

Oath to the Queen Violates Freedom of Expression?

Canada's citizenship laws that require new Canadians to swear an oath of allegiance to the Queen are being challenged again. Charles Roach, a Toronto civil rights and criminal lawyer who was born a British subject of Trinidad and Tobago brought his case before the Ontario Superior Court of Justice on May 17, 2007. This issue has been considered previously by the Supreme Court of Canada.[\[1\]](#)

Roach argued that the provision under section 24 of the Citizenship Act that requires the oath to be taken is a violation of sections 2(a), 2(b), 2(d) and 15(1) of the Canadian Charter of Rights and Freedoms. He argued that this is not a case about immigration but rather it is about freedom of conscience. He also charged that the law discriminates against those who are not born here because those who are born in Canada are not obligated to take the oath.

Roach came to Canada in 1955 and remains a permanent resident, rather than a Canadian citizen because of his refusal to take the oath. This decision bars Roach from voting, traveling on a Canadian passport, running for political office and having a chance at becoming a judge.

Roach and others who feel that they have been wronged by the oath have started a class action lawsuit. They want the oath to be repealed and are seeking \$5000 in damages. Roach argued that there are some tangible monetary damages involved including fees charged to non-Canadians to cross the American and European border or the ineligibility for some Canadian grants.

In a preliminary motion to dismiss the case, lawyers for the Federal government asked the Ontario judge to dismiss Roach's claim because it was heard in the Federal Court in the 1990's. At that time the judges held that the oath did not violate the Charter, however Justice Belobaba noted that the Charter has evolved since then. The Ontario Superior Court of Justice judge held that the case was "neither frivolous nor vexatious." Justice Belobaba stated that there is nothing in the Constitution Act requiring citizens to swear an oath of allegiance to the Queen and there is a potential Charter argument to be made.

Sources:

[Lawyer cleared to challenge loyalty oath to the Queen](#), Toronto Star (18 May 2007)

Lawyer allowed to challenge citizenship oath, CBC News (18 May 2007)

He says nay to the Queen: Lawyer Charles Roach pays a price for refusing the oath of allegiance, Toronto Star (11 May 2007)

Swearing oath of allegiance taken to court, The National Post (8 May 2007)

Citizenship Act, R.S.C. 1985, c. C-29, s. 24.

Canadian Charter of Rights and Freedom, Part I of the Constitution Act 1982, being Schedule B to the Canada Act, 1982 (U.K.), 1982, c. 11 ss. 2, 15.

[1] See *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143, 1989 CanLII 2 (S.C.C.) <http://www.canlii.org/en/ca/scc/doc/1989/1989canlii2/1989canlii2.html>.