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Charter rights trump requirement to take oath of allegiance

By **Stephen A. Thiele**

Law360 Canada (January 14, 2026, 1:28 PM EST) -- The concept of taking an oath of allegiance can be traced back to medieval times when people took oaths of fealty to pledge loyalty or faithful service to a monarch or a lord. Today, it is not uncommon for immigrants seeking citizenship in a new country to be required to take an oath of allegiance or oath of citizenship. Professional regulatory bodies, such as law societies, may also obligate members to take an oath of allegiance in order to be admitted.

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However, as determined in *Wirring v. Law Society of Alberta*, 2025 ABCA 413, a mandatory requirement to take an oath of allegiance may be vulnerable to being struck on the grounds that the requirement infringes fundamental rights, such as freedom of conscience and religion, under the *Canadian Charter of Rights and Freedoms*.

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In this case, an Edmonton-born lawyer challenged the constitutionality of a statutory requirement that in order to be called to the Alberta bar, he had to take the following 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 oath of allegiance was required by s. 44(2)(a) of the *Legal Profession Act*. Its content was prescribed by s. 1(1) of the *Oaths of Office Act*.

The lawyer argued that this requirement conflicted with his own devout religious beliefs and that his rights under ss. 2(a) and 15 of the *Charter of Rights and Freedoms* had been breached.

The lawyer was a member of the Sikh faith, who, at the age of 13, had decided to live his life in strict accordance with his faith. He became a member of the Khalsa, a particularly devout community of Sikhs, and was an Amritdhari Sikh.

To become a member of the Khalsa, the lawyer took an oath submitting himself to the Guru and to Akal Purakh, the Creator, and participated in a ceremony in which he confirmed that he would not give allegiance or devote himself to any other figure or entity.

The lawyer felt that this oath and confirmation seriously conflicted with his ability to take the law society's oath of allegiance and that in order to practise law, he was essentially forced to uproot his family and move away from his friends and community to another province that did not require him to take an oath of allegiance to get admitted to the bar.

Indeed, the lawyer eventually became a member of the Saskatchewan bar and then transferred his Saskatchewan law society membership to Alberta using a licence transfer process available under Alberta's *Labour Mobility Regulation*. This process did not require the lawyer to take the oath of allegiance. However, the transfer did not occur until after a chambers judge summarily dismissed the lawyer's action.

To succeed on a claim that the right to freedom of conscience and religion under the Charter has been infringed, the person asserting the claim must show 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.

Although the chambers judge accepted that the lawyer had sincerely held religious beliefs, she found that the lawyer's evidence suggested that he was permitted to make an oath of allegiance to an "abstract concept."

The chambers judge disagreed with the lawyer's argument that the oath of allegiance was an oath to an entity or the Queen. Rather, the chambers judge found that 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. In this regard, the oath of allegiance did not interfere with the lawyer's ability to live according to his religious beliefs.

The lawyer appealed this ruling. Even though the appeal was technically moot because the lawyer had found a way to be admitted to the Alberta bar, the Court of Appeal for Alberta heard the appeal because the issue raised was a matter of public importance and a full adversarial context existed.

On the appeal, the lawyer contended that the chambers judge made a palpable and overriding error in finding that his religion permitted him to make an oath of allegiance to an "abstract concept." He also contended that the chambers judge had misinterpreted the scope of the oath of allegiance.

The Court of Appeal of Alberta disagreed with the lawyer's submission that the chambers judge had misinterpreted the scope of oath. However, it agreed that the chambers judge had made a serious critical factual error about the lawyer's ability to take an oath of allegiance to an abstract concept based on his religious beliefs.

In contrast to the factual findings of the chambers judge, the Court of Appeal found that the evidence clearly established that the lawyer had made an oath of allegiance to the Creator to devote his life to the Guru, and that he believed:

> (a) that this oath prevented him from making an oath of allegiance to anything else, including abstract ideals;
> (b) that he had made an oath to live his life in accordance with the strict teachings of his faith; and
> (c) that he could not take an oath to anything else.

This satisfied the first element of the test for infringement of the right to freedom of religion.

Applying an objective analysis, the Court of Appeal concluded that even though the oath of allegiance did not require the lawyer to "be faithful and bear true allegiance" to an entity, the requirement that he take the oath overrode his personal and religious commitments. The court stated that objectively the lawyer could not take the oath and remain true to his religious beliefs because it forced him to choose between following his religious convictions or practising law in his home province.

Accordingly, the lawyer's right to freedom of religion was infringed, and that infringement was not justified under s. 1 of the Charter.

To be saved under s. 1, the Law Society of Alberta was required to show that the mandatory requirement to take the oath of allegiance had a pressing and substantial objective and that the means chosen were proportional to that objective.

Under the well-established test articulated in *R. v. Oakes*, [1986] 1 S.C.R. 103, 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 law society and Alberta were unable to satisfy the components of the test.

While the Court of Appeal accepted that the objective of the oath 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, no evidence was provided to show that the requirement to take the oath was a minimal impairment. In contrast, the court recognized that other provinces had either made an oath of allegiance for admission to the bar optional or removed the requirement to take such an oath entirely.

No evidence on the beneficial effects of s. 44(2)(a) of the *Legal Profession Act* was led either. This contrasted with the lawyer's unchallenged evidence that the oath seriously burdened his right to practise his religion.

In the result, s. 44(2)(a) of the *Legal Profession Act* was declared of no force and effect under s. 52(1) of the Charter.

A key takeaway from this case is that rights of freedom of religion can trump a requirement to take an oath of allegiance, even if that oath is to an abstract concept like the rule of law. Although the rule of law is often said to be "supreme" such that no one is above it, this case shows that strongly held devotions and adherences to religious beliefs cannot be easily displaced, especially in circumstances where no evidence is provided to justify the requirement to take such an oath. However, in my view, the law society and the province of Alberta were right in not aggressively seeking to save the oath under s. 1 of the Charter.

It remains to be seen whether Alberta will amend the *Legal Profession Act* to eliminate the need to take the oath of allegiance, make it an optional requirement or redraft the oath.

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