

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 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.

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.

DATE: September 10, 2012

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 Applicants