could physically mouth the words of the oath, they cannot do so if they are to take the message of the oath seriously and adhere to it faithfully.

[52] The Applicants' record contain examples of citizenship oaths from other democratic nations such as the United States, and even Australia where the Queen is likewise titular head of state, where the expression of fidelity is to the country, its laws, and its heritage, but not to a person of any special, elevated status. Counsel for the Applicants contends that the fact that other comparable societies manage to confer citizenship without an oath that is personalized to a national figure, is indicative that the means chosen by Parliament to accomplish its goal does not represent a minimal impairment of freedom of expression.

[53] A similar argument was put forward by an applicant for citizenship in *Re Heib* (1980), 104 DLR (3d) 422 (Fed Ct TD). Like the Applicants here, the appellant in *Re Heib* "interprets the oath as a binding promise by him to bear allegiance to a living person, Queen Elizabeth, and to her successors. He says he cannot bring himself to swear allegiance to any living person." Likewise, Charles Roach in his Federal Court litigation held fast to the view that "a public oath is the most solemn rite and that its terms must be faithfully observed." *Roach v Canada* (FCA), *supra*, at para 21 (per Linden J.A., dissenting).

[54] Much as this high respect for the oath of citizenship is admirable, it becomes problematic if the oath itself is misinterpreted. This court has no reason to doubt, and no inclination to inquire into, the *bona fides* of the Applicants' beliefs and viewpoints. That, however, does not mean that a misunderstanding on the Applicants' part must be taken as being true.

[55] The Federal Court in *Re Heib* viewed that appellant's similar objection to the oath as misguided. Collier J., at para 8, preferred the interpretation that "the oath can be regarded, not as a promise to a particular person, but as a promise to the theoretical political apex of our Canadian parliamentary system of constitutional monarchy." Likewise, 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 JA, for the majority, indicated at para 93 that the oath, properly understood, required a citizenship applicant to simply "express agreement with the fundamental structure of our country as it is."

[56] The Appellants have rejected these interpretations, opting to apply a "plain meaning" to the reference to the Queen in the citizenship oath.

[57] It appears that the Applicants have not embraced the prevalent view that eschews "plain meanings" as an approach to legal texts. Contemporary jurisprudence has for the most part seen so-called plain meaning interpretations as misleading, concluding that, where such plain meanings are invoked, it is as often as not the case that "the context and background [drive] a court to the conclusion that 'something must have gone wrong with the language.'" *Chartbrook Limited v Persimmon Homes Limited*, [2009] UKHL 38, at para 14. In the Applicants' view, however, the meaning of the citizenship oath – in particular the reference to the Queen – is in need of no further interpretation. They simply object to the meaning which they view as plain on the face of the oath.

[58] In fact, as indicated above, the Applicants take the plain words of the oath with much solemnity. They adopt the same posture as the appellant in *Re Heib*, who, at para 7, "said he could have, at the hearing before the Citizenship Judge, taken the designated oath, but...[h]is

conscience...would not allow him to do that.” As counsel for the Applicants states in his factum: “[t]he insistence on the Oath to the Queen is an obstacle only to those who, like the Applicants, do not support the Monarchy and also take oaths very seriously.”

[59] It would seem, however, that the Applicants’ problem is not so much that they take the oath seriously. Rather, their problem is that they take it literally.

[60] In the first place, 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. Thus, for example, Canada has divided sovereignty, with both the federal and provincial Crowns represented by the Her Majesty. In *R v Secretary of State for Foreign and Commonwealth Affairs, ex parte Indian Association of Alberta*, [1982] QB 892, at 916 (CA), Lord Denning explained that “the Crown was no longer single and indivisible”, but rather had Canadianized as “was separate and divisible for each self-governing dominion or province or territory.”

[61] One would presume that the Applicants understand that, despite the words used in our constitutional practice, there has never been a literal dicing or replication of the Queen. She “may for one aspect and for one purpose fall within Sect. 92 [and] may in another aspect or another purpose fall within Sect. 91,” *Hodge v The Queen* (1883), 9 App Case 117, at 127 (PC), but she does so figuratively, not literally.

[62] Moreover, at least since the writings of A.V. Dicey and Walter Bagehot in the latter half of the nineteenth century, the Crown as a symbol of the constitutional monarchy is not generally conceived as an arbitrary authority. In fact, “[t]he Queen is only at the head of the dignified [i.e. formal] part of the Constitution. The Prime Minister is at the head of the efficient [i.e. political] part.” W. Bagehot, *The English Constitution* (1st edn. 1877) (New York: Cosimo Classics, 2007), at 296. Together, these institutional embodiments of legal sovereignty are more accurately conceived as representing “the rule of law as a fundamental postulate of our constitutional structure.” *Roncarelli v Duplessis*, [1959] SCR 121, at 142.

[63] Not only is the Canadian sovereign not foreign, as alleged by the Applicants in identifying the Queen’s British origin, but the sovereign has come to represent the antithesis of status privilege. For one thing, the Crown is, *inter alia*, the repository of responsibility toward aboriginal peoples. *Guerin v The Queen*, [1984] 2 SCR 335, at 376.

[64] The Royal Proclamation of 1763, for example, was described by Laskin J. (as he then was) as a form of “Indian Bill of Rights”. *Calder v Attorney General of Canada* (1973) 34 DLR (3d) 145, at 203 (SCC). It was therefore the Crown, or the royal sovereign, that first acknowledged aboriginal rights in Canada. In *Ex parte Indian Association of Alberta, supra*, at 916, Lord Denning concluded that “the obligations to which the Crown bound itself in the Royal Proclamation of 1763” continue apace in “the territories to which they related and [are] binding on the Crown...in respect of those territories.”

[65] As indicated above, the Applicants depose that they find it “repugnant” to swear an oath to a foreign person that represents hierarchical authority and privileged status. It is more

plausible, however, that the oath to the Queen is in fact an oath to a domestic institution that represents egalitarian governance and the rule of law.

[66] In fact, the Canadianization of the Crown, along with all the other institutions of constitutional government, “was achieved through legal and political evolution with an adherence to the rule of law and stability. The proclamation of the *Constitution Act, 1982* removed the last vestige of British authority over the Canadian Constitution and re-affirmed Canada’s commitment to the protection of its minority, aboriginal, equality, legal and language rights, and fundamental freedoms...” *Reference re Secession of Québec*, [1998] 2 SCR 217, at para 46.

[67] In interpreting the oath in a literalist manner, the Applicants have adopted an understanding that is the exact opposite of what the sovereign has come to mean in Canadian law. Little wonder, then, that they perceive the oath to represent a maximal rather than a minimal impairment of their rights.

[68] The normative clash that forms the essence of their position is premised on a misunderstanding born of literalism. Once the Queen is understood, in context, as an equality-protecting Canadian institution rather than as an aristocratic English overlord, any impairment of the Applicants’ freedom of expression is minimal.

d. Proportionality of the oath’s objective to its effects

[69] As with other cases involving expression in a political context, stacking the citizenship oath up against the rights of those who disagree with it poses a problem that is, once again, “difficult, if not impossible, to measure scientifically”. *Harper v Canada (Attorney General)*, [2004] 1 SCR 827, at para 79. The court, however, is entitled not only to consider the evidence in its proper context, but to apply some common sense to the analysis. It is certainly relevant to consider whether, as the Applicants argue, the oath mandated by the Act is “so arbitrary and unreasonable that it detracts from the value of Canadian citizenship.” *Lavoie v Canada*, [2002] 1 SCR 769, at para 59 [emphasis in original].

[70] The key to the proportionality test under section 1, as with the test for arbitrary deprivations of the section 7 right to life, liberty, and security of the person, is to combine logic with empirically discernible facts – i.e. “to evaluate the issue in the light, not just of common sense or theory, but of the evidence.” *Chaoulli v Québec (Attorney General)*, [2001] 1 SCR 791, at para 150. While the legal onus is on the Respondent to establish that the legislation falls within reasonable limits, the risk of empirical uncertainty with respect to the section 1 evidence is, in effect, shared by both parties. See Sujit Choudhry, “So what is the real legacy of Oakes? Two decades of proportionality analysis under the Canadian *Charter*’s section 1” (2006), Sup Ct L Rev 501, at 530.

[71] Accordingly, the government party must provide evidentiary support for its position about the salutary effects of its actions. On the other hand, the challenging party must demonstrate that its position as to the deleterious effects of the state action has a modicum of

credibility, or at least makes logical sense. *Dagenais v Canadian Broadcast Corporation*, [1994] 3 SCR 835, at 884, 888.

[72] The Applicants are of the view that the oath to the Queen is not only itself an instance of compelled speech but that it will, if taken seriously, forever restrict their freedom to express dissenting views. One of the Applicants, Dror Bar-Natan, sums up this viewpoint succinctly in his affidavit, deposing that if he is compelled to take the oath, "I will be bound in allegiance to the monarchy, and unlike born-Canadians, I will be morally bound to support it."

[73] With all due respect, the 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. As Rand J. put it in *Boucher v. The King*, [1951] SCR 265, at 288: "[f]reedom in thought and speech and disagreement in ideas and beliefs, on every conceivable subject, are of the essence of our life."

[74] Although the Applicants correctly perceive the oath as a vow of loyalty, they misconceive the notion of loyalty in Canada. Ironically, they appear to adopt what historians have labeled the 'loyalist myth' about the founding of the country, and characterize the citizenship oath in terms reminiscent of the traditional characterization of the country's 18th century 'loyalist' settlers. This myth of supposed blind faith in royal authority, and the explosion of that myth, is important to understanding Canadian nationhood; indeed, it reflects "the value system of a society writ metaphorically." Jo-Ann Fellows, "The Loyalist Myth in Canada", in: *Historical Papers*, 1971, Canadian Historical Association 94, at 104.

[75] As historians explain it, the 'loyal' half of the continent that received its first constitution, the *Constitution Act, 1791*, 31 Geo 3 c 31, in the wake of the American Revolution, and that eventually formed an independent confederation under the *Constitution Act, 1867*, was not founded on uncritical acceptance of Empire or loyalty to the Crown. J.M. Bumsted, *Understanding the Loyalists* (Sackville, NB: Centre for Canadian Studies, Mount Allison University, 1986), at 12. Rather, the loyalists shared with their counterparts to the south the ethos of dissent against authority – albeit democratic rather than revolutionary dissent. Arthur Johnson, *Myths and Facts of the American Revolution* (Toronto, 1908), at 188.

[76] History teaches that what distinguished those who remained with the Crown was not thoughtless fidelity to the monarch: "[b]oth patriots and loyalists had grievances against the King, George the Third." Constance MacRae-Buchanan, "American Influence on Canadian Constitutionalism", in: J. Ajzenstat, ed., *Canadian Constitutionalism 1791-1991*, Canadian Study of Parliament Group (1991), at 154. Rather, what distinguished these proto-Canadians from their southern counterparts was their notion of loyal opposition – i.e. the ability to dissent from within the fold. *Ibid.*, at 147.

[77] Those living in, and fleeing to, the colonial precursors to Canada remained 'loyal' to the concept that loyalty and dissent can live together. Janice Potter, "The Lost Alternative: the Loyalists in the American Revolution" (1976), 27 Hum Assoc Rev 89. The earliest Canadians, it

turns out, “looked...to a pluralistic society and produced the first significant justification of partisanship in American political thought.” MacRae-Buchanan, *supra*, at 154. As one historical study puts it, the ‘loyalists’ who became Canadians were (and one could say still are) “cursed with an open mind.” Wallace Brown and Hereward Senior, *Victorious in Defeat: the Loyalists in Canada* (Toronto, 1984), at 15.

[78] One of the Applicants, Simone Topey, deposes that if she were to take the oath of Canadian citizenship she “would feel bound by that oath to refrain from participating in such [anti-monarchist] political movements”. That belief is doubtless sincere, but it is premised on a mistake. The nation was born in debate rather than revolution, reflecting a commitment to engagement even while disagreeing with each other and with the governing Crown. Ged Martin, “Introduction to the 2006 Edition”, in: *Confederation Debates in the Province of Canada, 1865*, P.B. Waite, ed. (Montreal: McGill-Queen’s University Press, 2nd edn., 2006), at vii, ix.

[79] It is in this light – a heritage of debate and dissent – that one can best understand Canada’s tradition of permitting all viewpoints, including advocacy directly contrary to the existing constitutional order. Thus, for example, not 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 SCR 753; *Reference re Secession of Québec*, [1998] 2 SCR 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.

[80] I accept that the Applicants’ beliefs are subjectively sincere, and so the deleterious effect of the oath is not nil. *Syndicat Northcrest v Amselem*, [2004] 2 SCR 551, at para 68. Given that these beliefs about the oath to the Queen reflect a fundamental misapprehension, however, it is difficult to attribute them great objective weight. On the other hand, the salutary effect of an expression of fidelity to a head of state symbolizing the rule of law, equality, and freedom to dissent, is substantial.

[81] In requiring a vow of commitment to national values at the moment of citizenship, the Act, as indicated earlier in these reasons, places a limit on free speech; but it does so in a way that is appropriate to the free and democratic society that is Canada. Indeed, the Act, with its mandatory oath, restricts a *Charter* right in a way “that reflects the very purpose for which rights were entrenched”, Lorraine E. Weinrib, “The Supreme Court of Canada and Section 1 of the Charter” (1988), 10 Sup Ct L Rev 469, at 494. As a statement that embraces constitutional values, it is a rights-enhancing measure that is justified under section 1 of the *Charter*.

[82] Accordingly, notwithstanding that it is a *prima facie* violation of section 2(b) of the *Charter*, the oath to the Queen is constitutionally valid.

V. Sections 2(a) and 15(1) of the *Charter*

[83] Unlike the challenge under section 2(b) of the *Charter*, the Applicants have not established that the citizenship oath rises to the level of a *prima facie* infringement of either section 2(a) (freedom of religion) or section 15(1) (equality rights).

[84] In evaluating a claim of freedom of religion, it is important to keep in mind that, “both purpose and effect are relevant in determining constitutionality; either an unconstitutional purpose or an unconstitutional effect can invalidate legislation.” *R v Big M Drug Mart Ltd.*, *supra*, at para 80. It is equally important to recall that, “[f]reedom in a broad sense embraces both the absence of coercion and constraint, and the right to manifest beliefs and practices.” *Ibid.*, at para 95.

[85] No one contends, and it could not seriously be argued, that the citizenship oath has a religious purpose. While the Applicants complain that there are religious limitations on who can become the monarch (the *Act of Settlement* still prohibits Roman Catholics from ascending to the throne), the purpose of the oath in Canada is the strictly secular one of articulating a commitment to the identity and values of the country.

[86] The Applicant, Simone Topey, however, deposes that the effect of the oath is to infringe her religious freedom by forcing a choice between citizenship and making a vow that is contrary to her faith. To be clear, there is no contention that the Act, in mandating the oath, singles out any one Applicant or is aimed at any one religion; rather, the point is that its universal application to all citizenship candidates has a detrimental impact on Ms. Topey.

[87] The Supreme Court of Canada addressed this type of claim in *Alberta v Hutterian Brethren of Wilson Colony*, [2009] 2 SCR 567, where members of a minority religious community claimed that the province of Alberta’s requirement of a photo on a drivers’ license violated a tenet of their faith. In a description that could be equally apt in the present case, McLaughlin J.C. stated, at para 39: “Much of the regulation of a modern state could be claimed by various individuals to have a more than trivial impact on a sincerely held religious belief. Giving effect to each of their religious claims could seriously undermine the universality of many regulatory programs...”

[88] In *Hutterian Brethren*, the government conceded that its legislation breached the challengers’ religious freedom for the purpose of enhancing public safety. The simple solution articulated by the court, at para 96, was for those effected by the impugned law to “hire people with drivers’ licenses for this purpose, or to arrange third party transport to town for necessary services, like visits to the doctor”. Since the case was seen as pitting the utility and security of the many against the disutility and inconvenience of the few, the court readily concluded that the license requirement constituted a proper balance that was justifiable under section 1.

[89] The citizenship oath has much in common with the drivers’ license photograph in that it is equally a universal requirement of the state applied to applicants without regard or reference to religion. The oath, however, presents an even stronger case for upholding the state action since the challengers’ section 2(a) objection – the deleterious effect on a sincerely held religious belief

– runs counter to the very object of holding up constitutional values for new citizens. The freedom of religion challenge here illustrates the observation by Abella J. in *Bruker v Markovitz*, [2007] 3 SCR 607, at para 2, that “[n]ot all differences are compatible with Canada’s fundamental values and, accordingly, not all barriers to their expression are arbitrary.”

[90] To the extent that the oath to the Queen reflects a commitment not to inequality but to equality, and not to arbitrary authority but to the rule of law, it is not only a unifying statement but a rights-enhancing one. In taking the position that the mere recitation of the oath is an infringement of her subjectively held religious belief, Ms. Topey runs up against the settled notion that the rights of some cannot be a platform from which to strike down the rights of others.

[91] The Supreme Court of Canada embraced this notion in addressing the *Charter* arguments in *Reference re Same-Sex Marriage*, [2004] 3 SCR 698. The court stated emphatically, at para 46, that “[t]he promotion of *Charter* rights and values enriches our society as a whole and the furtherance of those rights cannot undermine the very principles the *Charter* was meant to foster.” Likewise, an oath of citizenship that references a symbol of national values enriches the society as a whole, and does not undermine the rights and freedoms that the society and its head of state foster and represent.

[92] Accordingly, while the section 2(a) challenge here bears resemblance to the section 2(a) challenge in *Hutterian Brethren*, the analysis need not proceed to section 1. Rather, it suffices to say that while the subjective religious beliefs of the Applicants (or at least one of them) may be effected, the court could not order an accommodation of Ms. Topey’s or any of the other Applicants’ religious particularity in the face of the secular universality of the Act and the oath. The Applicants’ desired remedy would itself undermine the values enshrined in section 2(a) of the *Charter*.

[93] An accommodation of religion such as that sought here – taking account of Ms. Topey’s personal religious beliefs in the context of a non-religious citizenship procedure – would be analogous to a public school board accommodating a religious group by de-secularizing its curriculum. In other words, it would amount to a form of accommodation that the Supreme Court has said is impermissible. *S.L. v Commission scolaire des Chênes*, [2012] 1 SCR 235. After all, it stands to reason that, “state sponsorship of [or support for] one religious tradition amounts to discrimination against others.” *Ibid.*, at para 17.

[94] Accordingly, the Act does not amount to a *prima facie* violation of freedom of religion in the way that it does for freedom of expression. As Deschamps J. put it in *S.L.*, at para 23, “it is not enough for a person to say that his or her rights have been infringed...” Freedom of religion under section 2(a) of the *Charter* has both a subjective and an objective, societal component, both of which must be shown to be infringed before moving on to section 1. The Applicants have not satisfied that test.

[95] Turning to the section 15(1) claim raised by the Applicants, two of the three of them (Mr. McAteer and Mr. Bar-Natan) identify the ground of discrimination against them as one of political belief. Mr. McAteer states that he believes in republicanism, while Mr. Bar-Natan

states that he believes in a non-hierarchical society. Ms. Topey, as noted above, claims interference with freedom of religion; and although she bases her argument more on section 2(a) than section 15(1), she raised the issue in a way that is closely related to a claim of discrimination on religious grounds. Further, Cullity J. made it clear in *Roach, supra*, at para 17, that an opposition to the entrenchment of “racial hierarchies”, and thus to racial discrimination, was a significant part of Charles Roach’s original claim in this case.

[96] Race and religion are specifically enumerated grounds of prohibited discrimination under section 15(1) of the *Charter*. Furthermore, the Supreme Court of Canada reasoned in *Corbiere v Canada (Minister of Indian and Northern Affairs)*, [1999] 2 SCR 203, at 219, that a ground of discrimination is an analogous *Charter* ground if it is based on characteristics that are immutable, or changeable only at an unacceptably high cost to personal identity. Recent case law has suggested that section 15(1) of the *Charter* can be invoked “to protect against discriminatory treatment of a person on account of having a political belief.” *Condon v Prince Edward Island* (2002), 214 Nfld & PEI Rep 244, at para 49 (PEI SC); *aff’d* on other grounds 253 Nfld & PEI Rep 265 (PEI CA).

[97] Whether the Applicants’ claim is based on racial discrimination, religious discrimination, or the somewhat more novel ground of political belief discrimination, there is sufficient evidence in the record to consider a section 15(1) challenge alleging that the oath to the Queen violates equality rights.

[98] The claims of discrimination on the grounds of religion and race are raised as purely subjective matters by Ms. Topey (and formerly by Mr. Roach). There is no discriminatory purpose in requiring the oath, and there is likewise no objective evidence that it has a discriminatory effect – that is, no statistical evidence or demographic data to establish that the requirement of an oath to the Queen has a disparate impact on religious or racial minorities. Absent evidence of discriminatory purpose or impact, there is no basis on which a *Charter* challenge based on unequal treatment can succeed. *Trinity Western University v British Columbia College of Teachers*, [2001] 1 SCR 772, at para 35.

[99] As for the claim of political belief discrimination raised by Mr. McAteer and Mr. Bar-Natan, this claim is equally unsubstantiated in the evidentiary record. These two Applicants no doubt feel that the impact of the citizenship oath is discriminatory toward those with their republican and anti-hierarchical beliefs, but there is no evidence that any particular political movement or group has been adversely impacted by these measures. Indeed, if anything the evidence in Canada, where there are many dissenting political groupings and movements – including, as indicated above, a thriving anti-monarchist movement – is to the contrary.

[100] What the claim of political belief discrimination really reduces to is a claim that the oath discriminates against those who object to the oath. It is self-evident that a claim under section 15(1) cannot be so finely tuned to the very measure being challenged lest every enactment be labeled discriminatory.

[101] That said, the Applicants’ argument here is closely allied with their overall claim that they are discriminated against on the grounds of their non-citizenship status. They submit that

since persons who are Canadian citizens by birth do not need to take an oath to the Queen, applicants for citizenship by naturalization are inherently discriminated against by requiring them to take an oath. Those who, like the Applicants, hold political beliefs that oppose the content of the oath, are the ones who feel this discrimination the most.

[102] The Applicants' claim of discrimination on the ground of (non-)citizenship, however, attempts to prove too much. While it is impermissible for government to distinguish between citizens and non-citizens in certain other contexts that are not intrinsically related to citizenship, *Andrews, supra*, the very concept of citizenship is premised on there being a legal distinction between citizens and others. "Citizenship", according to Rand J. and just about every other jurist who has written about the issue, "is membership in a state". *Winner v S.M.T.*, [1951] SCR 887, at 918. Needless to say, the very existence of a category of membership also signifies the existence of non-members.

[103] For this reason, the courts in Canada have perceived citizenship to be a status that is "determined by Parliament under subsection 91(25) of the British North America Act, 1867... and is a political prerogative derived from the sovereignty of the nation." *Lavoie (FCA), supra*, at para 11. If an immigrant and a citizen were required to be treated equally within the meaning of section 15(1) of the *Charter*, the concept of citizenship would disappear. Accordingly, "one cannot even speak of the possibility of a breach of the equality principle when comparing the privileges of citizenship to those accorded to immigrants." *Ibid.*, at para 9.

[104] Citizenship, as Linden JA indicated in *Lavoie*, at para 125, "is a cherished privilege, not for the pecuniary benefits which accrue to its holders, but for the bonds that it creates." Likewise, when *Lavoie* reached the Supreme Court, the plurality judgment by Bastarache J. 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.

[105] Bonds by definition separate people within from people without. This fact has been the subject of critique by political theorists and legal scholars, who have pointed out that the political and material advantages given to birthright citizens raises for some a "moral disdain against acquisition and transfer rules that systemically exclude prospective members on the basis of ascriptive criteria." Ayelet Shachar and Ran Hirschl, "Citizenship as Inherited Property" (2007), 35 *Political Theory* 253, at 255. It is this sentiment that is reflected in, for example, Mr. Bar-Natan's testimony that the oath is a form of initiation ritual that is "tantamount to hazing."

[106] Nevertheless, one simply cannot have citizens without non-citizens, or members of the state without non-members; and since the non-citizens define the citizens, their very status cannot be discriminatory within the meaning of section 15(1) of the *Charter*. As Arbour J. said in her separate concurrence in *Lavoie*, at para 110, "it is the essence of the concept of citizenship that it distinguishes between citizens and non-citizens and treats them differently... Were the differences...eliminated so that all rights available to citizens were also immediately and equally available to non-citizens, the notion of citizenship would become meaningless."

[107] Thus, in challenging the disparate impact of the oath on non-citizens as opposed to birthright citizens, the Applicants in effect challenge citizenship itself. In doing so, they impugn the unimpeachable. In Canada, the courts have been directed to "accord the state a...wide latitude in determining some of the special rights of citizenship." *Lavoie* (SCC, per Arbour J.), at para 116. One such right, or determining factor, is that Parliament can determine the admission criteria such as an oath without being subject to equality rights analysis on the grounds of the challengers' citizenship itself.

[108] In enacting the oath, Parliament has sought "to enhance the meaning of citizenship as a unifying bond for Canadians." *Lavoie* (SCC, per Bastarache J.), at para 57. As with the freedom of religion claim, the Applicants cannot use section 15(1) as a means of undermining the equality and unity of others. To put it another way, "[t]he mere recognition of the equality rights of one group cannot, in itself, constitute a violation of the rights of another." *Reference re Same-Sex Marriage, supra*, at para 46.

[109] Accordingly, there is no violation of either section 2(a) or 15(1) of the *Charter* in requiring new citizens to take an oath to the Queen.

VI. Disposition

[110] The Application is dismissed.

[111] The citizenship oath to the Queen, as set out in the Act, infringes section 2(b) of the *Charter* as a form of compelled expression, but is saved by section 1 as being a reasonable limit on the right of expression that is justifiable in a free and democratic society.

[112] The oath does not violate section 2(a) (freedom of religion) or section 15(1) (equality rights) of the *Charter*.

[113] The parties have agreed not to seek costs against each other, and none are ordered.



Morgan J.

CITATION: McAteer et al. v. Attorney General of Canada, 2013 ONSC 5895
COURT FILE NO.: 05-CV-301832-PD3
DATE: 20130920

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

Michael McAteer, Simone E.A. Topey, and Dror Bar-Natan

Applicants

— and —

The Attorney General of Canada

Defendant

REASONS FOR JUDGMENT

E.M. Morgan J.

Released: September 20, 2013



THE HONOURABLE
JUSTICE CAROLYN J.
HORKINS

ONTARIO
SUPERIOR COURT OF JUSTICE

(TORONTO REGION)

Court File No.: 05-CV-301832 CP

32

Monday, the 18th
TUESDAY, THE 29TH
DAY OF MAY, 2012

'June'

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ce

BETWEEN:

CHARLES C. ROACH, ASHOK CHARLES, MICHAEL MCATEER AND
HOWARD JEROME GOMBERG

Plaintiffs

-and-

THE ATTORNEY GENERAL OF CANADA

Defendant

ORDER

Proceeding under the Class Proceedings Act, 1992

THIS MOTION, made by the Plaintiffs for an order pursuant to subsection 7(b) and (c) of the *Class Proceedings Act* permitting the proceedings to continue as a proceeding between the parties and to set a timetable for the conduct of this proceeding, and the Defendant's motion to dismiss for delay, were heard in the presence of counsel for the Plaintiffs and counsel for the Defendant on the 29th day of May 2012 at Osgoode Hall, 130 Queen Street West in Toronto.

ON READING the Motion material filed by the Plaintiffs and Defendant and on hearing the submissions of counsel for the Plaintiffs and the Defendant.

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1. **THIS COURT ORDERS** that the Defendant's motion to dismiss for delay is denied.
2. **THIS COURT ORDERS** that pursuant to s. 7 of the *Class Proceedings Act*, the individual claims may proceed on the following terms:
 - a. The plaintiffs may proceed by application or statement of claim to seek the declaratory relief that is articulated in the proposed claim.
 - b. The plaintiffs may issue a fresh statement of claim or application and must do so no later than September 21, 2012. This includes service of the claim or application on the defendant.
 - c. By the end of September, the parties will agree on a timetable for moving the proceeding ahead.
 - d. A copy of this order and reasons will be posted on the website of plaintiffs' counsel for a period of 60 days.

Cee ✓
Dated at Toronto this ~~—~~ day of August, 2012 ✓

Cee

REGISTRAR

REGISTRAR, SUPERIOR COURT OF JUSTICE
GREFFIER ADJOINT, COUR SUPÉRIEURE DE JUSTICE

ENTERED AT / INSCRIPT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

SEP 07 2012

AS DOCUMENT NO.:
A TITRE DE DOCUMENT NO.:
PER / PAR:

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Roach et al.

-and-

The Attorney General of Canada

34

(Plaintiffs)

(Defendant)

Court File No.: 05-CV-301832 CP

ONTARIO COURT OF JUSTICE

(Toronto Region)

Proceeding commenced at Toronto

ORDER

ROACH, SCHWARTZ & ASSOCIATES
Barristers & Solicitors
688 St. Clair Avenue West
Toronto, Ontario
M6C 1B1

Tel: 416 657-1465
Fax: 416 657-1511

Peter Rosenthal (LSUC no. 33044O)
Michael Smith (LSUC no.14557M)
Selwyn Pieters (LSUC no. 50303Q)

Solicitors for the Plaintiffs

Court File No. 06-CV-301832PD3

ONTARIO

SUPERIOR COURT OF JUSTICE

THE HONOURABLE
 MASTER GUSTEIN
 JUSTICE

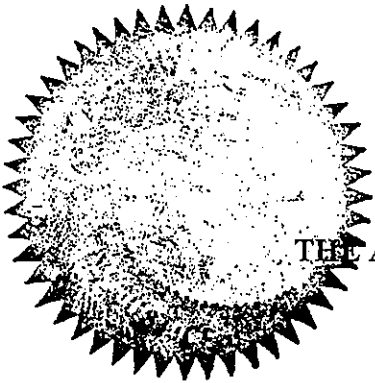
) THURSDAY THE 8TH DAY
) NOVEMBER
) OF OCTOBER, 2012
) 136

BETWEEN:

CHARLES C. ROACH, ASHOK CHARLES, MICHAEL MCATEER AND
 HOWARD JEROME GOMBERG

Applicants

-and-



THE ATTORNEY GENERAL OF CANADA

Respondent

ORDER

THIS MOTION made by the Applicants for an Order removing three Applicants and adding two new Applicants and for an Order issuing an Amended Fresh as Amended Notice of Application was read this day at 393 University Avenue, Toronto.

ON READING the consent of all parties and the Amended Fresh as Amended Notice of Application, duly executed and filed;

THIS COURT ORDERS that:

a) the Amended Fresh as Amended Notice of Application attached to this Order be issued by the Registrar to replace the Fresh as Amended Notice of Application;

b) Charles C. Roach, Ashok Charles and Howard Gornberg are no longer Applicants in the Application herein;

c) Simone E.A. Topey and Dror Bar-Natan are added as Applicants in the Application herein;

d) the style of cause of this Application shall henceforth be:

Court File No. 06-CV-301832PD3

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

MICHAEL MCATEER, SIMONE E.A. TOPEY AND DROR BAR-NATAN

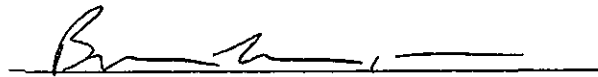
Applicants

-and-

THE ATTORNEY GENERAL OF CANADA

Respondent

e) there are no costs of this motion.


Master Glustein

ENTERED AT/INSCRIT À TORONTO
ON/BOOK NO:
LE/DANS LE REGISTRE NO:

NOV 21 2012

PER/PAR:

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

~~CHARLES C. ROACH, ASHOK CHARLES, MICHAEL MCATEER, AND~~
~~HOWARD JEROME COMBERG~~ SIMONE E.A. TOPEY AND DROR BAR-NATAN

Applicants

-and-

THE ATTORNEY GENERAL OF CANADA

Respondent

AMENDED FRESH AS AMENDED NOTICE OF APPLICATION

(Pursuant to Rule 14(3) (g.1) of the *Rules of Civil Procedure*)

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicants. The claim made by the Applicants appears on the following pages.

THIS APPLICATION will come on for a hearing on a date to be set by the Court at 393 University Avenue, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a Notice of Appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your Notice of Appearance, serve a copy of the evidence on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it with proof of service, in the Court office where the Application is to be heard as soon as possible, but not later than 2 days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH

**TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES,
LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL
AID OFFICE.**

Date: September 10, 2012

Issued by: "Y. Grant"
Registrar
393 University Avenue
10th Floor
Toronto, ON M5G 1E6

TO:

THE ATTORNEY GENERAL OF CANADA
The Exchange Tower
130 King St. W.
Suite 3400, Box 36
Toronto, ON M5X 1K6

Per: Kristina Dragaitis
Tel: 416 952 6992
Fax: 416 954 8982

Lawyer for the Respondent

APPLICATION

- I. **THE APPLICANTS MAKE APPLICATION FOR** a declaration that requiring applicants for Canadian citizenship to take an oath or affirmation that contains the phrase “...*I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Queen of Canada, her Heirs and successors, ...*” contravenes the rights enshrined in sections 2(a), 2(b), 2(c), 2(d) and 15(1) of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”), is not a reasonable limit on those rights within the meaning of section 1 of the *Charter*, and is therefore of no force and effect pursuant to section 52 of the *Charter*.

II. THE GROUNDS FOR THE APPLICATION ARE:

3. The Applicants were all born outside of Canada, as were their parents.
4. In order for immigrants born outside Canada whose parents were born outside Canada to become Canadian citizens, the *Citizenship Act*, R.S.C 1985, c. C-29 requires that qualified

immigrants (except for those in certain specified categories) take the following oath ["the oath"]:

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.

5. The Applicants do not fall into any of the categories of immigrants that are exempted from taking the oath.
6. The Applicants conscientiously object to taking an oath that includes the words "*I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Queen of Canada, Her Heirs and Successors*" ["the impugned words"].
7. The Applicants have no objection to taking an oath that they would faithfully observe the laws of Canada and fulfill their duties as Canadian citizens.
8. The Applicants support political movements whose goals include establishing a republican form of government in which the head of state would be an elected official instead of a monarch established by the laws of succession.
9. Taking an oath containing the impugned words would force the Applicants to express allegiance and faithfulness to the royal family and to a monarchical form of government.
10. Remaining true to an oath containing the impugned words would require the Applicants

to refrain from republican activities.

11. Taking an oath containing the impugned words would violate the Applicants' religious, political, cultural and/or moral beliefs.

VIOLATIONS OF SECTION 2 OF THE CHARTER

12. Section 2(a) of the *Charter* guarantees freedom of conscience and religion and protects the rights of individuals to hold views based on their concepts of right and wrong.

13. Requiring the Applicants to take an oath containing the impugned words as a condition of citizenship violates their section 2(a) *Charter* rights.

14. The Applicants hold views and beliefs that prevent them from swearing or affirming allegiance to Her Majesty Queen Elizabeth II, her Heirs and Successors.

15. The Applicants believe in republican philosophies and also object to the taking of the Oath of Allegiance to the Queen because of their heritage, religious beliefs, political beliefs and/or national backgrounds..

16. The current Oath forces the Applicants to choose between remaining faithful to their

spiritual and political beliefs and thus not become Canadian citizens or to hypocritically take the oath to gain the opportunity to enjoy citizenship rights.

17. Section 2(b) of the *Charter* guarantees freedom of thought, belief, opinion and expression, and protects individuals from being compelled to make statements contrary to their personal beliefs and opinions.

18. The impugned words violate the Applicants' section 2(b) *Charter* rights.

19. An oath containing the impugned words forces those who take it to express fealty to the monarchy.

20. The Applicants take public oaths seriously and regard taking of such as a matter of conscience.

21. Taking the Oath of Allegiance to the Queen would have the effect of hindering the Applicants for the rest of their lives from freely expressing their thoughts, beliefs and opinions regarding their opposition to monarchy.

22. Section 2(c) of the *Canadian Charter of Rights and Freedoms* guarantees the right to peaceful assembly. The Applicants' section 2(c) *Charter* rights are violated by the oath as taking it would prevent them from holding meetings and rallies advocating the removal of the

Monarchy from the Canadian Constitution.

23. Section 2(d) of the *Charter* guarantees freedom of association.

24. Taking the Oath and living according to it would bar the Applicants from freely joining republican associations or religious groups that foreswear oaths to monarchs. The Oath of Allegiance hinders or curtails collective opposition and incentive for change by demanding loyalty to a form of government that requires a monarch to be head of state. This strikes at the heart of democracy and breaches s. 2(d) of the *Charter*.

VIOLATIONS OF SECTION 15 (1) OF THE *CHARTER*

25. Section 15 of the *Charter* guarantees that every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination.

26. The impugned words discriminate against the Applicants on the prohibited grounds of national origin, race, and religion and on the analogous grounds of political beliefs and conscience.

27. Those who become Canadian citizens by virtue of being born in Canada can maintain their citizenship indefinitely without ever taking any oath of allegiance to the Queen.

28. The Oath discriminates between those who become citizens of Canada by virtue of being born in Canada and those who become naturalized citizens. The impugned words impose obligations of faithfulness and true allegiance to the Queen that a citizen born in Canada does not bear. Immigrant citizens are required to uphold the monarchic form of government while native born citizens are free to fully participate in movements to abolish the monarchy.

29. Section 6 of the *Citizenship Act* states that a citizen, whether or not born in Canada, is entitled to all rights, powers and privileges and is subject to all obligations, duties and liabilities to which a person who is a native-born citizen is entitled to or subject to. However, the impugned words impose obligations on naturalized citizens that are not imposed on native--born citizens.

30. The Oath of Allegiance to the monarchy discriminates against the Applicants on the prohibited ground of national origin. It requires the Applicants to take the Oath of Allegiance to the Queen in order to have the rights to stand for public office and to vote but does not require persons born in Canada to take the aforesaid oath in order to obtain those rights.

31. The Applicants assert that the class of all those who seek Canadian citizenship and who cannot reconcile their beliefs with the taking of the Oath of Allegiance should be recognized as an identifiable group in comparison to individuals who apply for citizenship and who do not object to the Oath of Allegiance.

32. The group of individuals who cannot reconcile their beliefs with the taking of the Oath of

Allegiance is discriminated against when compared to the group of individuals who apply for citizenship and who do not object to the Oath of Allegiance.

33. The impugned words discriminate on the basis of religion against those whose religious beliefs preclude taking such an oath.

34. The Oath places a differential burden upon the Applicants by failing to accommodate their very reasonable, lawful and deeply-held beliefs.

35. The Applicants object to the oath of allegiance on the basis of their ethnic, racial and/or national origins. They have direct historical relationships to opposition to the English monarchy.

Among the Applicants are individuals:

- a. who are the descendents of African slaves who were kidnapped by English slavers who paid royalties to the Crown;
- b. whose ancestors and/or peoples were directly involved in anti-colonial and anti-monarchy struggles in their countries of origin, and
- c. whose ancestors and/or peoples were dispossessed of their lands and/or livelihoods by the actions of the English monarchy, their servants or agents.

36. Some of the Applicants assert that requiring them to swear the Oath of Allegiance discriminates against them by requiring them to swear fealty:

- a. to a royal family and institution that benefited from the historical harm inflicted

on the Applicants' peoples and/or ancestors;

- b. to a royal family and institution whose current wealth was accumulated in part as a result of slavery and colonial activities;
- c. to a royal family and institution whose methods of acquisition of its current wealth included harming the Applicants' ancestors.

37. The *Act's* failure to accommodate the Applicants by allowing them to acquire citizenship without taking the oath with the impugned words places a differential burden on them by forcing them to choose between respecting and honouring their own political beliefs, ancestors, and/or the struggles for emancipation of national, racial and ethnic peoples on the one hand and, on the other hand, pledging fealty to a monarch.

38. The Applicants allege that, although the Oath of Allegiance to the Queen requirement is imposed on almost all applicants for citizenship, it has an adverse, differential impact on persons who object to taking the oath because of reasons of conscience.

39. The main concrete effect of the Oath of Allegiance to Queen Elizabeth II, Her Heirs and Successors is to promote the current political structure of Canada as a constitutional monarchy and thus to discourage republican thought and action.

40. The Oath of Allegiance to the Queen and the monarchy violates the Applicants' beliefs against racial superiority and in the equality of all human beings.

41. Pursuant to the *Act of Settlement of 1701*, which is part of the Canadian constitution, only persons who are members of the Church of England can be Monarch of Canada.

42. The Applicants and their offspring are barred from holding the office of head of state of Canada since they are not members of the Church of England.

43. The Applicants allege that their right to equal benefit of the law is infringed by the oath's effect of conscripting oath-takers to the monarchist system of government as opposed to the republican cause.

44. The Applicants are treated differently from other applicants for citizenship in that the taking of the oath by the Applicants would cause mental anguish while applicants who do not feel that their conscience is being coerced do suffer such anguish.

45. The impugned words constitute a pledge to the individual who is head of state. The symbol of the head of state is so integrally identified with the Windsor family and privilege by birth that an oath to it offends the Applicants' commitment to values of equal dignity and equal liberty.

46. Forcing conscientious objectors to take the oath is discriminatory as the Oath has a differential impact on republicans as opposed to monarchists. Monarchists are pleased to take the

oath while republicans experience mental anguish if they are forced to do so.

47. The status of citizenship is essential for a resident of Canada to participate in the life of the community without trammels.

48. Non-citizens often face stereotypical attitudes, including assumptions that they are less loyal to Canada, less community minded, less hardworking and of lesser value than citizens.

49. Prejudices and stereotypes about the loyalty of non-citizens act as ongoing barriers to their full participation in Canadian society. Such provide often-used rationales to deny positions in employment, community, professional and labour organizations, resulting in financial hardship, psychological and emotional distress and a sense of exclusion and isolation.

50. The policy of requiring a mandatory Oath to the Queen stops republican immigrants such as the Applicants from engaging in the political process of the country by denying them the right to vote and to stand for public office.

51. Pursuant to section 35 of the *Citizenship Act*, the Lieutenant Governor in Council of a province or designate is authorized to prohibit, annul or in any manner restrict the taking or acquisition directly or indirectly of, or the succession to, any interest in real property located in the province by persons who are not citizens or by corporations or associations that are effectively controlled by persons who are not citizens.

52. The Applicants have strong commitments to principles of justice and desire to continue to make useful contributions to their communities.

53. Citizenship can have a major impact on a person's independence, security, self-esteem and a sense of contributing to the community.

54. Section 29 of the *Citizenship Act* provides that a person who, for any of the purposes of the *Act*, makes any false representation, commits fraud or knowingly conceals any material circumstances, is guilty of an offence punishable on summary conviction.

55. Taking the Oath of Allegiance with no intention of honouring it would be a false representation and would therefore contravene section 29 of the *Act*.

56. The Oath of Allegiance promotes strong institutional prejudice against anti-monarchists, republicans, descendants of colonized people and persons belonging to certain religious faiths. Thus the Oath containing the impugned words reflects, reinforces and perpetuates pre-existing stereotypes and prejudices.

57. Requiring those seeking citizenship to take the oath of allegiance with the impugned words reinforces a stereotype that the political, ethnic and religious group of the Monarch is superior to other racial, ethnic and religious groups.

THE INFRINGEMENTS ARE NOT REASONABLE LIMITATIONS ON RIGHTS**50**

58. Pursuant to section 1 of the *Charter*, the onus of justifying any of the above-described infringements of *Charter* rights rests upon the Respondents.

59. There is no reasonable justification for requiring an oath to a monarch in a free and democratic society.

60. An oath to a monarch is contrary to fundamental principles of democracy.

61. Any reasonable purposes of a citizenship oath could be obtained by eliminating the impugned words entirely or by allowing applicants for citizenship to opt out of the impugned words.

62. Since, under section 5 of the *Citizenship Act*, the Minister may waive on compassionate grounds the requirement to take the Oath of Allegiance for persons who are minors and for those who cannot understand the significance of taking the oath because of mental disability, a comparable analogous exemption for conscience objectors is feasible.

63. Australia has a constitutional monarchy that is similar in all material respects to that of Canada. The British monarch is Australia's head of state. But the oath required of applicants for citizenship in Australia does not refer to the monarchy.

64. Pursuant to section 11 of the *Citizenship Act*, the Oath of Allegiance is not administered to a person who automatically receives citizenship under section 11(2). This section provides that a woman, who before 1947 by reason only of her marriage or the acquisition by her husband of a foreign nationality, ceased to be a British subject, and would have been a citizen had the former Act come into force immediately before her marriage or the acquisition by her husband of a foreign nationality, acquires citizenship immediately on the receipt by the Minister of a notice in writing by her that she elects to be a citizen.

65. The Government of Canada has not enforced fidelity to the Oath. Thus the Oath only restricts those who, like the Applicants, feel bound by their consciences.

66. Such further grounds as counsel may advise and this Honourable Court may permit.

III. THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE APPLICATION:

1. The *Citizenship Act*, R.S.C. 1985, c. C-29, as amended;
2. The *Canadian Charter of Rights and Freedoms*;
3. ~~The Affidavit of Charles Roach, to be filed;~~
4. The Affidavit of Michael McAteer, to be filed;
5. The Affidavit of Ashok Charles, to be filed;

6. The Affidavit of Howard Jerome Gomberg, to be filed;
7. The Affidavit of ~~NEW APPLICANT~~ Simone E.A. Topey, to be filed;
8. The Affidavit of ~~SECOND NEW APPLICANT~~ Dror Bar-Natan, to be filed;
9. The Affidavit of Randall White, to be filed;
10. Such further material as counsel may advise and this Honourable Court may permit.

52

DATE: September 10, 2012

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Solicitors for the Applicants

Court File No. ⁵06-CV-301832-~~PD3~~ CP00

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

**CHARLES C. ROACH, ASHOK CHARLES, MICHAEL MCATEER, AND
HOWARD JEROME GOMBERG SIMONE E.A. TOPEY AND DROR BAR-NATAN**

Applicants

-and-

THE ATTORNEY GENERAL OF CANADA

Respondent

AMENDED THIS Apr. 18/13 PURSUANT TO
MODIFIÉ CE CONFORMEMENT À
☐ RÈGLE/LA RÈGLE 26.02
☒ THE ORDER OF Master Ghestein
L'ORDONNANCE DU
DATED / FAIT LE Apr. 8, 2012
REGISTRAR D. J. Tindall
SUPERIEUR D. J. Tindall
DE LA COUR D. J. Tindall
DE JUSTICE D. J. Tindall
COMPTÉ DE JUSTICE

AMENDED FRESH AS AMENDED NOTICE OF APPLICATION(Pursuant to Rule 14(3) (g.1) of the *Rules of Civil Procedure*)**TO THE RESPONDENT**

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicants. The claim made by the Applicants appears on the following pages.

THIS APPLICATION will come on for a hearing on a date to be set by the Court at 393 University Avenue, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a Notice of Appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your Notice of Appearance, serve a copy of the evidence on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it with proof of service, in the Court office where the Application is to be heard as soon as possible, but not later than 2 days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH

**TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES,
LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL
AID OFFICE.**

Date: September 10, 2012

Issued by: "Y. Grant"
Registrar
393 University Avenue
10th Floor
Toronto, ON M5G 1E6

TO:

THE ATTORNEY GENERAL OF CANADA

The Exchange Tower
130 King St. W.
Suite 3400, Box 36
Toronto, ON M5X 1K6

Per: Kristina Dragaitis
Tel: 416 952 6992
Fax: 416 954 8982

Lawyer for the Respondent

APPLICATION

- I. THE APPLICANTS MAKE APPLICATION FOR a declaration that requiring applicants for Canadian citizenship to take an oath or affirmation that contains the phrase "...I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Queen of Canada, her Heirs and successors, ..." contravenes the rights enshrined in sections 2(a), 2(b), 2(c), 2(d) and 15(1) of the *Canadian Charter of Rights and Freedoms* (the "*Charter*"), is not a reasonable limit on those rights within the meaning of section 1 of the *Charter*, and is therefore of no force and effect pursuant to section 52 of the *Charter*.

II. THE GROUNDS FOR THE APPLICATION ARE:

3. The Applicants were all born outside of Canada, as were their parents.
4. In order for immigrants born outside Canada whose parents were born outside Canada to become Canadian citizens, the *Citizenship Act*, R.S.C 1985, c. C-29 requires that qualified

immigrants (except for those in certain specified categories) take the following oath ["the oath"]:

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.

5. The Applicants do not fall into any of the categories of immigrants that are exempted from taking the oath.
6. The Applicants conscientiously object to taking an oath that includes the words "*I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Queen of Canada, Her Heirs and Successors*" ["the impugned words"].
7. The Applicants have no objection to taking an oath that they would faithfully observe the laws of Canada and fulfill their duties as Canadian citizens.
8. The Applicants support political movements whose goals include establishing a republican form of government in which the head of state would be an elected official instead of a monarch established by the laws of succession.
9. Taking an oath containing the impugned words would force the Applicants to express allegiance and faithfulness to the royal family and to a monarchical form of government.
10. Remaining true to an oath containing the impugned words would require the Applicants

to refrain from republican activities.

11. Taking an oath containing the impugned words would violate the Applicants' religious, political, cultural and/or moral beliefs.

VIOLATIONS OF SECTION 2 OF THE CHARTER

12. Section 2(a) of the *Charter* guarantees freedom of conscience and religion and protects the rights of individuals to hold views based on their concepts of right and wrong.

13. Requiring the Applicants to take an oath containing the impugned words as a condition of citizenship violates their section 2(a) *Charter* rights.

14. The Applicants hold views and beliefs that prevent them from swearing or affirming allegiance to Her Majesty Queen Elizabeth II, her Heirs and Successors.

15. The Applicants believe in republican philosophies and also object to the taking of the Oath of Allegiance to the Queen because of their heritage, religious beliefs, political beliefs and/or national backgrounds..

16. The current Oath forces the Applicants to choose between remaining faithful to their

spiritual and political beliefs and thus not become Canadian citizens or to hypocritically take the oath to gain the opportunity to enjoy citizenship rights.

17. Section 2(b) of the *Charter* guarantees freedom of thought, belief, opinion and expression, and protects individuals from being compelled to make statements contrary to their personal beliefs and opinions.

18. The impugned words violate the Applicants' section 2(b) *Charter* rights.

19. An oath containing the impugned words forces those who take it to express fealty to the monarchy.

20. The Applicants take public oaths seriously and regard taking of such as a matter of conscience.

21. Taking the Oath of Allegiance to the Queen would have the effect of hindering the Applicants for the rest of their lives from freely expressing their thoughts, beliefs and opinions regarding their opposition to monarchy.

22. Section 2(c) of the *Canadian Charter of Rights and Freedoms* guarantees the right to peaceful assembly. The Applicants' section 2(c) *Charter* rights are violated by the oath as taking it would prevent them from holding meetings and rallies advocating the removal of the

Monarchy from the Canadian Constitution.

23. Section 2(d) of the *Charter* guarantees freedom of association.

24. Taking the Oath and living according to it would bar the Applicants from freely joining republican associations or religious groups that foreswear oaths to monarchs. The Oath of Allegiance hinders or curtails collective opposition and incentive for change by demanding loyalty to a form of government that requires a monarch to be head of state. This strikes at the heart of democracy and breaches s. 2(d) of the *Charter*.

VIOLATIONS OF SECTION 15 (1) OF THE *CHARTER*

25. Section 15 of the *Charter* guarantees that every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination.

26. The impugned words discriminate against the Applicants on the prohibited grounds of national origin, race, and religion and on the analogous grounds of political beliefs and conscience.

27. Those who become Canadian citizens by virtue of being born in Canada can maintain their citizenship indefinitely without ever taking any oath of allegiance to the Queen.

28. The Oath discriminates between those who become citizens of Canada by virtue of being born in Canada and those who become naturalized citizens. The impugned words impose obligations of faithfulness and true allegiance to the Queen that a citizen born in Canada does not bear. Immigrant citizens are required to uphold the monarchic form of government while native born citizens are free to fully participate in movements to abolish the monarchy.

29. Section 6 of the *Citizenship Act* states that a citizen, whether or not born in Canada, is entitled to all rights, powers and privileges and is subject to all obligations, duties and liabilities to which a person who is a native-born citizen is entitled to or subject to. However, the impugned words impose obligations on naturalized citizens that are not imposed on native--born citizens.

30. The Oath of Allegiance to the monarchy discriminates against the Applicants on the prohibited ground of national origin. It requires the Applicants to take the Oath of Allegiance to the Queen in order to have the rights to stand for public office and to vote but does not require persons born in Canada to take the aforesaid oath in order to obtain those rights.

31. The Applicants assert that the class of all those who seek Canadian citizenship and who cannot reconcile their beliefs with the taking of the Oath of Allegiance should be recognized as an identifiable group in comparison to individuals who apply for citizenship and who do not object to the Oath of Allegiance.

32. The group of individuals who cannot reconcile their beliefs with the taking of the Oath of

Allegiance is discriminated against when compared to the group of individuals who apply for citizenship and who do not object to the Oath of Allegiance.

33. The impugned words discriminate on the basis of religion against those whose religious beliefs preclude taking such an oath.

34. The Oath places a differential burden upon the Applicants by failing to accommodate their very reasonable, lawful and deeply-held beliefs.

35. The Applicants object to the oath of allegiance on the basis of their ethnic, racial and/or national origins. They have direct historical relationships to opposition to the English monarchy.

Among the Applicants are individuals:

- a. who are the descendents of African slaves who were kidnapped by English slavers who paid royalties to the Crown;
- b. whose ancestors and/or peoples were directly involved in anti-colonial and anti-monarchy struggles in their countries of origin, and
- c. whose ancestors and/or peoples were dispossessed of their lands and/or livelihoods by the actions of the English monarchy, their servants or agents.

36. Some of the Applicants assert that requiring them to swear the Oath of Allegiance discriminates against them by requiring them to swear fealty:

- a. to a royal family and institution that benefited from the historical harm inflicted

- on the Applicants' peoples and/or ancestors;
- b. to a royal family and institution whose current wealth was accumulated in part as a result of slavery and colonial activities;
- c. to a royal family and institution whose methods of acquisition of its current wealth included harming the Applicants' ancestors.

37. The *Act's* failure to accommodate the Applicants by allowing them to acquire citizenship without taking the oath with the impugned words places a differential burden on them by forcing them to choose between respecting and honouring their own political beliefs, ancestors, and/or the struggles for emancipation of national, racial and ethnic peoples on the one hand and, on the other hand, pledging fealty to a monarch.

38. The Applicants allege that, although the Oath of Allegiance to the Queen requirement is imposed on almost all applicants for citizenship, it has an adverse, differential impact on persons who object to taking the oath because of reasons of conscience.

39. The main concrete effect of the Oath of Allegiance to Queen Elizabeth II, Her Heirs and Successors is to promote the current political structure of Canada as a constitutional monarchy and thus to discourage republican thought and action.

40. The Oath of Allegiance to the Queen and the monarchy violates the Applicants' beliefs against racial superiority and in the equality of all human beings.

41. Pursuant to the *Act of Settlement of 1701*, which is part of the Canadian constitution, only persons who are members of the Church of England can be Monarch of Canada.

42. The Applicants and their offspring are barred from holding the office of head of state of Canada since they are not members of the Church of England.

43. The Applicants allege that their right to equal benefit of the law is infringed by the oath's effect of conscripting oath-takers to the monarchist system of government as opposed to the republican cause.

44. The Applicants are treated differently from other applicants for citizenship in that the taking of the oath by the Applicants would cause mental anguish while applicants who do not feel that their conscience is being coerced do suffer such anguish.

45. The impugned words constitute a pledge to the individual who is head of state. The symbol of the head of state is so integrally identified with the Windsor family and privilege by birth that an oath to it offends the Applicants' commitment to values of equal dignity and equal liberty.

46. Forcing conscientious objectors to take the oath is discriminatory as the Oath has a differential impact on republicans as opposed to monarchists. Monarchists are pleased to take the

oath while republicans experience mental anguish if they are forced to do so.

47. The status of citizenship is essential for a resident of Canada to participate in the life of the community without trammels.

48. Non-citizens often face stereotypical attitudes, including assumptions that they are less loyal to Canada, less community minded, less hardworking and of lesser value than citizens.

49. Prejudices and stereotypes about the loyalty of non-citizens act as ongoing barriers to their full participation in Canadian society. Such provide often-used rationales to deny positions in employment, community, professional and labour organizations, resulting in financial hardship, psychological and emotional distress and a sense of exclusion and isolation.

50. The policy of requiring a mandatory Oath to the Queen stops republican immigrants such as the Applicants from engaging in the political process of the country by denying them the right to vote and to stand for public office.

51. Pursuant to section 35 of the *Citizenship Act*, the Lieutenant Governor in Council of a province or designate is authorized to prohibit, annul or in any manner restrict the taking or acquisition directly or indirectly of, or the succession to, any interest in real property located in the province by persons who are not citizens or by corporations or associations that are effectively controlled by persons who are not citizens.

52. The Applicants have strong commitments to principles of justice and desire to continue to make useful contributions to their communities.

53. Citizenship can have a major impact on a person's independence, security, self-esteem and a sense of contributing to the community.

54. Section 29 of the *Citizenship Act* provides that a person who, for any of the purposes of the *Act*, makes any false representation, commits fraud or knowingly conceals any material circumstances, is guilty of an offence punishable on summary conviction.

55. Taking the Oath of Allegiance with no intention of honouring it would be a false representation and would therefore contravene section 29 of the *Act*.

56. The Oath of Allegiance promotes strong institutional prejudice against anti-monarchists, republicans, descendants of colonized people and persons belonging to certain religious faiths. Thus the Oath containing the impugned words reflects, reinforces and perpetuates pre-existing stereotypes and prejudices.

57. Requiring those seeking citizenship to take the oath of allegiance with the impugned words reinforces a stereotype that the political, ethnic and religious group of the Monarch is superior to other racial, ethnic and religious groups.

THE INFRINGEMENTS ARE NOT REASONABLE LIMITATIONS ON RIGHTS

58. Pursuant to section 1 of the *Charter*, the onus of justifying any of the above-described infringements of *Charter* rights rests upon the Respondents.

59. There is no reasonable justification for requiring an oath to a monarch in a free and democratic society.

60. An oath to a monarch is contrary to fundamental principles of democracy.

61. Any reasonable purposes of a citizenship oath could be obtained by eliminating the impugned words entirely or by allowing applicants for citizenship to opt out of the impugned words.

62. Since, under section 5 of the *Citizenship Act*, the Minister may waive on compassionate grounds the requirement to take the Oath of Allegiance for persons who are minors and for those who cannot understand the significance of taking the oath because of mental disability, a comparable analogous exemption for conscience objectors is feasible.

63. Australia has a constitutional monarchy that is similar in all material respects to that of Canada. The British monarch is Australia's head of state. But the oath required of applicants for citizenship in Australia does not refer to the monarchy.

64. Pursuant to section 11 of the *Citizenship Act*, the Oath of Allegiance is not administered to a person who automatically receives citizenship under section 11(2). This section provides that a woman, who before 1947 by reason only of her marriage or the acquisition by her husband of a foreign nationality, ceased to be a British subject, and would have been a citizen had the former Act come into force immediately before her marriage or the acquisition by her husband of a foreign nationality, acquires citizenship immediately on the receipt by the Minister of a notice in writing by her that she elects to be a citizen.

65. The Government of Canada has not enforced fidelity to the Oath. Thus the Oath only restricts those who, like the Applicants, feel bound by their consciences.

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2. The *Canadian Charter of Rights and Freedoms*;
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9. The Affidavit of Randall White, to be filed;
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DATE: September 10, 2012

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CHARLES C. ROACH et al
Applicants

- and -

ATTORNEY GENERAL OF CANADA

69
Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceedings commenced at Toronto

AMENDED FRESH AS AMENDED
NOTICE OF APPLICATION

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05-CV-301832-PD3

ONTARIO
SUPERIOR COURT OF JUSTICE

JL/fm

B E T W E E N:

MICHAEL MCATEER, SIMONE E. A. TOPEY AND DROR BAR-NATAN
Applicants

- and -

THE ATTORNEY GENERAL OF CANADA

Respondent

- - - - -

This is the Cross-Examination via teleconference of
RELL DeSHAW on her affidavit sworn January 30th, 2013,
taken at the offices of VICTORY VERBATIM REPORTING
SERVICES, Suite 900, Ernst & Young Tower, 222 Bay Street,
Toronto, Ontario, on the 11th day of March, 2013.

- - - - -

APPEARANCES :

PETER ROSENTHAL

-- for the Applicants

RENI CHANG

SELWYN PIETERS

MAYA JOHNSTON

(law clerk)

KRISTINA DRAGAITIS

-- for the Respondent

Also Present :

Dror Bar-Natan

R. DeShaw - 2

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R. DeShaw - 3

1 RELL DeSHAW, sworn

2 CROSS-EXAMINATION BY MR. ROSENTHAL:

3 1. Q. Good afternoon. Ms. DeShaw, you
4 have been sworn to tell the truth in this
5 examination?

6 A. That's correct.

7 2. Q. And you swore an affidavit in these
8 proceedings, dated January 30th, 2013, is that
9 correct?

10 A. Yes.

11 3. Q. And as far as you understand, is
12 everything in that affidavit still true?

13 A. Yes.

14 4. Q. You wouldn't change anything upon
15 further reflection?

16 A. No.

17 5. Q. Okay, thank you. You are the
18 manager of Citizenship Legislation and Program
19 Policy of the Government of Canada, is that correct?

20 MS. DRAGAITIS: The Department of
21 Citizenship and Immigration.
22

23 BY MR. ROSENTHAL:

24 6. Q. But your title, according to your
25 affidavit, is manager of Citizenship, Legislation,

R. DeShaw - 17

1 Canada brochure, which is Exhibit F of her
2 affidavit. The oath is on the...I guess
3 you could call it the second page.

4 58. MR. ROSENTHAL: Yes. The oath is in
5 many places, many documents in this
6 proceeding for obvious reasons, and I trust
7 they are all accurate. So, let's look at
8 that version of it, if you like, that copy
9 of it.

10

11 BY MR. ROSENTHAL:

12 59. Q. Do you have that in front of you
13 then?

14 A. I do.

15 60. Q. Now, the part that is impugned in
16 this application is that,

17 "...I will be faithful and bear true
18 allegiance to Her Majesty Queen Elizabeth
19 the Second, Queen of Canada, Her Heirs and
20 Successors..."

21 I wanted to ask you, please, what is meant by
22 "Heirs"?

23 MS. DRAGAITIS: Mr. Rosenthal, this is
24 Ms. Dragaitis. Are you asking for a legal
25 opinion here?

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1 61. MR. ROSENTHAL: No, I'm asking for...

2 MS. DRAGAITIS: Sorry, interpretation,
3 because that's not what this witness is
4 here for.

5 62. MR. ROSENTHAL: I'm not asking for a
6 legal interpretation, I'm asking for the
7 interpretation that policy...that the
8 policy department in the Canadian
9 Department of Immigration makes of this
10 document.

11 MS. DRAGAITIS: Well, then, perhaps you
12 should ask whether there are any policy
13 documents about it.

14 63. MR. ROSENTHAL: Let me ask it in the
15 following way.

16

17 BY MR. ROSENTHAL:

18 64. Q. Is it not the case, Ms. DeShaw, that
19 some applicants for citizenship would ask questions
20 such as, "What does that mean, 'Heirs'?" Ms.
21 DeShaw?

22 A. Yes?

23 65. Q. Is that not a potential question
24 that an applicant for citizenship might ask of an
25 officer at the citizenship ceremony?

R. DeShaw - 19

1 A. An applicant might ask that
2 question.

3 66. Q. Yes. That might be. So, what would
4 an appropriate answer be by such an official of
5 Canada Immigration?

6 A. I believe it will refer to the
7 people who will come after the Queen to assume the
8 throne.

9 67. Q. I see. It says,
10 "...Heirs and Successors..."
11 What would you, meaning Citizenship Canada, advise
12 an inquiring citizenship applicant "Successors"
13 means, in that context?

14 A. I'm afraid I would just end up
15 repeating what I just said. So, the people that
16 come after the Queen to assume the role of king or
17 queen.

18 68. Q. But then you're suggesting that it
19 is redundant to say "Heirs and Successors"?

20 MS. DRAGAITIS: Well, Mr. Rosenthal, she
21 is not suggesting it's redundant, she is
22 saying that they really...they do say the
23 same thing. You could make whatever
24 argument you like about it.

25 69. MR. ROSENTHAL: May I please

R. DeShaw - 20

1 cross-examine without objections unless
2 there is a proper objection? I have a
3 right to ask her what she is suggesting,
4 Counsel. And I asked her that, and I would
5 respectfully request that she be allowed to
6 answer.

7
8 BY MR. ROSENTHAL:

9 70. Q. And so I will ask again, even though
10 your counsel has interjected, I'll ask the question:
11 Are you suggesting, then, that those two terms mean
12 the same thing and it's therefore redundant to say
13 "and Successors"?

14 A. I would take it to mean that some of
15 her heirs will be successors.

16 71. Q. So, are you suggesting that "Heirs"
17 is broader than "Successors", then? Only some of
18 them will become successors?

19 A. I'm suggesting that to be an
20 interpretation.

21 72. Q. Is that the interpretation you would
22 answer a citizenship applicant who asked?

23 A. I would likely seek advice before I
24 gave that answer.

25 73. Q. You would seek advice about that?

R. DeShaw - 21

1 A. Yes, I would.

2 74. Q. I see. So, what is a much lower
3 citizenship official at a citizenship ceremony
4 supposed to answer in response to questions such as
5 I've asked?

6 MS. DRAGAITIS: Mr. Rosenthal, did you
7 say what lower? I didn't hear your second
8 word there.

9 75. MR. ROSENTHAL: Official.

10

11 BY MR. ROSENTHAL:

12 76. Q. Somebody who is involved in a
13 citizenship ceremony, watching people take the oath,
14 citizenship judge, any representative of Citizenship
15 Canada involved in the citizenship ceremony. What
16 is that person supposed to answer about the meaning
17 of "Heirs"?

18 A. I would suggest that they might do
19 the same thing that I'm proposing, which is seek
20 advice.

21 77. Q. They should seek advice?

22 A. Yes.

23 78. Q. How many steps would there be in the
24 hierarchy of Citizenship Canada between a person who
25 is at a citizenship ceremony, witnessing people

R. DeShaw - 22

1 taking the oath, and yourself in your position as
2 manager? I would put it to you there would be many
3 layers of higher officers, is that correct?

4 A. I would say there might be one or
5 two steps between me and that person.

6 79. Q. So, who would you seek advice from?
7 You're the manager of policy, as you have told us.
8 You don't know the answer. Who would you seek
9 advice from?

10 A. I would probably contact our
11 departmental legal services unit.

12 80. Q. I see. There is no document that
13 you're aware of put out by Citizenship Canada that
14 answers this question, is that correct?

15 A. I'm not aware of any document.

16 81. Q. If "Heirs" means what you said, I
17 believe the second time that it arose, namely
18 suggesting that it was more than successors, would
19 Prince William right now be an heir within the
20 meaning of this oath, as far as Citizenship Canada
21 is concerned?

22 MS. DRAGAITIS: Mr. Rosenthal, this
23 witness is not here to testify about the
24 Royal Family and rules of succession. I'm
25 sorry, that's just not what she is here

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1 for.

2 82. MR. ROSENTHAL: That's correct, Counsel.

3 But she is here to testify about the
4 citizenship oath from the point of view of
5 the manager of policy, as she has
6 identified herself.

7 MS. DRAGAITIS: Well, I don't think...

8 83. MR. ROSENTHAL: And my question...

9 MS. DRAGAITIS: ...the question is
10 proper for the reason I said.

11 84. MR. ROSENTHAL: Counsel, my question is
12 the following: If an applicant for
13 citizenship at a citizenship ceremony
14 concerned about the nature of the oath that
15 he or she is taking, asks, "Does this oath
16 imply that, as of now, I must be faithful
17 and bear true allegiance to Prince
18 William?", what would Citizenship Canada
19 answer that applicant?
20

21 BY MR. ROSENTHAL:

22 85. Q. Can you assist us with that, please,
23 Ms. DeShaw?

24 A. And I would seek advice on that
25 point.

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1 86. Q. Excuse me? My hearing, sorry.

2 A. I would seek advice on that point.

3 87. Q. You would seek advice on that point.

4 And again, there are no documents put out by the
5 Government of Canada that would answer that
6 question?

7 A. I'm not aware of any documents.

8 88. Q. And if there were such documents,
9 you should be aware of it, given your position, is
10 that not fair?

11 A. I would agree with that.

12 89. Q. If a citizenship applicant asked,
13 "What is the significance of this oath?", what would
14 your answer on behalf of Citizenship Canada be?

15 A. Can I just make sure I've heard the
16 question correctly? What is the significance of the
17 oath?

18 90. Q. Yes, I suppose that question were
19 asked directly.

20 A. Okay. The significance is it's the
21 final step in becoming a citizen of Canada.

22 91. Q. Yes, but what is the significance of
23 swearing this oath as far as what it binds the
24 person who takes the oath to? What does it bind him
25 or her to with respect to Her Majesty and her heirs

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1 and successors?

2 A. I'm struggling with the word "bind".

3 92. Q. You're having trouble with the word
4 "bind"?

5 A. I am.

6 93. Q. Well, is it not the case that you
7 understand, generally, that taking an oath is
8 something that binds someone to something? You take
9 an oath in court. You took an oath to tell the
10 truth on this examination. An oath is something
11 that, generally, in our society, binds a person to
12 the terms of that oath. Is that not fair?

13 A. I think I'm just struggling with
14 what it binds the person to. I understand that
15 you're swearing an oath and the significance of it.

16 94. Q. You do understand the significance
17 of it? You told us the significance is it's the
18 last step to becoming a citizen.

19 A. M'hmm.

20 95. Q. Well, I understand that answer in
21 one sense, but I'm saying it's not really responsive
22 to a person who already knows that, who is there on
23 the verge of becoming a citizen, and knows that
24 that's all he or she has to do to become one.

25 A. M'hmm.

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1 96. Q. If that person then asks you, "What
2 is the significance of this oath? My taking this
3 oath, what does it bind me to? What does it mean
4 for me?" You have to have an answer for that, don't
5 you, as Citizenship Canada?

6 A. I'm just not sure if it's more than
7 the words that are in the oath, which is your
8 swearing or affirming that you're going to observe
9 the laws of Canada, and fulfil your duties as a
10 citizen.

11 97. Q. We understand that part, and as you
12 know, that part is not impugned in this application.

13 A. Yes.

14 98. Q. So, I'm talking about the impugned
15 portion of the oath, responding...respecting Queen
16 Elizabeth the Second and her heirs and successors.
17 And I'm asking on behalf of a potential citizenship
18 applicant, "What does that bind me to if I take this
19 oath?" And you answer what?

20 A. So, again, the words of the oath are
21 you're swearing or affirming that you'll be faithful
22 and bear true allegiance to the Queen.

23 99. Q. Okay, let me ask you a different
24 related question. Suppose the citizenship applicant
25 comes to you and says, "I am anti-monarchist. In my

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1 view, the monarchy is a relic of times when people
2 were unequal by reason of birth, and I believe
3 everyone is born equally. I feel repulsed by
4 swearing allegiance to a monarch. Can I swear
5 allegiance to the monarch, given that I will bear
6 her no loyalty whatsoever, and that I intend to join
7 anti-monarch associations and fight for the
8 abolition of the monarchy in Canada?" What would
9 you say to that applicant?

10 A. Well, it seems to me that if you're
11 swearing or affirming an oath of citizenship, you
12 should be honouring the words in that oath.

13 100. Q. And so by taking this oath, you
14 would inform such an applicant, "You would be
15 precluded from participating in organizations whose
16 goal is to end the monarchy in Canada"?

17 A. I am not...I would not agree that
18 you are prevented from those activities.

19 101. Q. You would not agree? So, is it
20 consistent with an oath of loyalty to Queen
21 Elizabeth the Second to argue that she should not
22 longer be Queen of Canada?

23 MS. DRAGAITIS: Sir, I lost the
24 question.

25 THE DEPONENT: Yes, I lost it as well,

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1 I'm sorry. Could you repeat the question,
2 please?

3

4 BY MR. ROSENTHAL:

5 102. Q. Is it consistent with an oath of
6 loyalty to Queen Elizabeth the Second to argue and
7 join organizations that argue that she should no
8 longer be allowed to be Queen of Canada?

9 A. No, they are not consistent, no.

10 103. Q. They are not consistent. So, you
11 would then tell such an applicant, "Sorry, but you
12 cannot become a Canadian citizen"?

13 A. I would be telling people they
14 should intend to honour the oath that they are
15 taking.

16 104. Q. Yes, but if a person tells you, "I
17 have deep beliefs that a republican [they are
18 against monarchy]...I could never defend monarchy."
19 And I put it to you, as a conclusion of what you
20 said a moment ago, you would have to tell that
21 person, "Sorry, it appears you cannot become a
22 Canadian citizen." Isn't that fair?

23 A. I would not tell somebody that. I
24 would say they have to make a personal choice about
25 swearing the oath or not.

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105. Q. Okay. You would say, "It's your personal choice", but you would...you told us earlier that it was your view that it was inconsistent with taking the oath to then immediately embark upon activities aimed at removing Queen Elizabeth as our queen. So, you would explain that to the person, and then say, "It's your choice"?

A. Their choice whether to affirm the oath or not, but to go back to what I said, you should be honouring all the words that you are saying in the oath.

106. Q. Yes. So, you would say to the person, if you do take the oath, you should not participate in such a movement to rid Canada of Queen Elizabeth, right?

A. That's not what I'm saying, no.

107. Q. Well, that's what I took from what
you said. Did I misunderstand?

A. I think you are misunderstanding me.

108. Q. Okay. Please explain it more carefully, as to what you would advise such an applicant.

MS. DRAGAITIS: Counsel, your question
actually...it's counsel here, it

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1 shifts...the exact wording that you're
2 using shifts everytime you pose it, and so
3 it's making it difficult for the witness to
4 come up with a clear answer to it. Bearing
5 in mind, she is not at this ceremony to
6 begin with, but in any event...

7 109. MR. ROSENTHAL: Well, I'm sorry you
8 don't think my questions are optimally
9 phrased, and I'll try to do them again.

10
11 BY MR. ROSENTHAL:

12 110. Q. And Witness, if you do not
13 understand the question that I ask, please ask for
14 clarification. I don't want any misunderstanding
15 with respect to questions. But I'm asking
16 you...perhaps we had better go back a bit, then.
17 Did I understand you correctly as indicating that in
18 your view, and you would express this view to a
19 citizenship applicant, it was inconsistent with
20 taking the oath to then immediately embark upon
21 activities designed to rid Canada of the monarch,
22 Queen Elizabeth the Second? Did I misunderstand
23 you, or did you agree that that was inconsistent
24 with the oath?

25 A. I agree that's inconsistent.

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1 111. Q. Okay, thank you. So, then, if a
2 person told you that, "I have deep anti-monarchal
3 beliefs, and I feel I must work for abolition of the
4 monarchy because it represents a kind of inequality
5 that is repugnant to my morality, and I intend to do
6 that, is it your view that I can take the oath
7 nonetheless?"

8 MS. DRAGAITIS: Sorry, when is...this is
9 counsel, when is the person saying this?
10 I'm not understanding your hypothetical
11 here. Are they saying it before they take
12 the oath? This witness is not at the
13 ceremony, so I'm allowing you some leeway
14 to ask hypothetical questions, but you have
15 to at least phrase them consistently and
16 accurately so we know what we are
17 answering.

18 112. MR. ROSENTHAL: I thought I did do that,
19 Counsel, but I'll make it clear again.
20 This entire series of questions has been by
21 a citizenship applicant attending the
22 ceremony at which he or she is to take the
23 oath, and knowing that it is the last step
24 to becoming a citizen, and in a quandary
25 because of his or her conscientious beliefs

R. DeShaw - 32

1 about monarchy. That's the context, okay?

2

3 BY MR. ROSENTHAL:

4 113. Q. Ms. DeShaw, is that okay? You
5 understand the context?

6 A. I do.

7 114. Q. And did you understand that was the
8 context for the last ten, fifteen minutes of
9 questions, at least?

10 A. M'hmm.

11 115. Q. Thank you. Now...

12 MR. PIETERS: I don't think she
13 answered. She said, "M'hmm."

14

15 BY MR. ROSENTHAL:

16 116. Q. Given that context, then, I believe,
17 when I was interrupted by your counsel, I was at the
18 point of asking you the following, more specific,
19 situation. This citizenship applicant explains to
20 you..."you", meaning an official of Citizenship
21 Canada, at that ceremony, just before taking the
22 oath, that he or she has deep conscientious feelings
23 that monarchy represents something repulsive to
24 equality of human beings, and that that person feels
25 a responsibility to her or his conscience to

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1 participate in organizations whose goal is to
2 politically change things so that the Queen is no
3 longer monarch of Canada. And that person says to
4 you, "I don't know what to do. I really want to
5 become a Canadian citizen, desperately, but on the
6 other hand I have this deep conscientious believe
7 and I will act on it in the sense of participating
8 in republican activities. What should I do?"

9 A. And I'm sorry, I'm going to be
10 repeating myself. That personal decision lies with
11 the applicant about what to do about that situation.

12 117. Q. Okay. That is fair. It lies with
13 the applicant. But you would communicate to the
14 applicant your view that there is a contradiction
15 between taking the oath and engaging in republican
16 activities right afterwards?

17 A. I don't think I did say that I would
18 communicate that to the applicant. I think you
19 asked me if that is a contradiction, and I agreed
20 with you.

21 118. Q. Yes, okay. So, in other words, the
22 oath as it stands, the impugned portion of the oath,
23 would tend to bar from citizenship any person who
24 has a deep conscientious view against monarchy, and
25 who also takes the making of an oath very seriously.

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1 Isn't that a fair conclusion?

2 A. It might bar from citizenship the
3 person who does not feel they can take the oath, and
4 agree to the contents of the oath.

5 119. Q. Yes.

6 A. I would agree with that.

7 120. Q. Yes. Now, in fact, many applicants
8 for citizenship do express concern in one sense or
9 another about taking an oath to the Queen, isn't
10 that fair?

11 A. I can't agree with the fact that
12 many would have a problem with the oath.

13 121. Q. You don't think many do?

14 A. I have no...I have come across no
15 evidence that many people have a problem with taking
16 the oath.

17 122. Q. Well, let me ask you this question
18 first, then, do you think that from your experience
19 with Citizenship Canada, that most of the people
20 taking the oath actually feel that they want to bear
21 loyalty to the monarchy? Or, sorry, allegiance to
22 the monarchy?

23 A. I believe the majority...I believe
24 the people taking the oath agree with its contents.

25 123. Q. Well, I would put it to you that you

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1 know from your experience with Citizenship Canada
2 that most people taking the oath don't particularly
3 think about the fact that it binds them to some sort
4 of real allegiance to the Queen, and just say it
5 without thinking about it very much in order to get
6 citizenship. Isn't that fair?

7 A. I wouldn't agree with that
8 statement.

9 124. Q. You wouldn't agree with it?

10 A. No.

11 125. Q. So, putting together the several
12 answers that you have given me, I would suggest the
13 conclusion is that in your view, most people who
14 become citizens of Canada believe in monarchy, is
15 that correct?

16 A. I don't...I can't agree with that
17 statement. What I'm trying to say is that people
18 understand the contents and the oath and are willing
19 to swear or affirm that oath to become citizens.

20 126. Q. Well, everyone who becomes a citizen
21 of Canada takes an oath to bear allegiance to the
22 monarchy, right?

23 A. It's not everyone, though. There
24 are exceptions.

25 127. Q. Yes, except for the exceptions for

R. DeShaw - 36

1 minors and so on, right?

2 A. Well, there are some other groups,
3 yes.

4 128. Q. Yes, except for certain small
5 categories that are listed in the documents, right?

6 A. Yes.

7 129. Q. But of the normal citizenship
8 applicants, every one of them takes an oath to bear
9 true allegiance to the Queen and her successors and
10 heirs, right?

11 A. Well, some people have that
12 requirement waived, and not just for age reasons.

13 130. Q. Yes, for reasons of mental
14 disability, and there are other reasons for waiving
15 it, right?

16 A. Yes.

17 131. Q. Okay, but the vast majority...what
18 percentage of people who become citizens of Canada
19 do take the oath, in fact? It would be 95 or more
20 percent, is that not correct?

21 MS. DRAGAITIS: Counsel, do we have
22 numbers or...

23 132. MR. ROSENTHAL: Percent, I said.

24

25 BY MR. ROSENTHAL:

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1 133. Q. Of the people who, in recent years,
2 are naturalized Canadian citizens, what percentage
3 of them would have been required to, and therefore
4 did, take the oath?

5 A. I'm afraid I don't have a hard
6 statistic for you. It would be the vast majority.

7 134. Q. It would be the vast majority, is
8 that fair?

9 A. That's fair.

10 135. Q. Okay, so that's good enough for my
11 present purposes. So, the vast majority have taken
12 the oath?

13 A. Yes.

14 136. Q. Would you agree with me, then, that
15 unless we are pushing people into hypocrisy, it
16 should be the case that the vast majority of
17 immigrants feel bound to allegiance to Her Majesty
18 and her successors?

19 MS. DRAGAITIS: It's counsel here. Not
20 to put too fine a point on it, but they are
21 swearing to Queen Elizabeth as Queen of
22 Canada, her heirs and successors.

23 137. MR. ROSENTHAL: Is that counsel
24 answering that question?

25 MS. DRAGAITIS: I said, "It's counsel".

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1 I'm just trying...

2 138. MR. ROSENTHAL: Counsel, I...

3 MS. DRAGAITIS: ...to be specific about

4 the oath, which you have repeated, but you

5 have left out a not insignificant

6 component.

7 139. MR. ROSENTHAL: Counsel, I have

8 requested that you not answer any questions

9 until you raise the possibility of your

10 answering the question, and we debate the

11 legitimacy of your answering as opposed to

12 your client answering.

13 MS. DRAGAITIS: I wasn't answering any

14 question, Counsel.

15 140. MR. ROSENTHAL: Did you just give an

16 answer, or did your witness answer?

17 MS. DRAGAITIS: I was clarifying your

18 question.

19 141. MR. ROSENTHAL: Well, I would ask you

20 not to clarify the question...

21 MS. DRAGAITIS: Well, if...

22 142. MR. ROSENTHAL: ...unless...

23 MS. DRAGAITIS: ...the question and I'll

24 clarify it, I'm sorry.

25 143. MR. ROSENTHAL: Counsel, may I finish my

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1 sentence, please? I would ask you not to
2 clarify a question until we have discussed
3 the question of your clarifying the
4 question. Because we will read the
5 transcript, but my impression was that your
6 clarification to the question directed an
7 answer. We will see it in the transcript,
8 but I would ask you, Counsel, to refrain
9 from doing that. We are not in the same
10 room. It makes it more difficult.

11 But please, if you wish to
12 interject, interject in a way that does not
13 tell the witness the answer that you want.
14 And if you feel it necessary to discuss
15 something at some length, I would
16 respectfully request that you ask your
17 witness to leave the room, and I will, of
18 course, trust you that you do that, and we
19 can then discuss the question of whether
20 you should clarify the question. Okay?
21 Can we do that in the normal manner please,
22 Counsel?

23 MS. DRAGAITIS: I said I will bear your
24 comments in mind.

25 144. MR. ROSENTHAL: Thank you very much.

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1 BY MR. ROSENTHAL:

2 145. Q. Now, excuse me a second, I forget
3 where I was at. So, Ms. DeShaw, I believe I had
4 asked you a question to the following effect: Do you
5 agree, then, based on your understanding as you have
6 told us so far, that it should be the case that the
7 vast majority of immigrants to Canada feel an
8 allegiance to monarchy unless we are forcing people
9 into hypocrisy in signing the oath...in taking the
10 oath, excuse me. I think I phrased it better the
11 first time, but do you understand the question,
12 Witness?

13 A. So, you're asking about whether new
14 Canadians have an allegiance to the monarchy?

15 146. Q. Do they, in fact...you say that the
16 vast majority take the oath. Does that mean that
17 the vast majority really do have a true allegiance
18 to Her Majesty, heirs, and successors? Or is there
19 a lot of hypocrisy that is being perpetrated by
20 Citizenship Canada?

21 A. And I was trying to bear distinction
22 between monarchy and...

23 147. Q. Sorry? Make it exactly what is said
24 in the oath, then.

25 "...Queen Elizabeth the Second, her Heirs

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1 and Successors..."

2 Do the vast majority of immigrants actually bear
3 true allegiance to the named parties, or is their
4 taking of the oath largely hypocritical?

5 A. I don't agree that their taking of
6 the oath is hypocritical.

7 148. Q. So, do you conclude, then, that the
8 vast majority of new Canadians who become
9 naturalized citizens do bear true allegiance to Her
10 Majesty Queen Elizabeth the Second and her heirs and
11 successors?

12 A. They are swearing that they will by
13 taking the oath.

14 149. Q. That is clear.

15 A. Whether they bear it or not, I
16 think, is a separate question.

17 150. Q. It is, and that's the question I
18 asked you.

19 A. Are you asking me after the
20 ceremony, whether they bear allegiance to the Queen?

21 151. Q. Yes.

22 A. I have no way to speculate on that.

23 152. Q. Okay, thank you. If you could turn,
24 please, to tab G of your affidavit? Are you with
25 me, Ms. DeShaw?

Court File No. 06-CV-301832PD3

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

MICHAEL MCATEER, SIMONE E.A. TOPEY AND DROR BAR-NATAN

Applicants

-and-

THE ATTORNEY GENERAL OF CANADA

Respondent

AFFIDAVIT OF MICHAEL MCATEER

I, MICHAEL MCATEER, of the City of Toronto in the Province of Ontario,

AFFIRM AS FOLLOWS:

1. I was born in Dublin, Ireland on August 31, 1933.
2. I am a journalist.
3. I became a Canadian landed immigrant in 1964 and have resided in Canada ever since. I now hold a permanent resident card.
4. I am an Irish citizen.
5. For many years, I have desired to become a Canadian citizen. I wish to fully participate in Canadian Society: vote in elections, travel on a Canadian passport, and so on.
6. I have not been able to take Canadian citizenship because one of the requirements is that of taking an Oath of or affirming allegiance to Her Majesty Queen Elizabeth II, her

Heirs and Successors.

7. My family has a long history of commitment to republican beliefs and of support for the establishment of an independent, democratic and inclusive Irish Republic. My father, who was English-born (as was my mother), was a democrat and a strong advocate of social justice who saw British dominance in Ireland as a hindrance to progress and social change. He was wounded in the civil war of the early 1920's, fighting for the republican cause, and later faced discrimination for his republican principles.

8. I too am a committed republican and a democrat. I believe that, despite what flaws it may have, a democratic form of government is one that I can fully support. I take oaths very seriously, and so taking an oath of allegiance to a hereditary monarch who lives abroad would violate my conscience, be a betrayal of my republican heritage and impede my activities in support of ending the monarchy in Canada.

9. The institution of hereditary monarchy, with its hereditary privileges, its perpetuation of a class system, and its insistence that the monarch be a member of the established Church of England is anachronistic and discriminatory and has no place in a democratic, multi-cultural, multi-ethnic, multi-religious country such as Canada. I will not take an Oath to such an institution because it is not in keeping with my beliefs of egalitarianism and democracy.

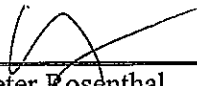
10. With its mix of people from all over the world, Australia is much like Canada. Also, like Canada, Australia is a constitutional monarchy with Queen Elizabeth II as its reigning monarch. Several years back, Australia changed its citizenship oath of allegiance to eliminate any mention of the Queen and her heirs and successors. Their oath now reads in part: "From this time forward I pledge my loyalty to Australia and its people whose

democratic beliefs I share, whose rights and liberties I respect and whose laws I will uphold and obey." I would feel comfortable in making such a pledge, with "Australia" replaced by "Canada".

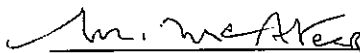
11. The rest of the present Canadian oath requires new citizens to faithfully obey the laws of Canada and to fulfill the obligations of a Canadian citizen. I have no objection to taking this part of the present oath.

12. I affirm this Affidavit in support of the Application herein and for no other or improper purpose.

Affirmed before me at the City of Toronto)
this 9 day of November, 2012)



Peter Rosenthal
A Commissioner, etc.



Michael McAteer

Court File No. 06-CV-301832PD3

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

**CHARLES C. ROACH, ASHOK CHARLES, MICHAEL MCATEER AND
HOWARD JEROME GOMBERG**

Applicants

-and-

THE ATTORNEY GENERAL OF CANADA

Respondent

AFFIDAVIT OF SIMONE E.A. TOPEY

I, SIMONE E.A. TOPEY, affirm as follows:

1. I was born in the country of Jamaica in 1966.
2. I immigrated to Canada in 1978.
3. I have been a permanent resident of Canada since 1981.
4. Canada is my home. I would like to be a Canadian citizen.
5. I would like to have the convenience of being able to travel on a Canadian passport.
6. I want to be able to vote in elections.
7. I am a Rastafarian. One of the beliefs of the Rastafarian religion is that the current society is Babylon. The Queen, as the head of state of Canada, would be regarded then as the

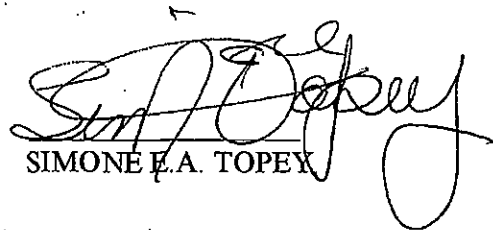
head of Babylon. It would deeply violate my religious belief to take any kind of oath to the person who is the head of Babylon.

8. I have not applied for citizenship because I know that the oath to the Queen is required and that I could not take such an oath.
9. I have no objection whatsoever to taking an oath that I will faithfully observe the laws of Canada and fulfill my duties as a Canadian citizen if I am granted citizenship.
10. If the part of the current citizenship oath that refers to the Queen and her heirs was removed, I would apply for citizenship.
11. I want to be able to participate in political movements whose goals include abolishing the monarchy. If I took the citizenship oath to the Queen, I would feel bound by that oath to refrain from participating in such political movements.
12. I affirm this affidavit to provide evidence on the Application herein and for no other or improper purpose.

Affirmed before me this 4th day of)
October 2012 at Toronto, ON

A Commissioner, Etc.

Peter Rosenthal


SIMONE E.A. TOPEY

Court File No. 06-CV-301832PD3

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

CHARLES C. ROACH, ASHOK CHARLES, MICHAEL MCATEER AND

HOWARD JEROME GOMBERG

Applicants

-and-

THE ATTORNEY GENERAL OF CANADA

Respondent

AFFIDAVIT OF DROR BAR-NATAN

I, DROR BAR-NATAN, of the City of Toronto in the Province of Ontario, AFFIRM AS FOLLOWS:

1. This Affidavit is written to provide evidence in support of a motion that I be added to the Application within as an Applicant and, should such a motion be granted, as evidence to be used in the hearing of the Application itself.
2. I was born on January 30, 1966, in Kiryat-Gat, Israel, to Naomi Bar-Natan, an Israeli born in the United States, and to Shaul Bar-Natan, an Israeli born in Syria. My father's sole citizenship was Israeli, and my mother and I are citizens of both the United States and of Israel.
3. I have lived in Israel and in the United States until July 2002, over the years obtaining a Ph.D. in mathematical physics from Princeton University, teaching for a number of years at Harvard University, and eventually achieving the rank of an associate professor with tenure at the Hebrew University in Jerusalem.

4. I am married to Yael Karshon whose career path has been similar to mine. We are parents of Assaf (born 1993) and Itai (born 1996).
5. On July 31, 2002, I moved with my family to Toronto, Canada.
6. My wife and I were both appointed as associate professors of mathematics at the University of Toronto. We were both promoted to full professors in 2006, and presently we both still work at U. of T. as researchers in mathematics and teachers of mathematics.
7. While resident in Toronto, I have published numerous articles in scientific journals, taught thousands of undergraduate students, hundreds of graduate students, and supervised or am supervising about 10 Ph.D. students and several post-doctoral fellows. As a resident of Canada, I have lectured extensively domestically and internationally, I have been awarded a number of research grants, and I maintain an extensive scientific web presence. I have performed significant administrative duties within my university.
8. The primary reasons for our move out of Israel have been political and cultural. I did not want to live in an area of the world that is in a permanent state of conflict, and I found it hard to live in a place where one's ancestry determines so much of his/her future.
9. Before moving to Canada, my wife and I both lived for about a decade in the United States, where my wife was a permanent resident and I was a citizen, and we knew and know that country very well. Yet we have chosen to move to Canada, which we had only visited briefly before. I used to tell my friends that I see Canada as a "kinder, gentler America", and this, along with having established roots here, remains the reason we wish to stay and play a role in Canadian life.
10. My wife and I and our children became permanent residents of Canada in June, 2005. My wife and children became Canadian citizens in January 2011.

11. In January 2008, around the time that we became eligible to apply for Canadian citizenship, I realized, because of the requirement of taking the oath of citizenship that includes affirming allegiance to the Canadian monarch, I would not be able to become a Canadian citizen along with my family. I have not become a Canadian citizen since.
12. I find the phrase "*I affirm that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth II, Queen of Canada, Her Heirs and Successors*" repulsive. To me, it states that some people, the royals and their heirs, are born with privilege. It is a historic remnant of a time we all believe has passed, in which the children of peasants could be nothing but peasants, and in which aristocracy existed as a closed club.
13. I appreciate that the monarchy in Canada is mostly symbolic (I could not live here had it been anything more). Yet it is precisely the wrong symbol: a symbol that we aren't all equal and that some of us have to bow to others for reasons of ancestry alone.
14. I could and can live in Canada ignoring the monarchy and enjoying all else that is wonderful here. But I feel that affirming allegiance to what I think is wrong would be a violation of my conscience that I would find very difficult to do. I find the thought of having to violate my conscience in this way very bitter to swallow.
15. I should stress that I see nothing wrong with the second half of the oath, that "*I will faithfully observe the laws of Canada and fulfil my duties as a Canadian citizen*". Indeed, I faithfully observe the laws of Canada and I am looking forward to fulfilling my duties as a Canadian citizen. I accept that acceptance of the Canadian laws is reasonable to require of new Canadians.
16. Yet I feel that the requirement of taking the (first half of) the oath is tantamount to hazing. To be initiated as a Canadian, I am required to participate in an initiation ritual that I find disturbing and humiliating. It is a ritual that has no practical meaning and only carries what I regard as a repugnant symbolic meaning. Moreover, it is a ritual that born-Canadians are not subject to.

17. I therefore wish to be added as an Applicant to this Application so that I can have the courts consider the possibility of relieving me of the necessity of affirming my allegiance to the monarchy of Canada as a part of the process of becoming Canadian.
18. There are many reasons that I wish to become a Canadian citizen, including obtaining the right to vote in elections and the right to travel on a Canadian passport.
19. I feel there is much value in becoming a Canadian citizen. Should this Application be dismissed and possible subsequent appeals be denied, I will likely hold my nose and shut my eyes, surrender to some hazing and unhappily take the oath of citizenship in contradiction to my conscientious beliefs as indicated above.
20. Should that happen, I will be bound in allegiance to the monarchy, and unlike born-Canadians, I will be morally bound to support it. Thus my first act as a new Canadian citizen would be to write the monarch in person and request to be relieved of my obligations to her.
21. This Affidavit is for the purpose of providing evidence on a motion to add me as an Applicant and evidence on the Application itself, and for no other or improper purpose.

Affirmed before me at the City of Toronto)

this 17 day of September, 2012)

)

Peter Rosenthal

A Commissioner, etc.



DROR BAR-NATAN

Court File No. 06-CV-301832PD3

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

MICHAEL MCATEER, SIMONE E.A. TOPEY AND DROR BAR-NATAN

Applicants

-and-

THE ATTORNEY GENERAL OF CANADA

Respondent

AFFIDAVIT OF ASHOK CHARLES

I, ASHOK CHARLES, of the City of Toronto, AFFIRM AS FOLLOWS:

1. I was born on September 11, 1955 in India.
2. Neither of my parents was born in Canada.
3. I have resided in Canada since 1960.
4. When I commenced the application procedure for Canadian citizenship in 1977, I learned that swearing or affirming to "be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Queen of Canada, her Heirs and successors" [hereinafter, "the Oath"] was an essential part of the naturalization process.

5. I was repelled by the Oath requirement and found it deeply distasteful that I could not become a Canadian citizen without professing an allegiance which I did not sincerely feel and which was repugnant to me.
6. I believe in the fundamental democratic principle of equality and regard the monarchy as an undemocratic institution based on hereditary privilege and inequality of status.
7. For many years, the British Crown repressed my ancestors in India. India finally won independence, after years of struggle in which soldiers representing the British monarchy killed and repressed my ancestors. This is a reason that swearing allegiance to the British monarchy is even more repulsive to me than swearing allegiance to an arbitrary monarch might be.
8. Because I felt that it was very important for me to become a citizen of Canada, I reluctantly took the Oath of Allegiance in 1977, in spite of the great discomfort this violation of my conscience caused me. I have been a citizen of Canada since that time.
9. Years later, I began to feel that the requirement of swearing the Oath to gain Canadian citizenship was in violation of both the spirit and the provisions of the *Canadian Charter of Rights and Freedoms*. This increased the ideological discomfort and distress that I experienced as a result of having sworn the Oath.
10. In 2002, I joined Citizens for a Canadian Republic, an organization which seeks to build a political movement to have the Queen replaced by a democratically-selected Canadian as Canada's Head of State. As a result of the fundamental freedoms enshrined in the *Canadian Charter of Rights and Freedoms*, I felt that I did have the right to participate in such an organization in spite of my having sworn the Oath.

11. Since 2002, I have been is an active and committed participant in Canada's republican movement.
12. In 2004, I publicly recanted the Oath to the Queen and her successors and heirs.
13. To formalize my recantation of the Oath of Allegiance, in May, 2004 I submitted a notarized document to Citizenship and Immigration Canada recanting the said portion of the citizenship Oath. In this document I reaffirmed the remainder of the Citizenship Oath. Attached to this Affidavit as Exhibit "A" is a true copy of that document.
14. On October 4, 2004, after some months had elapsed without my having received a response to my recantation, I wrote as follows to the Minister of Citizenship and Immigration:

Honourable Minister,

On May 25, 2004 I sent you, by registered mail, a legally notarized statement in which I recanted the portion of the Oath of Citizenship, which I swore in 1977, which pledges allegiance and faithfulness to Queen Elizabeth and her heirs and successors.

So far I have received no response from your office.

It is extremely disconcerting to send a communication of such gravity to an office of the federal government and receive no acknowledgement or response.

In particular I would like to know if my withdrawal of allegiance to Queen Elizabeth, and her heirs and successors, has affected the status of my citizenship in any way.

I look forward to hearing from you.
15. The next month, I received a response to my letter of October 4, 2004. Citizenship

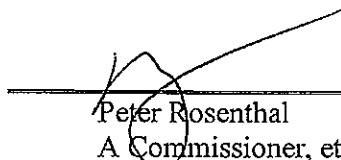
and Immigration Canada acknowledged receipt of my recantation in writing and informed me that my citizenship had not been affected by my recantation. Attached to this Affidavit as Exhibit "B" is a true copy of the letter dated November 19, 2004 providing that information, in which the Ministry of Citizenship and Immigration also indicated that "...there are no laws in Canada that state that a person loses citizenship if the individual recants part of the oath that was sworn at the time the individual became a citizen."

16. I found this response heartening because it informed me that the Canadian government recognized that my complete absence of allegiance and faithfulness to the Queen and other members of her family did not make me less worthy of Canadian citizenship.

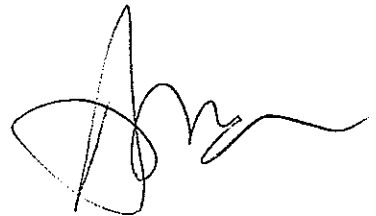
17. As I expressed in Exhibit "A", I am proud to make the commitment contained in the other part of the citizenship oath; namely, to "faithfully observe the laws of Canada and fulfill my duties as a Canadian citizen".

18. This Affidavit is for the purpose of providing evidence on the Application herein and for no other or improper purpose.

Affirmed before me at the City of Toronto)
this 7th day of November, 2012)



Peter Rosenthal
A Commissioner, etc.



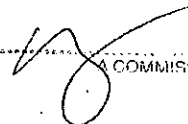
ASHOK CHARLES

Ashok Charles
94A Ascot Av., Toronto,
Ontario. M6E 1E9.

The Honourable Ms. Judy Sgro
Minister of Citizenship and Immigration
Jean Edmonds South Tower
21st floor, 365 Laurier Av.
Ottawa, Ontario. K1A 1L1

This is Exhibit A
affidavit of Ashok Charles
sworn before me, this 7th
day of NOVEMBER, 2012

Honourable Minister,


A COMMISSIONER ETC

I became a Canadian citizen in 1977. Since then
I have come to embrace my identity as a citizen,
among equals, in a progressive, modern
democracy.

On reflection, I have also recognized that the
portion of the citizenship oath I swore, which
pledges allegiance to Queen Elizabeth, and her
heirs and successors, is incompatible with the
democratic ideals I uphold.

It is my view that it is entirely inappropriate for
Canada to require of its citizenry, allegiance to a
monarch. I see this state-sanctioned subjugation
as detrimental to our national spirit and to the
fulfillment of Canada's role, internationally, as
an independent democracy.

In accordance with my principles and as a member of Citizens for a Canadian Republic, an organization dedicated to the installation of a Canadian head of State, I hereby recant that portion of my sworn oath which read "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..."

I continue to wholeheartedly respect the remainder of the oath, which read "...and that I will faithfully observe the laws of Canada and fulfill my duties as a Canadian citizen."

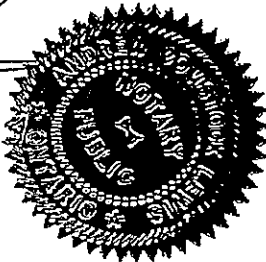
Sincerely,

This solemn declaration is made conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

Sworn before me at the
City of Toronto in the
Province of Ontario
this 20th day of May, 2004

)
)
)
)
Ashok Charles

Andrew C. Lewis
A Commissioner etc.
Notary Public





Citizenship and
Immigration Canada

Citoyenneté et
Immigration Canada

113

Case Management Branch
300 Slater Street, 9th Floor
Ottawa, Ontario
K1A 1L1

November 19, 2004

Mr. Ashok Charles
94A Ascot Avenue
Toronto, Ontario
M6E 1E9

This is Exhibit B referred to in the
affidavit of Ashok Charles
sworn before me, this 7th
day of November 2004

Dear Mr. Charles:

I am writing in regards to your letter of October 4, 2004, to the Honourable Judy Sgro,
Minister of Citizenship and Immigration. I apologize for the delay in responding.

The *Citizenship Act* states that a person becomes a citizen if they meet the requirements
in section 5 and then take the oath of citizenship.

The only way that a person can renounce their citizenship is to follow the requirements
described in section 9 of the *Act* and section 7 of the *Regulations*.

A person loses their Canadian citizenship if their application for renunciation is
approved. The individual must meet all requirements of the *Act* by filing an application
for renunciation. We do not recognize implicit renunciation, and there are no laws in
Canada that state that a person loses citizenship if the individual recants part of the oath
that was sworn at the time the individual became a citizen.

I trust that this explanation is satisfactory. Should you wish to find out more information
concerning the requirements for renunciation of citizenship, please visit our web site at
www.cic.gc.ca.

Sincerely,

John Warner
Case Analyst

Canada

Court File No. 06-CV-301832PD3

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

MICHAEL MCATEER, SIMONE E.A. TOPEY AND DROR BAR-NATAN

Applicants

-and-

THE ATTORNEY GENERAL OF CANADA

Respondent

AFFIDAVIT OF HOWARD JEROME GOMBERG

I, HOWARD JEROME GOMBERG, of the City of Toronto in the Province of Ontario, AFFIRM AS FOLLOWS:

1. I was born on August 16th 1939 in the City of Brooklyn, New York, United States of America.
2. Neither of my parents was born in Canada.
3. I have lived in Ontario since 1974.
4. I applied for Canadian citizenship and was duly granted citizenship in 2008.
5. Before I was sworn in as a Canadian Citizen and received delivery of my Citizenship Certificate, I had sworn an affidavit stating that taking the Oath to be loyal and

bear true allegiance to Her Majesty Queen Elizabeth II, Her Heirs & Successors [hereinafter, "the Oath"] is not consistent with my religious and personal beliefs and consequently, such an Oath or Affirmation violated my fundamental freedom of conscience.

6. I took Canadian citizenship because not having it presented hardships for me with respect to my professional life as an actor and performer and also because I wanted to more fully participate in Canadian life, including voting at elections.

7. I was therefore forced to take the Oath under duress and, as a result, I have suffered ongoing mental anguish having taken a solemn Oath to be loyal to an institution and political theory that I do not believe in.

8. On my attendance to be sworn in as a Canadian citizen, I expressed to everyone who had authority at the ceremony that I was taking the oath under duress and that I believed that my right to freedom of conscience was being violated.

9. I believe that no human being by right of birth is better than any other human being. In the country of my birth, the United States, I grew up with the maxim: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness." I firmly believe in that maxim, and I consequently find the notion of the divine right of royalty to be immoral.

10. I am Jewish. I believe that my religious beliefs were compromised by my being forced to affirm the impugned words of the Oath of Allegiance. I object to the religious nature of the Oath. My religious tradition states clearly, in the Book of Exodus, Chapter 20, verses 4 through 6, "*Thou shall not have any other Gods before me. Thou shall not bow down to any graven idols.*"

11. It is my view that forcing me to take the Oath contravened the spirit of the above excerpt from the Book of Exodus.

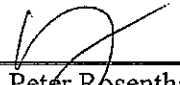
12. On April 3rd 2008, I attended my citizenship swearing-in ceremony. I indicated to all persons I perceived to be in a position of authority and to a number of others that I was taking the oath under duress and that it was not binding on my conscience. Further, I explained to them my view that my rights were being compromised by being forced to swear in such a manner. The Citizenship Judge said to me "Someday it will change." However, the Judge administered the oath to me, notwithstanding my protestations that the oath is not binding on my conscience and that I had no intention of honouring it.

13. When I signed the Oath, I wrote above my signature the words "under duress" and pointed out what I had written to an official.

14. None of the officials expressed any concerns about my indications that I had no intention of honouring the Oath. No official of the Government of Canada expressed any such concerns to me at any time before or after I took the Oath.

15. This Affidavit is for the purpose of providing evidence on the Application herein and for no other or improper purpose.

Affirmed before me at the City of Toronto)
this 9 day of November, 2012)



Peter Rosenthal
A Commissioner, etc.



HOWARD JEROME GOMBERG

ONTARIO**SUPERIOR COURT OF JUSTICE**

BETWEEN

MICHAEL MCATEER, SIMONE E. A. TOPEY AND DROR BAR-NATAN

Applicants

-and-

THE ATTORNEY GENERAL OF CANADA

Respondent

AFFIDAVIT OF RANDALL WHITE

I, RANDALL WHITE, of the City of Toronto in the Province of Ontario, AFFIRM AS
FOLLOWS:

1. A true copy of my curriculum vitae is attached to this Affidavit as Exhibit "A".
2. I obtained the following degrees from the University of Toronto: a B.A. in Political Science and Economics, an M.A. in Political Science and a Ph.D. in Political Science. From 1968 to 1972 and then again from 1975 to 1980, I was enrolled in the Ontario Public Service. I ended my formal career in the Ontario Public Service as a Senior Policy Advisor, Economic Development.
3. From 1980 to the present, I have worked as an independent public policy consultant for

clients at all three levels of government in Canada and in various branches of the Canadian-based private sector.

4. Over the past quarter century, I have dealt with a wide variety of policy areas, including democratic reform, disaster management, economic development, health policy, heritage preservation, housing, intellectual property rights and international trade, professional governance, public finance, and real estate development and property taxation.
5. I am the author of a number of books on Canadian history, politics, and public policy issues. These include: *Ontario 1610-1985: A Political and Economic History* (Dundurn Press, 1985); *Fur Trade to Free Trade: Putting the Canada-US Trade Agreement in Historical Perspective* (Dundurn Press, 1988); *Voice of Region: The Long Journey to Senate Reform in Canada* (Dundurn Press, 1990); *Global Spin: Probing the Globalization Debate* (Dundurn Press, 1995); *Ontario Since 1985* (eastendbooks, 1998); and *Is Canada Trapped in a Time Warp? Political Symbols in the Age of the Internet* (eastendbooks, 2001).
6. The main subject of my 2001 book, *Is Canada Trapped in a Time Warp?*, was “abolishing the monarchy in Canada.” The book was described as “thought provoking” by Adam M. Dodek in the Ontario Bar Association publication, *Constitutional*.
7. In the more recent past, I have written a variety of articles on Canadian republican issues

and the future of the British monarchy in Canada. These include : "Let's elect our head of state," *Toronto Star*, April 26, 2009 ; "PM Harper's new governor general shows office continues to evolve?", *counterweights.ca*, July 8, 2010 ; "PM's puzzling reticence on the monarchy," *Toronto Star*, April 29, 2011 ; and "Who pays for the Canadian forces nowadays — the offshore monarchy or the people of Canada (and Quebec)?", *counterweights.ca*, August 20, 2012.

The Citizenship Oath to the Queen

8. Section 24 of the *Citizenship Act* and the associated schedule prescribe that where a person is required under this Act to take the oath of citizenship, 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 fulfil my duties as a Canadian citizen.

9. The Ontario Council of Agencies Serving Immigrants' March 2005 submission to the Standing Committee on Citizenship and Immigration of the Parliament of Canada urged that “only naturalized citizens” (or new citizens) “are required to make ... an oath” to the Queen as a condition of citizenship in Canada today. It “is assumed that native-born Canadians would automatically agree to uphold the principles of the Oath.” The submission urged that the citizenship oath be replaced buy one that made no reference to the Monarchy.

10. As opinion polls make clear, substantial numbers of native-born Canadians today would not automatically agree to uphold the oath to the Queen; and they are not compelled to do so by law as a condition of their citizenship.
11. On one understanding of modern democratic thought, at least, the principles of “monarchy” and “democracy” are fundamentally opposed. Those who have such an understanding with deep seriousness are bound to object to swearing an oath of allegiance to a monarch.
12. In Canada today not everyone may agree with the belief that the principles of monarchy and democracy are opposed. As in the case, for example, of those who continue to believe in "constitutional monarchy," or in historic conceptions of a mixed constitution, that blends elements of monarchy, aristocracy, and democracy. But many individuals feel that monarchy and democracy are opposed, as a serious matter of conscience. It is my opinion that this is an increasingly common view among Canadian historians and political scientists.

Impact on Charles Roach

13. This application was initiated some years ago by Charles Roach, who passed away on October 2, 2012.
14. Over the past several years, I had many discussions with Charles Roach about his

concerns about oaths to the Queen. The information about him that I depose to below is based on those discussions.

15. Mr. Roach was born a British subject in the Caribbean, and grew up in a household with pictures of George V and George VI on the wall. In 1955 he emigrated to Canada, where he joined the Regular Officer Training Plan of the Canadian Forces and studied at the University of Saskatchewan.
16. As a British subject and permanent resident of Canada, under the Canadian Citizenship Act of 1947 Mr. Roach could vote and stand for public office, and generally enjoyed the political rights of a Canadian citizen. In 1963 he became a barrister and solicitor in Ontario.
17. By the middle of the 1970s, what Mr. Roach characterized as his mature "egalitarian credo" included opposition to the monarchy, and this caused him to decline when a colleague nominated him for the title of "Queen's Counsel."
18. The Canadian Citizenship Act of 1977 effectively took away Mr. Roach's political rights as a British subject in Canada. In particular, he could no longer vote in elections. To become a Canadian citizen and restore these rights he would have had to swear an oath of allegiance to the British monarch, who was also the Queen of Canada, Elizabeth II.

19. By 1977, Mr. Roach had embraced republicanism, which to him included a belief that sovereignty or the supreme power in a state ought to reside with the people and their elected representatives, and not with the holder of any hereditary office.
20. In the late 1980s, Mr. Roach was informed by the Law Society of Upper Canada that he would have to become a Canadian citizen by a certain deadline to continue working as a barrister and solicitor in Ontario.
21. Mr. Roach successfully completed all parts of the required process for citizenship, except for the last one: taking the Oath. He informed the Citizenship Judge before whom he appeared that he was unwilling, as a matter of conscience, to swear or affirm an oath to the Queen. He informed the Judge that he would be willing to affirm the rest of the citizenship oath: that he would "faithfully observe the laws of Canada and fulfil my duties as a Canadian citizen." The Citizenship Judge told him he would have to affirm the entire oath if he was to receive citizenship. His application for citizenship was not granted.
22. Before the deadline by which Mr. Roach had been required by the Law Society to become a citizen had passed, the Supreme Court of Canada ruled that it was unconstitutional to require that lawyers be citizens. As a result of this ruling, Mr. Roach was not required to obtain citizenship. He remained a member in good standing of the Law Society of Upper Canada until his death.

23. In 1994, the Attorney General of Ontario asked Mr. Roach to apply for the position of Provincial Judge. He declined since an oath to the Queen was required before assuming such a position.

Canadian Citizenship and Naturalization - Background

24. The present oath to the Queen has its origins in an earlier legal and constitutional regime, under which Canadians were legally regarded as British subjects. This regime was fundamentally changed by the Citizenship Act of 1947, which introduced the legal status of a Canadian citizen for the first time, and by the Citizenship Act of 1977, which ended all special treatment of British subjects in Canadian citizenship law.
25. The oath to the Queen in the present Citizenship Act has its origins in the earlier history of the 1867 confederation (and before that as well), when the majority of the Canadian population still reported British national or ethnic origins, and when Canadians were still legally known inside and outside Canada as British subjects.
26. According to the Canadian Genealogy Centre: "From 1763 until the Canadian Citizenship Act came into force on January 1, 1947, people born in Canada were British subjects. Thus, immigrants born in Great Britain and the Commonwealth, being British subjects by birth, had no need to be naturalized or to obtain British citizenship in Canada." Under a "number of earlier laws ... aliens could petition for naturalization. If

successful, they would swear allegiance to the British sovereign and would be granted the rights of someone born within the British Empire.”

27. In the 1901 Census, just under 13% of the Canadian population were immigrants or “born outside Canada.” Some 57% of these immigrants had been born in the British Isles, and retained their status as British subjects in Canada. The largest group of so-called “foreign-born” immigrants (i.e., born outside the British Empire) was from the United States (19%), with smaller groups from Russia (5%), Germany (4%), China (2.5%), and other places. In 1901 only 55% of foreign-born immigrants had sworn allegiance to the British sovereign and become naturalized.
28. During the first decade of the 20th century, immigration to Canada accelerated dramatically, especially in connection with the settlement of Western Canada. During the years immediately preceding the First World War it reached absolute levels that have never subsequently been surpassed. Canada admitted more than 400,000 immigrants in 1913.
29. Between 1915 and 1945, more than 1.9 million immigrants were admitted to Canada over the three decades. As in earlier periods, many of these newcomers had been “born in Great Britain and the Commonwealth,” and “being British subjects by birth, had no need to be naturalized or to obtain British citizenship in Canada.” In the 1941 Census, 17.5% of the Canadian population were immigrants or “born outside Canada.” And just under

half these immigrants (49.7%) were “Other British-born” outside Canada.

30. “Foreign-born” immigrants during this period, who had to swear allegiance to the British sovereign to become naturalized and “be granted the rights of someone born within the British Empire,” had somewhat more diverse origins than in earlier periods. For the first century of the present confederation, Canadian public policy preferred immigrants from Great Britain and the Commonwealth, the United States, and Europe — and more or less in that order.
31. The first Canadian Citizenship Act of 1947 was just one step in a long process of continuing Canadianization of Canadian public life. The Citizenship Act of 1947 provided for the conferring of a common Canadian citizenship on all Canadians, whether or not they had been born in Canada.
32. Not all immigrants were required to take the oath to the Queen. As Citizenship and Immigration Canada today explains, under the Citizenship Act of 1947 “unlike an alien ... a British subject could qualify for Canadian citizenship without being called before a judge for a hearing or taking the oath of allegiance in a formal ceremony.”
33. As Citizenship and Immigration Canada today further explains : "Thanks to changing attitudes and the soaring numbers of non-British immigrants in the 1950s and 1960s, the distinction in treatment between British subjects and aliens began to come under attack.

The concept that citizenship is a privilege and not a right was also being questioned."

34. Two other Canadianizing events of 1947 complemented the new Citizenship Act of that year. The first was the repeal of the Chinese Immigration Act of 1923. The second was Letters Patent issued by King George VI, which effectively transferred "all the powers and authorities of the Sovereign in right of Canada" from the British monarch to the Governor General of Canada.
35. In 1965, the Parliament of Canada adopted the present independent Canadian maple leaf flag, despite protests from supporters of the old British red ensign, with the Union Jack in the top left-hand corner.
36. As explained by the now disbanded Canadian Policy Research Networks (whose archives survive in the Carleton University Library), in the centennial year of the 1867 confederation, "Canada finally broke the link between national identity and racial identity that had underpinned immigration policy for a century." With changes in immigration regulations in 1967, national origin — and, by extension, race and ethnicity — ceased to be a condition of entry or exclusion. They were replaced by a "point system" that remains in use today. These changes "had a tremendous impact on the demographic make-up of Canada ... prior to 1967 most immigrants originated in Europe or the United States ... by 2001 more than 63 percent of all newcomers originated in Asia."

37. The Official Languages Act of 1969 recognized English and French as the official languages of Canada. The Act's primary focus was to provide for federal government services in both languages, wherever warranted by local population size. The final report of the Royal Commission on Bilingualism and Biculturalism that preceded the enactment of the Official Languages Act of 1969 explained that its recommendations "encouraged federal institutions and agencies to promote ... 'cultural diversification within a bilingual framework.'"
38. The Citizenship Act of 1977 ended the last vestiges of special status for British subjects in Canadian citizenship law.
39. The content of the oath of allegiance for new citizens in the present Citizenship Act of 1977 (which essentially dates back to the Citizenship Act of 1947) has been discussed and debated.
40. In 1994, in the midst of growing controversy over the form of what still remains the current citizenship oath, Citizenship and Immigration Canada asked a group of 10 noted Canadian writers to work as a team to draft a new oath. The result was: "I am a citizen of Canada and I make this commitment: to uphold our laws and freedoms, to respect our people in their diversity, to work for our common well-being and to safeguard and honour this ancient Northern land."

41. In February 1999, during a Canadian House of Commons debate on proposed changes to citizenship legislation, Alex Shepherd, a Liberal Member of Parliament from the Durham region of Ontario, urged: "What I suggest to the government is that we propose some sort of amendment to this legislation that will recognize that the oath of citizenship is to Canada only ... as a small token of the realization that we are going into the 21st century we should as a minimum change this oath so it clearly swears allegiance solely to Canada, Canada's democratic traditions that Canadians have developed of themselves, Canada's rights and freedoms that we have developed by ourselves and those traditions that talk about our loyalty to our laws and upholding the laws of Canada that we evolved and developed."
42. During the course of debate on what Joseph Garcea of the University of Saskatchewan has called "three relatively similar pieces of draft citizenship legislation between 1998 and 2003 designed to supplant the existing Citizenship Act," individual Members of Parliament proposed other versions of a new citizenship oath that omitted all references to the Queen.
43. John Bryden from the Hamilton area in Ontario proposed a new oath which read: "In pledging allegiance to Canada, I take my place among Canadians, a people united by their solemn trust to uphold these five principles: equality of opportunity, freedom of speech, democracy, basic human rights and the rule of law."

44. Alex Shepherd from the Durham region in Ontario proposed a new oath which read:
“From this day forward, I pledge my loyalty and allegiance to Canada and its Constitution. I promise to respect our country's rights and freedoms, to defend our democratic values, to faithfully observe our laws and fulfil my duties and obligations as a Canadian citizen.”
45. In 1980 “O Canada” officially replaced “God Save the Queen” as Canada’s national anthem.
46. The *Constitution Act 1982* finally fully patriated the Constitution of Canada from the United Kingdom, and provided for methods of Canadian constitutional amendment inside Canada for all parts of the Constitution.
47. Section 16 (and sections 17 to 23) of the Canadian Charter of Rights and Freedoms also constitutionally entrenched French and English language rights in Canada.

Changing demographics of the Canadian people

48. Demographically, as made clear in census data collected and compiled by the federal government’s central statistical agency, the “British North American” national or ethnic origin majority of the Canadian population during the late 19th century has evolved into a “Multiple Origins Canadian” majority in the early 21st century.

49. People of British national or ethnic origin accounted for a majority of the Canadian population from 1867 until just before the first Canadian Citizenship Act in 1947.
50. Statistics Canada provides the following information:

TABLE 1. CHANGING ORIGINS OF THE CANADIAN POPULATION, 1871–1971

| Group | % 1871 | % 1921 | % 1971 |
|-------------------|--------------|--------------|--------------|
| Aboriginal | 0.7 | 1.3 | 1.5 |
| French | 31.1 | 27.9 | 28.7 |
| British | 60.5 | 55.4 | 44.6 |
| Other | 7.7 | 15.4 | 25.2 |
| All Canada | 100.0 | 100.0 | 100.0 |

51. As Table 1 (above) shows, even at the highest tide of “British North America” in the 19th century, close to a third of the Canadian population at the time of confederation was of French national or ethnic origin — as were most people legally and otherwise known as Canadians (or *Canadiens*) in the 17th and 18th centuries.
52. As Table 1 also shows, increasing international migrations in the 20th century meant that the British national-or-ethnic-origin majority in Canada had dwindled to a mere strong plurality Canada-wide by the 1970s.
53. Global international migrations of the last quarter or perhaps third of the 20th century have altogether transformed Canadian demography again, in the more recent past.

54. These latest and most diverse migrations have not affected all parts of the country uniformly. They are still especially concentrated in the metropolitan regions surrounding larger cities such as Vancouver, Edmonton, Calgary, Winnipeg, Hamilton, Toronto, Ottawa, and Montreal. But there are few parts of the country that have not begun to feel at least some impacts of the increasingly diverse Canada-wide demography today.

55. The following information is from Statistics Canada

TABLE 2. ORIGINS OF THE CANADIAN POPULATION, 2001

| Group | % |
|-------------------|--------------|
| Single Origins | |
| Aboriginal | 1.9 |
| French | 3.6 |
| British | 9.0 |
| Canadian | 22.8 |
| Other | 24.5 |
| Multiple Origins | 38.2 |
| All Canada | 100.0 |

56. As a result of changes in the population, data on national or ethnic origin in the more recent 1991 and 2001 censuses is no longer directly comparable with data for the 100-year long period from 1871 to 1971.

57. For example, in the 2001 census, more than 38% of Canadians reported so-called “Multiple Origins” — based on combinations of two or more national or ethnic origins.

(Comparable data from the Census of 2011 was not available at the time this affidavit was prepared.)

58. Unlike in all the earlier history of the present confederation, in the censuses of 1991 and 2001, it became possible as well to report “Canadian” as a national or ethnic origin in official Canadian statistics. In 2001 almost 23% of Canadians, across the country, actually did report so-called single Canadian origins.

59. Statistics Canada also reports the following:

TABLE 3. TEN LARGEST SINGLE-ORIGIN GROUPS IN CANADA, 2001

| Group | % of all Canadians |
|----------------------|--------------------|
| Canadian | 22.8 |
| British | 9.0 |
| French | 3.6 |
| Chinese | 3.2 |
| South Asian | 2.7 |
| Italian | 2.5 |
| German | 2.4 |
| Aboriginal | 1.9 |
| Caribbean | 1.1 |
| Dutch | 1.1 |
| Total Top 10 | 50.3 |
| Other Single Origins | 11.5 |
| Multiple Origins | 38.2 |
| All Canada | 100.0 |

60. The most striking feature of the data on national or ethnic origin in the 2001 Census of Canada is its sheer diversity. There are at least some people from virtually every country of the world living in Canada today. Several densely-populated parts of Canada are places of remarkable cultural, racial, and religious diversity.
61. Another striking feature of the 2001 data is the dramatic decline in the percentages of Canadians reporting British and French national or ethnic origins, especially compared to what prevailed 130 or even 80 years earlier.
62. Some might argue that the mere 9.0% of Canadians reporting single British origins in the 2001 census somewhat too dramatically under-represents the full weight of the British national or ethnic heritage in the Canadian population today. They would correctly note that another almost 25% of Canadians included “British” as one of their various “Multiple Origins” as well.
63. Another important point, however, is that this 25% of Canadians are now choosing to classify themselves as people of “Multiple Origins” rather than “British.” (Though this almost certainly has something to do as well with recent changes in census design by Statistics Canada officials.)
64. The following tables are also from Statistics Canada:

TABLE 4. PERCENTAGE OF “SINGLE CANADIAN” POPULATION BY

PROVINCE, 2001

| Province | % "Single Canadian" |
|-------------------------|---------------------|
| Quebec | 47.9 |
| Newfoundland & Labrador | 41.0 |
| New Brunswick | 33.7 |
| Nova Scotia | 28.0 |
| Prince Edward Island | 24.0 |
| Ontario | 14.2 |
| Alberta | 13.2 |
| Saskatchewan | 11.6 |
| Manitoba | 10.2 |
| British Columbia | 9.9 |
| CANADA | 22.8 |

TABLE 5. PERCENTAGE "SINGLE BRITISH" POPULATION BY PROVINCE, 2001

| Province | % "Single British" |
|-------------------------|--------------------|
| Newfoundland & Labrador | 28.9 |
| Prince Edward Island | 19.6 |
| Nova Scotia | 17.0 |
| New Brunswick | 12.5 |
| British Columbia | 11.3 |
| Ontario | 11.2 |
| Alberta | 9.1 |
| Manitoba | 7.8 |
| Saskatchewan | 7.4 |
| Quebec | 1.8 |
| CANADA | 9.0 |

65. Some Canadians — and in some provinces considerable numbers — formerly classified as British are now classified as Canadian. And some Canadians of more diverse origins, formerly classified in non-British and non-French groups, are now classified as either “Multiple Origins” or “Canadian” as well.
66. The tables show that the old British North American majority in the first 75 years of the present confederation has now been succeeded by a new Multiple Origins Canadian majority.
67. Canadian citizens today include people of many different national or ethnic origins. The majority of Canadians now choose to identify themselves as either people of Multiple Origins or Canadians.

Impact of citizenship oaths in the new demographic environment

68. In a brief to the Standing Committee on Citizenship and Immigration of the Parliament of Canada in March 2005, the Ontario Council of Agencies Serving Immigrants (OCASI) urged:

The Citizenship Oath is a powerful mechanism that serves to affirm the citizen’s commitment to Canada. It is important to note that only naturalized citizens are required to make such an oath. It is assumed that native-born Canadians would automatically agree to uphold the principles of the Oath ...

Consistent with the principles of fairness and equity, and in order to be sensitive to the concerns of members of aboriginal communities, the Quebecois and foreign-born Canadians, OCASI suggests that new legislation should omit reference to the monarchy of Great Britain in the Oath.

Constitutional Monarchy and Canadianization

69. The role of the British monarch and the constitutional monarchy in Canada is now considerably more strictly formal and honorific than it was in the late 19th century, as a result of the gradual but steady Canadianization (and democratization) of Canadian institutions, especially after the Second World War. This process was accelerated by the Citizenship Act of 1947 and George VI's 1947 Letters Patent. It reached an initial or interim culmination with the *Constitution Act 1982*, and its Canadian Charter of Rights and Freedoms.
70. It has been some time now since claims that the British monarch "personifies the [Canadian] state and is the personal symbol of allegiance, unity and authority for all Canadians" could be credibly made with broad acceptance by the great majority of the Canadian population, in all parts of the country.
71. In 2003 Frederick Vaughan, Professor Emeritus of political science at the University of Guelph, biographer of Justice Emmett Hall, and co-author of a history of the Supreme Court of Canada, published a book entitled *The Canadian Federalist Experiment: From Defiant Monarchy to Reluctant Republic*. In this book he maintains "that Trudeau's 1982 Charter quietly undermined the monarchic character of the constitution by introducing republican principles of government."
72. Professor Vaughan has also argued that the Canadian Charter of Rights and Freedoms

“was the instrument that, with one stroke, severed Canadians from their ancestral monarchical foundations. With the Charter, Canada began a new life as a nation, a republican nation. The Charter is based upon republican principles. It is the closest Canadians have ever come to a document that affirms the rights of the people.”

73. Professor Vaughan has urged as well that “the Canadian regime has turned its back on monarchy,” and the “direction cannot be reversed. The transformation to republican government has taken hold in the public mind and has been institutionalized by the new Charter mandate entrusted to the Supreme Court.”
74. While not all Canadian political scientists would agree with Professor Vaughan's arguments, the Constitution of Canada today is not what it was when the present confederation was first established in 1867. Part of Canada's Westminster constitution is ‘unwritten’ and open to evolution, to keep pace with changing times. Like much else in Canadian government and politics, the role of the monarchy has evolved over the past 145 years.
75. In June 2005 the former federal government constitutional advisor James Ross Hurley testified to a committee of the Senate of Canada that was investigating changes to the oath of allegiance for Senators. He explained :

Canada was not a sovereign country in 1867, it was a group of colonies ... at the time ... the only oath of allegiance possible was to the monarch, who was head of the empire, and the Crown had power over the colony. But Canada changed, it is now an independent country. We repatriated the Constitution, we have a flag, and a national anthem. These are all very important symbols of progress in the evolution of our

country. If we want to add other elements to the oath of allegiance today, it simply reflects the country's transformation over the years.

The “constitutional doctrine of popular sovereignty” and constitutional monarchy as an honorific institution

76. The way in which the partly unwritten Westminster constitution allowed the current Canadian parliamentary democracy to evolve over the first century of the 1867 confederation was succinctly summarized in Richard J. Van Loon and Michael S. Whittington's *The Canadian Political System : Environment, Structure & Process* — a pioneering Canadian political science textbook of the early 1970s (which subsequently went through four editions, and is still cited as an authority in the current edition of *Canadian House of Commons Procedure and Practice*):

[The] formal executive power in Canada is vested in the Crown and, in a very formal sense, we can be said to have a monarchical form of government. The Governor General exercises all of the prerogative rights and privileges of the Queen in right of Canada, according to the BNA Act [now called the *Constitution Act 1867*] and the [1947] Letters Patent that define his office. The constitutional doctrine of popular sovereignty has, however, reduced the *de facto* role of the Governor General to that of a figurehead. The real power is exercised by the Prime Minister and his cabinet who obtain their legitimacy from the fact that they possess a popular mandate.

77. Virtually all the practical and constitutionally serious aspects of the Queen's role as Canada's formal head of state are now filled by the Governor General. The role of the Crown in Canada has become almost entirely symbolic.

Current popular confusion about the role of the constitutional monarchy

78. An EKOS poll in 2002 found that only 5% of Canadians could correctly identify the

Queen as Canada's current formal head of state. The results were as follows:

Question: WHO IS THE HEAD OF STATE IN CANADA?

| Answer | % of Sample Choosing Answer |
|------------------|-----------------------------|
| Prime Minister | 69% |
| Governor General | 9% |
| Queen | 5% |
| Other | 1% |
| Don't Know | 16% |
| TOTAL | 100% |

SOURCE: EKOS Research Associates. *Trust and the Monarchy: an examination of the shifting public attitudes toward government and institutions*. May 30, 2002, 47.

Opinion surveys on the oath and the British monarchy in Canada

79. Opinion surveys provide useful information about contemporary community standards concerning the present oath to the Queen for new Canadian citizens.
80. In January 1996 an Angus Reid Survey for Citizenship and Immigration Canada found 51% of respondents felt that a new oath of allegiance for new citizens should remove any reference to the monarchy. Some 38% felt that allegiance should be pledged to both Canada and the monarchy. Only 5% favoured swearing allegiance only to the monarchy.
81. Angus Reid Strategies conducted surveys in September 2007 and February 2008 which asked representative samples of Canadians the following question:

Under the terms of the Canadian Constitution, Queen Elizabeth II holds the position of Canada's head of state. Would you support or oppose Canada ending

its formal ties to the British monarchy?

82. The Canada-wide results for the surveys were :

| | % September 2007 | % February 2008 |
|---------------------|------------------|-----------------|
| Support ending ties | 53 | 55 |
| Oppose ending ties | 35 | 34 |
| Not Sure | 12 | 11 |

83. These results varied by region in some significant ways. In 2008, for example, majorities in the three largest provinces of Ontario, Quebec, and British Columbia — which together account for just over 75% of the total Canadian population — supported Canada's ending its formal ties to the British monarchy (and the largest majority was in Quebec). There was less support in Atlantic Canada, and especially in the Prairie Provinces.

84. The regional results for 2008 were:

| | % BC | % Alta | % Mb/Sk | % Ont | % Que | % Atl Can |
|----------|------|--------|---------|-------|-------|-----------|
| Support | 51 | 43 | 25 | 54 | 71 | 43 |
| Oppose | 36 | 48 | 59 | 39 | 15 | 38 |
| Not sure | 12 | 9 | 16 | 7 | 14 | 19 |

85. In the pollster's view, the key conclusion from the 2008 survey was that the “majority of Canadians believe it is time to end the country's official relationship with the British monarchy.”

86. It has been said that the April 2011 wedding of Prince William and Catherine Middleton has boosted the popularity of the British monarchy, in Canada as elsewhere. A Harris/Decima poll taken this past May 2012, for a group known as Your Canada Your Constitution, suggests that, even with this boost in popularity, it is still true that a bare but clear majority of all Canadians, coast to coast to coast, believe it is time to end the country's official relationship with the British monarchy.
87. The May 2012 Harris/Decima poll asked more than 2,000 representative Canadians whether they agreed or disagreed "that Canada's Constitution should be changed to make Canada a fully independent country by retiring the British monarchy as Head of Canada's federal and provincial governments."
88. Canada-wide, in May 2012 some 52% of all Canadians agreed that Canada's Constitution should be changed to make Canada a fully independent country by retiring the British monarchy as Head of Canada's federal and provincial governments — while only 43% disagreed. In the French-speaking-majority province of Quebec the results were more strikingly one-sided. Some 76% of all Quebec respondents agreed that the British monarchy in Canada should be retired, and only 17% disagreed.

The oath in other jurisdictions

89. Only 16 member countries of the 54-member Commonwealth of Nations today are

constitutional monarchies that retain Queen Elizabeth II as formal Head of State. They include the United Kingdom itself and 15 other so-called “Commonwealth Realms” — Antigua and Barbuda, Australia, The Bahamas, Barbados, Belize, Canada, Grenada, Jamaica, New Zealand, Papua New Guinea, St. Christopher and Nevis, St. Lucia, St. Vincent and the Grenadines, Solomon Islands, and Tuvalu.

90. Most Commonwealth Realms still require citizenship oaths in their naturalization processes similar (and in some cases virtually identical) to the present Canadian citizenship oath, with direct references to the British monarch. There are, however, some exceptions.

Australia

91. Australia — perhaps the current Commonwealth Realm most similar to Canada, in a number of respects — has since January 1994 had a citizenship “Pledge of Commitment” that makes no “reference to the Crown.” This pledge simply reads :

From this time forward [under God], I pledge my loyalty to Australia and its people, whose democratic beliefs I share, whose rights and liberties I respect, and whose laws I will uphold and obey.

92. Prior to this pledge, the oath of allegiance for new citizens in Australia was very similar to the present citizenship oath in Canada : "I swear by Almighty God [solemnly and sincerely promise and declare] that I will be faithful and bear true allegiance to Her Majesty Elizabeth the Second, Her heirs and successors according to law, and that I will

faithfully observe the laws of Australia and fulfil my duties as an Australian citizen."

93. In 1993 the Australian government of Paul Keating announced its intention to replace this oath with a "Pledge of Commitment" that made no "reference to the Crown." In introducing the new legislation "the Minister for Immigration and Ethnic Affairs, Senator the Hon. Nick Bolkus said: 'We need to have an oath of allegiance which reflects the core values of Australia and which is a bonding instrument, and we can do this without any disrespect to our sovereign.'"
94. Australia has had a citizenship oath which makes no reference to the Queen for almost two decades now, without compromising its current status as a constitutional monarchy and Commonwealth Realm, which still acknowledges Elizabeth II as its formal head of state.

Papua New Guinea

95. Naturalized new citizens of Papua New Guinea are not required to take an oath of allegiance. They are required to make instead a "Declaration of Loyalty," which reads:

I ,....., realizing fully the responsibilities to which I am committing myself and the consequences of not living up to this Declaration and those responsibilities, freely and willingly declare my loyalty to the Independent State of Papua New Guinea and its People and to the Constitution of Papua New Guinea adopted by the Constituent Assembly on 15 August 1975, as altered from time to time in accordance with its provisions, and promise that I will uphold the Constitution and the laws of Papua New Guinea.

The Bahamas

96. Section 22 (4) of the Constitution of 1973 in the Bahamas explicitly prescribes
- “Protection of freedom of conscience ... No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.”

The United Kingdom

97. As in Canada, there has been considerable recent discussion of and change in oaths of allegiance for new citizens in other Commonwealth Realms, and in the United Kingdom itself. The discussion has also been coloured in some degree by the events of September 11, 2001 in the United States, and by concerns about preserving and strengthening “democratic values.”
98. The United Kingdom revised its citizenship oath for new citizens in 2002. The traditional British oath to the Queen remains but is now supplemented by the following pledge: “I will give my loyalty to the United Kingdom and respect its rights and freedoms. I will uphold its democratic values. I will observe its laws faithfully and fulfil my duties and obligations as a British citizen.”

New Zealand

99. New Zealand recently conducted a review of all oaths in its public life, and an Oaths Modernisation Bill began working its way through the New Zealand Parliament. The Bill had its second reading discharged on 1 June 2010, however, and did not proceed further.

100. Though New Zealand would have retained an oath to the Queen as part of its proposed new citizenship oath (and still has such an oath today), it had added (as in the United Kingdom pledge) a reference to respect for “the democratic values of New Zealand.”
101. Some Members of the New Zealand Parliament argued that combining the Queen and democratic values in this way “makes the oath internally contradictory ... How can I possibly pledge loyalty to democratic values and at the same time declare loyalty to the Queen as a head of State whose selection process is a complete denial of democratic values? There is simply no democratic selection process for our head of State.”
102. It was also argued that an oath to the Queen is devalued “when we all know that 35 percent or more of the population are republicans and another big chunk of New Zealanders do not really support the monarchy as an institution but cannot really see that this is the right time to make a big constitutional change in that respect ... If we apply the same principle that we have been applying to religion and religious belief — that of not wanting people to swear to something they do not believe in; like not swearing to a god if they are atheists — then we should not make republicans swear their loyalty to the Queen. It only demeans the oath.”
103. A Member of the New Zealand Parliament who opposed leaving references to the Queen in New Zealand’s citizenship oath urged: “To take loyalty to the Queen out of the oath is

not to deny that New Zealand is a constitutional monarchy, and we just need to look at countries of a similar constitutional situation, like Australia ... which is also a constitutional monarchy. That country has a new citizenship oath that does not mention the Queen ... we could easily have an oath like Australia's in order to get out of the problem of making people swear to something they do not believe in and devaluing the oath accordingly."

104. A May 2004 discussion paper prepared by the New Zealand Ministry of Justice reported somewhat related intelligence on Jamaica, which does not directly involve citizenship oaths: "Australia and the United Kingdom have both recently made changes to their citizenship oaths and there are proposals to change Canada's citizenship oath. Australia also introduced a new version of the oath for federal Government Ministers in 1993. Jamaica, on the other hand, undertook a more comprehensive review of oaths and changed its oath for Members of Parliament, Judges and Government officials. Instead of an oath to the Queen, there is now an oath to Jamaica, the constitution and the people of Jamaica. These changes were made following a constitutional commission and a ten-year programme to 'Jamaicanise' the constitution."

Kingdom of Norway

105. The Kingdom of Norway's current head of state is King Harald V. Quoting from the King's official website: "Norway is a constitutional monarchy. This means that the King is formally the head of state but that his duties are mainly representative and ceremonial. The legislative and executive powers lie with the country's elected bodies. When the

Constitution states that: ‘the executive power is vested in the King’, this now means that it is vested in the Government.”

106. As of September 1, 2006, new or naturalized citizens of Norway have the option of taking an oath of citizenship that makes no mention of King Harald V or his heirs and successors. It reads:

Som norsk statsborger lover jeg troskap til mitt land Norge og det norske samfunnet, og jeg støtter demokratiet og menneskerettighetene og vil respektere landets lover. [As a citizen of Norway I pledge loyalty to my country Norway and to the Norwegian society, and I support democracy and human rights and will respect the laws of the country.]

107. This citizenship oath is not compulsory in Norway. The situation has been described as follows: “Norway used to require its naturalized citizens to pledge allegiance to their new country, but the practice was dropped around 30 years ago. Now it's been reinstated on a voluntary basis, with Norwegian officials inviting new citizens to the first of the country's new naturalization ceremonies on December 17 ... It's up to each new citizen to decide whether they want to accept the invitation to their local ceremony. Those who do accept, however, will be required to take the oath of citizenship ... ”

The Kingdom of the Netherlands

108. The Kingdom of the Netherlands' current head of state is Queen Beatrix.
109. The naturalization ceremony in the Kingdom of the Netherlands does not require any oath to Queen Beatrix or the Dutch monarchy.

United States of America

110. The naturalization oath in the United States of America is as follows:

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the Armed Forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely without any mental reservation or purpose of evasion; so help me God.

111. The United States provides options for leaving out certain portions of this oath for those who have a conscientious objection. For example, the current USCIS *Guide to Naturalization* states that one “may take the [present] Oath, without the words ‘to bear arms on behalf of the United States when required by law...’ if you provide enough evidence that you are against fighting for the United States because of your religious training and beliefs.” The *Guide to Naturalization* further provides that if “you provide enough evidence and USCIS finds that you are against any type of service in the Armed Forces because of your religious training and beliefs, you may leave out the words ‘to perform noncombatant service in the Armed Forces of the United States when required by law’”. And if the “USCIS finds that you are unable to use the words ‘so help me God’ because of your religious training or beliefs, you may leave out these words. If you believe you qualify for a modified Oath, you should write us a letter explaining your situation with your application. USCIS may also ask you to provide a document from your religious organization explaining its beliefs and stating that you are a member in

good standing.”

Oaths of allegiance for new lawyers in Ontario and Manitoba

112. In 1992, Ontario lawyers voted to make the oath of allegiance to the Queen optional for admission to the Ontario Bar. The present By-Law 11 of the Law Society of Upper Canada explains that: “Immediately after the court has caused a person to be admitted and his or her name to be enrolled as a solicitor on the rolls of the Society ... the presiding judge shall administer in either the English or French language the Barristers Oath, the Solicitors Oath and, if the person so wishes, the Oath of Allegiance.”
113. The former requirement for a new lawyer in Manitoba to swear the traditional oath to the Queen has also been abandoned.

Oaths of allegiance for Ontario police

114. In Ontario, police officers are given a choice between two oaths: one refers to the Queen while the other does not. The oath that does not refer to the Queen is as follows:

I solemnly swear (affirm) that I will be loyal to Canada, and that I will uphold the Constitution of Canada and that I will, to the best of my ability, preserve the peace, prevent offences and discharge my other duties as (insert name of office) faithfully, impartially and according to law. So help me God. [Omit this line in an affirmation.]

(See Police Services Act, ONTARIO REGULATION 268/10)

The federal public service oath in Canada

115. As of December 31, 2005, Canadian federal public servants are no longer required to

swear (or affirm) an Oath of Allegiance to the Queen. They are still required to take an oath of service, which reads:

I,, solemnly and sincerely swear [or affirm] that I will faithfully and honestly fulfil the duties that devolve on me by reason of my employment in the Public Service and that I will not, without due authority in that behalf, disclose or make known any matter that comes to my knowledge by reason of such employment. [In the case where an oath is taken, add 'So help me God'.]

Debate on the oath for British Members of Parliament

116. A few years ago some British MP s engaged in an intriguing debate on their oath of allegiance to the Queen. While this debate has apparently not figured in the new parliament ushered in by the May 2010 British election, it still has some interest for the Canadian citizenship oath issue under discussion here.
117. As explained in an August 2008 article on the BBC News website, the debate had two main dimensions: First: "Anti-monarchy campaigners hope[d] to force a legal challenge to the oath of loyalty MPs swear to the Queen ... Human rights lawyer Louise Christian ... [was] ... representing campaign group Republic in its planned legal challenge." At the same time, 22 British MPs also "signed a Commons motion by Lib Dem Norman Baker, backing an alternative oath in which MPs would swear allegiance to their constituents."
118. Some of the arguments advanced by the 22 British MP s who supported Liberal Democrat Norman Baker's motion for "an alternative oath in which MPs would swear allegiance to their constituents" have some particular resonance for arguments about the

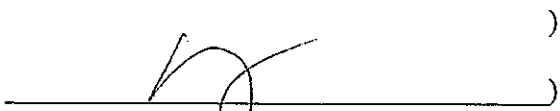
present Canadian citizenship oath. According to Mr. Baker himself, e.g.: “This is a matter of democracy ... I'm put here by my constituents and it's to them I owe my allegiance.”

119. The 22 British MPs who signed Mr. Baker's motion cut across party lines, and included 14 Labour, seven Liberal Democrats, and one Conservative. The one Conservative MP, Peter Bottomley, advanced arguments that transcended customary ideological positions: “We need to make the oath something that people are offered, rather than required to take ... We should make provision for republicans ... ” Mr. Bottomley himself “wouldn't drop the oath — I would make it optional.” He continued : “people ought to be able to come to parliament and argue that they don't want the monarchy.”

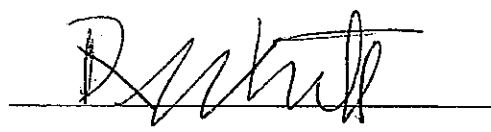
120. I make this affidavit to provide evidence concerning the application herein and for no other or improper purpose.

Affirmed before me at the City of Toronto)

this 9 day of November, 2012)


Peter Rosenthal

A Commissioner, Etc.


Randall White

This is Exhibit A referred to in the
 affidavit of Randall White
 sworn before me, this 9th
 day of November 2012


 A COMMISSIONER, ETC

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Personal information

BORN: Toronto, ON, Canada, 4 February 1945.

CITIZENSHIP: Canadian

Married, two (now adult) children.

Education

BA, Political Science and Economics, University of Toronto, 1968

C.L. Burton Scholarship, Nathanson Award, Second Alexander Mackenzie
 Scholarship

MA, Political Science, University of Toronto, 1970

PhD, Political Science (Canadian Government), University of Toronto, 1977

Mary Elizabeth Mahoney Fellowship, Maurice Cody Research Fellowship

Supervisor : Meyer Brownstone, former Deputy Minister of Municipal Affairs,
 Government of Saskatchewan.

Dissertation : "Citizen Politics in Riverdale" (study of "Alinsky-style" community
 organizing project in the east end of the old City of Toronto, 1968-1974).

Professional Experience

Economist, Ontario Department of Municipal Affairs / Ontario Ministry of Revenue,
 1968-1972.

Community Planning Branch, Assessment Standards Branch. Travel throughout
 Ontario and to Washington, DC.

Public reports included : "Multivariate Analysis and Residential Property Valuation
 in Ontario," October 1970 ; "A Comparative Sales Method for Mass Appraisal,"
 March 1972.

Chief Examiner, Lecturer, Institute of Municipal Assessors of Ontario, Queen's University at
 Kingston, 1972-1976.

Economist / Senior Policy Advisor, Ontario Ministry of Treasury and Economics (Ministry of Finance), 1975–1980.

Regional Planning Branch, Economic Development Branch. Travel throughout Ontario and in New York State. Duties included writing minister's speeches. Public reports included : "Economic Development in the Peterborough Area," February 1978 (documented early stress in Ontario manufacturing sector, report also discussed in *Financial Post Magazine*, November 15, 1981, 15–24) ; "Economic Development in the Niagara Region," June 1979 (more on a similar theme).

Partner, MacDonald White Associates, Toronto. Independent public policy consulting and financial analysis and investment, 1980 –

Clients at all three levels of government in Canada and in various branches of the Canadian-based private sector. Policy areas include democratic reform, disaster management, economic development, health policy, heritage preservation, housing, intellectual property rights and international trade, professional governance, public finance, and real estate development and property taxation. Travel in various parts of Canada and the United States.

Public reports have included:

* "The Political Theory of the Shelter Allowance Concept : Aspects of the Debate in Canada," Canada Mortgage and Housing Corporation, July 1981.

* "The Tax Base for Urban Housing : Five Toronto Neighbourhoods, From the Early 1920s to the Late 1970s," Canada Mortgage and Housing Corporation, July 1983.

* "Ten Steps Toward Property Tax Reform," City of Mississauga, February 1987.

* "Intellectual Property Rights and the Canadian Pharmaceutical Industry in Ontario," Ontario Ministry of Health, October 1991. (Also discussed in Thomas Walkom, *Rae Days*, 149–151.)

* "Who Are We? Changing Patterns of Cultural Diversity on the North Shore of Lake Ontario" (With a Preface by David Crombie), The Waterfront Regeneration Trust, September 1994.

* "The Province of Ontario Savings Office, 1922–1990," *Ontario History*, March 1995, 21–44. (Based on a project for the Ontario Ministry of Revenue.)

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* "Heritage Preservation and Disaster Management : United States and Canada," *Policy Options*, April 2003, 36–40.

<http://www.irpp.org/po/archive/apr03/bigenwald.pdf>.

Partner, eastendbooks, Toronto. Small-press publisher, 1996 –

Short list of 18 trade books, currently concentrating on fee for service institutional projects, with one and possibly two additional trade books planned for near future.

Website: <http://www.eastendbooks.com/>.

Managing editor (and frequent contributor), *counterweights.ca*, Canadian public affairs blogazine, 2004 –

Website: <http://www.counterweights.ca/>.

Publications

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Ontario 1610–1985 : A Political and Economic History. Toronto : Dundurn Press, 1985.

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Ontario Since 1985. Toronto : eastendbooks, 1998.

Is Canada Trapped in a Time Warp? : Political Symbols in the Age of the Internet. Toronto : eastendbooks, 2001.

On the Road in the GTA : An eclectic guide to the exurban sprawl of Greater Toronto. With Michael J. Seward. Toronto : eastendbooks, 2003. (Nominated for Heritage Toronto Book Award.)

ARTICLES

Randall White has contributed articles and reviews to a wide variety of periodicals, including the *Canadian Journal of Political Science*, the *Globe and Mail*, *Municipal World*, *Policy Options*, *Real Estate News*, *The Literary Review of Canada*, the *Toronto Star*, and *Urban History Review*.

Community Activities

Randall White has served on the Editorial Advisory Committee of the Ontario Historical Society journal *Ontario History* since 1997.

He also currently serves on the Advisory Board of the Ontario government and politics

website *ontarionewswatch.com* (see <http://ontarionewswatch.com/about.html>) and the Ontario Speaker's Book Award Selection Committee (see <http://educationportal.ontla.on.ca/en/node/765/selection-committee>).

Interest in Canadian republican issue and future of British monarchy in Canada

The main subject of Randall White's 2001 book, *Is Canada Trapped in a Time Warp?*, was "abolishing the monarchy in Canada." The underlying argument was that "political symbols of this sort can have more impact on our ordinary lives than we sometimes think, especially in the kind of future that nowadays seems to lie ahead."

Is Canada Trapped in a Time Warp? was described as "thought provoking" by Adam M. Dodek in the Ontario Bar Association publication, *Constitutional*. Barbara Yaffe in the *Vancouver Sun* explained how the book "argues that Canadians must adapt to the brave new world of the global village by taking control of their own destiny."

WORK WITH AUSTRALIAN LAWYER AND POLICY ADVISOR GREG BARNES

Is Canada Trapped in a Time Warp? led to a deeper involvement in and study of the republican issue in Canada. This included the development of new relationships with similarly interested individuals, in Canada and other parts of today's Commonwealth of Nations.

One such individual has been the Australian lawyer and former Liberal government policy advisor Greg Barnes, whom Randall White met when Mr. Barnes addressed a Toronto chapter dinner meeting of Citizens for a Canadian Republic in 2003.

Greg Barnes was also campaign director of the Australian Republican Movement's 1999 referendum campaign, and he succeeded Malcolm Turnbull as ARM chair in 2000.

Greg Barnes and Randall White have subsequently collaborated on a number of articles dealing with the comparative public policy experience in Australia and Canada. Examples include :

* "The feather and the bone — a difference in approach to Indigenous issues," *Online Opinion*, 22 April 2004.
<http://www.eniar.org/news/canadaoz.html>

* "G'day, Senator — Aussie Senate could be a model for Canada", *Winnipeg Free Press*, April 11, 2006, A13.
<http://newspaperarchive.com/winnipeg-free-press/2006-04-11/page-13>

* "Poll bound Canadians at sixes and sevens over coalition concept", *Crikey*, March 29, 2011.
<http://www.crikey.com.au/2011/03/29/poll-bound-canadians-at-sixes-and-sevens-over-coalition-concept/?wpmp-switcher=mobile>

* "Canada shows Australia the future of politics," *Online Opinion*, 6 May 2011.
<http://www.onlineopinion.com.au/view.asp?article=11998&page=0>

Randall White has reviewed Greg Barns and Anna Krawec-Wheaton's 2006 book, *An Australian Republic* in "The other republicans : way down south in the Land of Oz," *counterweights*, November 13, 2006.
http://www.counterweights.ca/2006/11/land_of_oz/

Greg Barns was featured in the 2009 Australian documentary film, *The Trial* ("The inside story of Australia's biggest terrorism trial"). See the link on the website for this film to "Dr Randall White's discussion of *The Trial* after interviewing Greg Barns in Toronto."
<http://www.360degreefilms.com.au/the-trial>

OTHER RECENT ARTICLES ON REPUBLICAN AND RELATED ISSUES IN CANADA

Randall White has written various articles on republican and related issues in Canada in the more recent past. Examples here include :

* "Let's elect our head of state," *Toronto Star*, April 26, 2009.
<http://www.thestar.com/opinion/article/624243--let-s-elect-our-head-of-state>

* "Who is our head of state: Jean or the Queen?" *Toronto Star*, October 19, 2009.
<http://www.thestar.com/comment/article/711658>

* "March 6 referendum in Iceland: one model for democratizing governor general in Canada," *counterweights*, February 24, 2010.
<http://www.counterweights.ca/2010/02/march-6-referendum-in-iceland-here%E2%80%99s-one-model-for-democratizing-the-governor-general-in-canada/>

* "PM Harper's new governor general shows office continues to evolve?," *counterweights*, July 8, 2010.
<http://www.counterweights.ca/2010/07/pm-harper%E2%80%99s-new-governor-general-shows-office-continues-to-evolve/>

* "PM's puzzling reticence on the monarchy," *Toronto Star*, April 28, 2011.
<http://www.thestar.com/opinion/editorialopinion/article/982350--pm-s-puzzling-reticence-on-the-monarchy>

* "Change in Commonwealth realms and Irish presidential election .. two straws in the wind for the Canadian future," *counterweights*, October 27, 2011
<http://www.counterweights.ca/2011/10/change-in-commonwealth-realms-and-irish-presidential-election-two-straws-in-the-wind-for-the-canadian-future/>

* “If step-by-step reform is good for the Senate, why not the monarchy too?,” *counterweights*, January 6, 2012.

<http://www.counterweights.ca/2012/01/if-step-by-step-reform-is-good-for-the-senate-in-canada-why-not-the-monarchy-too/>

* “Who pays for the Canadian Forces nowadays — the offshore monarchy or the people of Canada (and Quebec)?”, *counterweights*, August 20, 2012.

<http://www.counterweights.ca/2012/08/who-pays-for-the-canadian-forces-nowadays-%E2%80%94-the-offshore-monarchy-or-the-people-of-canada-and-quebec/>

November 2012.

ONTARIO**SUPERIOR COURT OF JUSTICE**

BETWEEN

MICHAEL MCATEER, DROR BAR-NATAN AND SIMONE E. A. TOPEY

Applicants

-and-

THE ATTORNEY GENERAL OF CANADA

Respondent

ACKNOWLEDGMENT OF EXPERT'S DUTY

1. My name is Randall White. I live at Toronto, in the Province of Ontario.
2. I have been engaged by the Applicants to provide evidence in relation to the above-noted court proceeding.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
 - (a) to provide opinion evidence that is fair, objective and non-partisan;
 - (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
 - (c) to provide such additional assistance as the court may reasonably require, to determine a matter in issue.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date

9 Nov 2012


Signature

Court of Appeal File No.: C57775
Superior Court File No. 05-CV-301832 CP00

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

MICHAEL MCATEER, SIMONE E.A. TOPEY
and DROR BAR-NATAN

Applicants

-and-

THE ATTORNEY GENERAL OF CANADA

Respondent

NOTICE OF CONSTITUTIONAL QUESTION

The Applicants intend to question the constitutional validity of the Oath or Affirmation of Citizenship prescribed by section 24 of the *Citizenship Act* R. S.C. 1985, c.C-29 and the regulations made pursuant thereto.

The question was argued on the hearing of this appeal at Osgoode Hall, 130 Queen Street West, Toronto, on a date to be fixed by the Registrar of the court.

The following are the material facts giving rise to the constitutional question:

1. The applicants are permanent residents of Canada who wish to become Canadian citizens. However, they are prevented from doing so because of their religious or conscientious beliefs, including a belief in the fundamental equality of human beings, which have caused them to have conscientious objections to taking an oath to the monarch.
2. Applicants for citizenship, pursuant to section 24 of the *Citizenship Act*, R.S.C. 1985, c. C-29, and regulations made pursuant thereto, must take an Oath or Affirmation of Citizenship to the monarch.

3. Such other grounds as counsel may advise and the court permit.

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The following is the legal basis for the constitutional question:

The requirement of an oath or affirmation to the monarch:

- a. Violates the applicants' freedom of conscience and religion and freedom of expression under sections 2(a) and (b) of the *Charter*.
- b. Discriminates against the applicants on the basis of religion, national origin and citizenship contrary to section 15(1) of the *Charter*;
- c. Is not a reasonable limit on the rights and freedom of the applicants within the meaning of section 1 of the *Charter*; and,

is therefore of no force and effect pursuant to section 52 of the *Charter*. (See also Issues and Argument set out in Applicants' Factum, appended.)

October 31, 2013

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Court File No.

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

MICHAEL MCATEER, SIMONE E.A. TOPEY
AND DROR BAR-NATAN

Applicants/Appellants

-and-

THE ATTORNEY GENERAL OF CANADA

Respondent/Respondent

**APPELLANTS' CERTIFICATE
RESPECTING EVIDENCE**

The Appellants certify that the following evidence is required for the appeal, in
the Appellants' opinion:

1. Affidavit of Michael McAteer, affirmed November 09, 2012
2. Affidavit of Simone E. A. Topey, affirmed November 07, 2012
3. Affidavit of Dror Bar-Natan, affirmed November 07, 2012
4. Affidavit of Ashok Charles, affirmed November 07, 2012
5. Affidavit of Howard Jerome Gomberg, affirmed November 09, 2012
6. Affidavit of Randall White, affirmed November 09, 2012

7. Pages 17 to 41 of the Transcript of the Cross-Examination of Rell DeShaw, taken on March 11th, 2013

Date: October 15, 2013

PETER M. ROSENTHAL, Barrister

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MCATEER, Michael, et al

-and-

Applicants/Appellants

ATTORNEY GENERAL OF CANADA

Respondent/ Respondent

Court File No. 05-CV-301832 CP 00

Court of Appeal File No.

COURT OF APPEAL FOR ONTARIO
Proceeding commenced at TORONTO

APPELLANTS'
CERTIFICATE RESPECTING
EVIDENCE

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Lawyers for the Applicants/ Appellants

Court File No. *CS7775*

COURT OF APPEAL FOR ONTARIO

BETWEEN:

MICHAEL MCATEER, SIMONE E. A. TOPEY
and DROR BAR-NATAN

Applicants/ Appellants

And

THE ATTORNEY GENERAL OF CANADA

Respondent/ Respondent in appeal

RESPONDENT'S CERTIFICATE

The respondent confirms the appellant's except for the following:

ADDITIONS

1. The affidavit evidence of Rell DeShaw and the affidavit evidence of Kamal Dean is required for the appeal including the exhibits attached to each affidavit.

2. The entirety of the transcript of the cross-examination of Rell DeShaw is required for the appeal.

October 24, 2013

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MICHAEL MCATEER ET AL.

Appellants

ATTORNEY GENERAL OF CANADA

Respondent

(Court file no.)
057775

COURT OF APPEAL FOR ONTARIO

Proceeding Commenced at Toronto

RESPONDENT'S CERTIFICATE

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(Fax number, if known, of person on whom document is to be served)

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COURT OF APPEAL FOR ONTARIO

B E T W E E N:

MICHAEL MCATEER, SIMONE E.A. TOPEY AND DROR BAR-NATAN

Applicants
(Appellants)

- and -

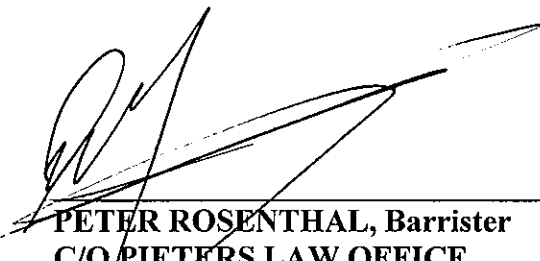
THE ATTORNEY GENERAL OF CANADA

Respondent
(Respondent)

CERTIFICATE OF COMPLETENESS

I, Selwyn A. Pieters, lawyer for the appellants, Michael McAteer, Simone E.A. Topey, and Dror Bar Natan, certify that the appeal book and compendium in this appeal is complete and legible.

Date: November 12, 2013



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-and-

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Respondent/ Respondent

Court File No. 05-CV-301832 CP 00

Court of Appeal File No. **C57775**

COURT OF APPEAL FOR ONTARIO
Proceeding commenced at TORONTO

APPELLANTS' APPEAL BOOK
AND COMPENDIUM

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