

**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

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

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
<b>British</b>	<b>9.0</b>
Canadian	22.8
Other	24.5
Multiple Origins	38.2
<b>All Canada</b>	<b>100.0</b>

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

<b>Group</b>	<b>% of all Canadians</b>
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
<b>Total Top 10</b>	<b>50.3</b>
Other Single Origins	11.5
Multiple Origins	38.2
<b>All Canada</b>	<b>100.0</b>



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
<b>CANADA</b>	<b>22.8</b>

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
<b>CANADA</b>	<b>9.0</b>

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

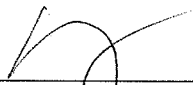
present Canadian citizenship oath. According to Mr. Baker himself, e.g.: “This is a matter of democracy ... I'm put here by my constituents and it's to them I owe my allegiance.”

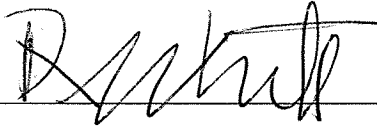
119. The 22 British MPs who signed Mr. Baker’s motion cut across party lines, and included 14 Labour, seven Liberal Democrats, and one Conservative. The one Conservative MP, Peter Bottomley, advanced arguments that transcended customary ideological positions: “We need to make the oath something that 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

  
\_\_\_\_\_)  
Randall White

A Commissioner, Etc.