

KEEPING CURRENT

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Oath of allegiance under the *Legal Profession Act* ruled unconstitutional (*Wirring v. Law Society of Alberta*)

By Stephen Thiele

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In certain circumstances, a requirement that a person pledge an oath of allegiance to a country, a monarch or an institution is not uncommon. In general, the purpose of an oath of allegiance is to signify that the person taking the oath remains loyal and committed to the subject matter of the oath.

However, for some individuals, the requirement to take an oath of allegiance can create conflict with other values held by the individual, such as religious values. In such circumstances, as seen in [Wirring v. Law Society of Alberta, 2025 ABCA 413 \(CanLII\)](#), a mandated requirement to take an oath of allegiance can be challenged on the grounds that to do so infringes fundamental rights under the [Canadian Charter of Rights and Freedoms](#).

In this case, a lawyer appealed the decision of a chambers judge who had dismissed his constitutional challenge to [section 44\(2\)\(a\)](#) of Alberta's [Legal Profession Act](#). This section required all lawyers who wanted to become a member of the Law Society of Alberta to

take the following prescribed Oath of Allegiance:

I _____ swear I will be faithful and bear true allegiance to Her Majesty the Queen Elizabeth the Second, Her heirs and successors, according to law.

The lawyer contended that this requirement breached his rights under [sections 2\(a\)](#) and [15](#) of the Charter because it conflicted with his own devout religious beliefs, and, in particular, an oath of allegiance he had given to the Guru Granth Sahib and to Akal Purakh, the Creator.

The lawyer was an amritdhari Sikh who had decided to live his life in strict accordance with the Sikh faith. He was a member of the Khalsa, a particular community of Sikhs. When he became a member of the Khalsa, he confirmed that he would not give allegiance or devote himself to any other figure or entity.

Accordingly, when he wanted to be admitted to the Law Society of Alberta,

he felt unable to take the Oath of Allegiance.

At first instance, the chambers judge found that this oath was not a pledge of allegiance to the monarch, as argued by the lawyer. Rather, the Oath of Allegiance was a commitment to the ideals of the Canadian system of constitutional government and unwritten constitutional principles, particularly the rule of law.

Based on the evidence filed in support of the lawyer's proceeding, the chambers judge found that the lawyer believed that his religion permitted him to make an oath of allegiance to an "abstract concept", including the rule of law, the public interest, and the Sovereign's interest.

As a result, the chambers judge concluded that the Oath of Allegiance did not interfere with the lawyer's ability to live according to his religious beliefs.

On appeal, the lawyer contended that the chambers judge made a critical reviewable error in finding that his religion permitted him to make an oath of allegiance to an "abstract concept". The lawyer's evidence, which was not challenged, showed that he did not believe that there was an "exception" for allegiance to abstract ideals and that taking the oath would interfere with his ability to follow his religious beliefs.

The Court of Appeal of Alberta agreed with the lawyer. Based on the evidence, it found that the chambers judge had made a palpable and overriding error in her findings of fact and that the lawyer's freedom of religion rights under the Charter were breached.

[Section 2\(a\)](#) of the Charter guarantees freedom of conscience and religion. This section protects the right to hold religious beliefs and manifest them by worship, practice, dissemination and countless other ways.

A person cannot be coerced to act against one's religious convictions, which includes indirect forms of control that significantly limit a person's alternative courses of conduct.

The test for infringement of the right to freedom of religion is comprised of two elements. A claimant must demonstrate that:

1. they sincerely believe in a practice or belief that has a nexus with religion; and
2. state conduct interfered, in a non-trivial manner, with their ability to act in accordance with that practice or belief.

With respect to the first element, the error in the chambers judge's findings of fact was critical.

The evidence clearly established that the lawyer had made an oath of allegiance to Akal Purakh to devote his life to the Guru, and that he believed that this oath prevented him from making an oath of allegiance to anything else, including abstract ideals. This was contrary to the factual conclusions reached by the chambers judge.

The Court of Appeal accepted that the lawyer's evidence showed that he had made an oath to live his life in accordance with the strict teachings of his faith, and that he believed that he could not take an oath to anything else. Accordingly, the lawyer satisfied the first stage of the test.

With respect to the second stage of the test, the Court of Appeal explained that it was required to conduct an objective analysis.

Although the Court of Appeal agreed that the Oath of Allegiance referred to the Canadian system of constitutional government and unwritten constitutional principles, particularly the rule of law, it found that requiring the lawyer to take the Oath of Allegiance would override his personal and religious commitments. The lawyer simply could



not take the Oath of Allegiance and remain true to his religious beliefs.

In other words, the Court of Appeal found that the requirement to take the Oath of Allegiance forced the lawyer to choose between following his religious convictions or practicing law in his home province. This was a breach of [section 2\(a\)](#) of the Charter.

The Court of Appeal further found that the infringement of the lawyer's [section 2\(a\)](#) rights could not be saved under [section 1](#) of the Charter.

The Court explained that for the requirement for the taking of the Oath of Allegiance to be justified, it had to have a pressing and substantial objective and that the means chosen had to be proportional to that objective.

Based on [R. v. Oakes](#), a challenged law is proportionate when the means adopted are:

- a) rationally connected to the law's objective;
- b) minimally impair the right in question; and
- c) the law's beneficial effects outweigh its negative effects.

The court accepted that the objective of the Oath of Allegiance was to maintain and promote the rule of law, that this was a pressing and substantial purpose to justify the breach of the rights to freedom of religion, and that the Oath of Allegiance was rationally connected to this objective.

However, the province of Alberta provided no evidence that the requirement to take the Oath of Allegiance was a minimal impairment. The court noted that other provinces had made an oath of allegiance optional for admission to the bar and that a few provinces had removed the requirement to take an oath of allegiance entirely.

The province of Alberta also provided no evidence on the beneficial effects of [section 44\(2\)\(a\)](#), while the lawyer provided unchallenged evidence that the oath seriously burdened his right to practice his religion.

In the result, [section 44\(2\)\(a\)](#) of the [Legal Profession Act](#) was declared of no force and effect under [section 52\(1\)](#) of the Charter.

The key takeaway from this case is that under the governing legislation of professional and other bodies, any mandatory requirement for members to take an oath of allegiance must be carefully considered. While it may be appropriate for members to be required to take oaths to diligently, faithfully and to the best of their abilities execute their office or to conduct all causes and matters faithfully, oaths of allegiance to a country, a monarch or an abstract concept that conflict with other values of an individual might not be easy to defend on a Charter challenge. This will especially be the case where the professional regulator or the government defending the oath provides no evidence to support the beneficial effects of an oath of allegiance or fails to demonstrate that the requirement is a minimal impairment of the rights of an individual.

It is interesting to note that in this case, the lawyer had actually found a way to get called to the Alberta bar before the hearing at the Court of Appeal. In this regard, the hearing of the appeal was moot. Nevertheless, the Court of Appeal exercised its discretion to decide the appeal because the matter was of public importance and there was a full adversarial context.

Contact us

If you have a litigation matter and are in need of legal advice, please do not hesitate to contact [Stephen Thiele](#) in our dispute resolution group at 416.865.6651 or via email at sthiele@grllp.com.
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