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Appeal court upholds oath to Queen in citizenship case

By Jeff Gray

Court rules against group of permanent residents who refuse citizenship over the requirement to swear allegiance to Queen

When new citizens swear an oath to the Queen, they are not pledging allegiance to her personally, the Ontario Court of Appeal ruled on Wednesday¹, rejecting a challenge by three permanent residents who have refused citizenship over an oath they say violates their political or religious beliefs.

The group launched a **constitutional challenge** last year, arguing that forcing candidates for Canadian citizenship to swear allegiance to the Queen violates the protections for free speech and freedom of religion in the Charter of Rights and Freedoms.

But in a decision issued on Wednesday, Ontario's top court dismissed their objections to the oath, ruling the group was wrong to take the oath literally. The decision... says that would-be citizens are not actually swearing allegiance to the Queen herself as "the reference to the Queen is symbolic of our form of government and the unwritten constitutional principle of democracy."

Peter Rosenthal, the lead Toronto lawyer representing the group, said he would recommend that his clients...appeal to the **Supreme Court of Canada**. But he said they had not made a final decision, given the uphill climb involved in convincing the Supreme Court to hear a case.

One of the would-be citizens involved in the case is 80-year-old former Toronto Star journalist Michael McAteer. He grew up in Ireland but has lived in Canada since 1964 and opposes the monarchy as an "anachronism" in a multicultural society.

He took issue with assertions in the appeal decision that those with republican or anti-monarchist views are free to express them even after taking the oath and that they could even "disavow" elements of the oath without any repercussions.

Mr. McAteer said he would never swear the oath to the Queen just to obtain his citizenship: "It's an insult on my integrity to take an oath that I don't believe a word of ... I am puzzled that members of the legal profession that sit on the judges' bench would even suggest that."

The other applicants oppose the oath on similar grounds. According to court submissions, Simone Topey, a Rastafarian, believes the Queen is the "Queen of Babylon" and that swearing the oath would "deeply violate her religious belief." The third, Dror Bar-Natan, an immigrant from Israel, calls the oath "repulsive" because he says the Queen is a symbol of inequality.

The federal Conservative government has made several moves to boost the stature of the monarchy in Canada - including tacking the word 'royal' back onto the Royal Canadian Air Force. Not surprisingly, Ottawa mounted a vigorous court fight to uphold the oath to the Queen.

Lawyers for the federal government argued that those who refuse to support Canada's "foundational constitutional structure" are not entitled to the benefits of citizenship, such as the right to vote.

In a 22-page ruling last September, Ontario Superior Court Justice Edward Morgan laid out the history of Canada's evolution as a constitutional monarchy and turned down the request to void the oath.

He ruled that while the oath did on its face appear to infringe the right to free expression in the Charter, it did so minimally. The violation, in the form of "compelled speech," he ruled, was a "reasonable limit" on a constitutional right in light of Parliament's objective to have new citizens swear allegiance to the country's constitutional structure.

The objectors had also argued that the oath is also discriminatory because native-born citizens are never required to swear it. Mr. Rosenthal said the Court of Appeal failed to adequately address this part of their case. He argues that just as many native-born Canadian oppose the monarchy, so do many immigrants to Canada.

"They go and they take this oath and most of them take it either without thinking about it, or ... crossing their fingers and feeling uncomfortable when they take it," Mr. Rosenthal said. "What the Court of Appeal has told us is that people who take [the oath] seriously ... are not welcome to become Canadian citizens. You would think quite the opposite should be the case."

The court battle is the latest chapter in more than 20 years of failed legal challenges to the citizenship oath spearheaded by Trinidadian-born Toronto activist and lawyer Charles Roach, who died in 2012 at 79, never having become a Canadian citizen.

Mr. Roach, a long-time friend of Mr. Rosenthal, refused to swear the oath and become a citizen because he believed the Queen was a symbol of imperialism and because of injustices done to his ancestors in the name of the British monarchy.

Alexis Pavlich, press secretary to federal Citizenship and Immigration Minister Chris Alexander, said the government welcomed the ruling.

"New Canadians are overwhelmingly proud to swear their allegiance to the Queen, Canada's head of state," Ms. Pavlich said in an e-mail. "The oath of citizenship is a pledge of mutual responsibility, and the final requirement to become a Canadian citizen."

References

1. www.ontariocourts.ca/decisions/2014/2014onca0578.htm

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