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Religious Freedom and the Oath to the Sovereign, Revisited

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Case Commented On: *Wirring v Law Society of Alberta*, 2025 ABCA 413

On December 16, 2025, the Alberta Court of Appeal overturned a decision of the Court of King's Bench which had held that the Oath of Allegiance required of candidates for enrolment in the Alberta Law Society did not infringe the religious freedom of the claimant, Mr. Wirring. At the relevant time, the text of the Oath was as follows:

> I _____swear I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her heirs and successors, according to law (quoted in *Wirring v Law Society of Alberta* at para 2).

Wirring argued that the requirement to take the Oath unjustifiably infringed his *Charter* right of religious freedom. He claimed that his beliefs as an amritdhari Sikh prohibited him from taking the oath. As I have posted about previously, the Court of King's Bench granted summary judgment in favour of the Law Society and the Government of Alberta, essentially on the reasoning that Wirring had misapprehended the oath. Justice B.B. Johnston found that while Wirring's beliefs prohibited him from taking an oath to any entity living or dead, the Oath of Allegiance required by the combined operation of the *Legal Profession Act*, RSA 2000 c L-8 and of the *Oaths of Office Act*, RSA 2000 c O-1 was, properly interpreted, a symbolic oath to the abstract ideas of democracy and the rule of law.

The Court of Appeal held that Justice Johnston's interpretation of Wirring's evidence disclosed a palpable and overriding error. In the view of Chief Justice Ritu Khullar, Justice Bernette Ho, and Justice Joshua B. Hawkes writing as "the Court", Wirring's unchallenged evidence established that "his religious commitments prohibited him from making an oath of allegiance to *anything*" (at para 10) (emphasis in original). While the Court of Appeal confirmed Justice Johnston's view that the Oath is not directed to the sovereign as a person but rather to the "rule of law and the Canadian system of constitutional government" (at para 11), it concluded that the Oath nevertheless infringed Wirring's religious freedom by requiring him to give allegiance to anything. As the Court explained, "[t]he problem with the Oath of Allegiance was that it was an oath of *allegiance*, never mind to whom" (at para 33, emphasis in original).

One reason for Justice Johnston's decision at the ABKB was that Wirring was prepared to make the Law Society Oath – a separate requirement under the *Legal Profession Act*, and the *Rules of the Law Society of Alberta* – which provides:

> I will as a Barrister and Solicitor conduct all causes and matters faithfully and to the best of my ability. I will not seek to destroy anyone's property. I will not promote suits upon frivolous pretences. I will not pervert the law to favour or prejudice anyone, but in all things will conduct myself truly and with integrity. I will uphold and maintain the Sovereign's interest and that of the public according to the law in force in Alberta (as quoted at para 3).

Justice Johnston had reasoned that Wirring's position on this oath demonstrated that his real religious objection to the Oath of Allegiance was that he perceived it to be an oath to a living person, the Queen (at para 64). The Court of Appeal, however, explained Wirring's position on the basis that the Law Society Oath was not an oath of *allegiance*, which was the core of his objection to the Oath of Allegiance. As the Court reasoned, "'allegiance' and its synonyms refer to a commitment to something that goes beyond ordinary support", and the "adjective 'true'… reinforces" this interpretation (at para 85). Ultimately, the crux of the Court's holding was:

> The only reasonable interpretation of the evidence as a whole is that the appellant made an oath of allegiance to Akal Purakh, which required him to devote his life to the Guru Granth Sahib. He believed that this oath prevented him from making an oath of allegiance to anything else. He did not believe there was an 'exception' for allegiance to abstract ideals (at para 62).

It followed that his right to religious freedom under s 2(a) of the *Charter* had been infringed.

This finding moved the Court of Appeal's analysis to justification under s 1 of the *Charter*. The Court accepted (at paras 100-101) that the Oath had the "pressing and substantial purpose" of "maintain[ing] and promot[ing] the rule of law and the Canadian system of constitutional government", and that the oath was rationally connected to that purpose as required by *R v Oakes*, 1986 CanLII 46 (SCC), [1986] 1 SCR 103. However, in defending the Oath, the Alberta government had submitted no evidence or argument that the Oath was minimally impairing. The Court interpreted the government's "implicit position" to be that "the rule of law in Canada is so vulnerable that its good health depends on the *allegiance*, not simply the support, of a very small segment of the population" (at para 104). In the face of evidence that Nova Scotia, New Brunswick, Yukon, and Ontario have made the oath optional and that British Columbia, Saskatchewan, and Prince Edward Island have removed it entirely (at para 105), the Court could not accept this position. Finally, because Alberta had provided no evidence on the actual effects of the Oath, the Court reasoned that "the contribution made by the Oath of Allegiance to maintaining the rule of law and constitutional government in Canada cannot be given significant weight" (at para 107). On the other hand, Wirring's evidence established a serious burden on his religious practice (at para 108). In sum, the government had not demonstrated that the limitation on religious freedom was proportionate, and the Oath was therefore not a justifiable limit on religious freedom.

Despite the mootness of the case – Wirring had managed to be admitted to the Law Society of Alberta by gaining admission to the law society of another province that did not require an oath of allegiance and then using an interprovincial license transfer process (at paras 9, 42-46) – the Court declared the relevant provision of the *Legal Profession Act* to be unconstitutional and of no force and effect. It outlined three potential options the legislature may take in response: (1)

make the Oath optional; (2) revise the Oath to remove the language "be faithful and bear true allegiance", or (3) remove the Oath entirely.

Analysis

The reasoning and outcome of the ABCA decision in *Wirring* are, in my view, more sound than those in the ABKB decision. Where members of religious minorities face legal barriers to full participation in social life, governments should be required to fully justify these within the rigours of s 1 of the *Charter*. Such barriers create pressures on members of religious minorities to alter or compromise their religious practices or forego benefits available to others. This narrows the range of their religious freedom even when such barriers were not intended to do so. In this case, the Oath was such a barrier, and the government failed to justify it.

Nevertheless, I want to tug at two threads of the *Wirring* decision: the Court's decision to analyze the Oath of Allegiance "objectively", and its specific interpretation of the Oath.

First, the Court of Appeal's decision to treat the Oath "objectively" for purposes of establishing whether an individual's religious freedom has been infringed is in tension with the principle that religious obligations should be assessed from the subjective perspective of the claimant. The Court of Appeal summarized the "objective" approach to the Oath's interpretation as follows:

> In cases where the state conduct at issue is legislation requiring claimants to swear an oath to gain access to a profession or status, some courts have applied the objective approach to both the legislation requiring the oath and the language of the oath itself: *McAteer v Canada (Attorney General)*, 2014 ONCA 578 at paras 24-27, 108, 114; *Roach v Canada (Minister of State for Multiculturalism and Citizenship)*, [1994] 2 FC 406 at 427-428 (per Linden JA dissenting but not on this point), 1994 CanLII 3453 (FCA). The oath requirement infringes s 2(a) only if making the oath, as correctly interpreted using the tools of statutory interpretation, conflicts with the person's religious beliefs. In this case, the parties agreed that it was correct to apply an objective approach to the second part of the test. (at para 53)

The Court's summary of the case law is correct, and I raise no objection to the Court proceeding on the basis of the parties' agreed approach. That said, treating the Oath "objectively" for the purposes of establishing whether religious freedom has been infringed strikes me as inconsistent with courts' general approach to s 2(a) cases. As I wrote in response to the ABKB decision in this case, the values underlying the *Charter*, including the protection of human dignity and its specific instantiation in the protection of religious freedom:

> favour an approach that privileges a sincere claimant's characterization of the oath's meaning for the limited purpose of assessing the religious freedom infringement… Opposing parties, and even the court, need not personally adopt the view expressed by the claimant; rather, in light of the claimant's fundamental freedoms, they must act in a way that respects the claimant's sincere beliefs. This does not make the right to religious freedom absolute or conditional only upon the claimant's say-so. The claimant must still fully explain their perspective in a way a court can understand, establishing objectively

how the government rule interferes with their subjectively held belief (see *SL v Commission scolaire des Chênes*, 2012 SCC 7 (CanLII) at paras 22-24). What's more, the government (or other defender of the limitation) still can justify any rights infringement under s 1 of the *Charter*

Words and symbols can have vastly different connotations in different cultural contexts. I have encountered this as a Jew living in Canada in December (and, increasingly, November). It seems to me that, for many people who celebrate Christmas, the language and symbolism around the holiday do not carry the religious implications they may have had in previous generations. People who observe the holiday in this less or non-religious way seem somewhat bewildered if I express some misgivings about the presence of a Christmas tree (and no other holiday symbols) in a public school, or the use of Christmas-themed exercises in public school education (How many ornaments do you count on the tree, kindergarteners?). In the Jewish home I was raised in, we were taught to respect but not to celebrate the holidays of other faith traditions. These holidays belonged to those other groups, but not to us; not celebrating them was part of what made us Jewish. (Of course, there are many forms of Jewish practice, and others will have different experiences.) So how am I to explain to someone who experiences Christmas as a cultural rather than a religious holiday that *not celebrating it* is nonetheless religious to me? The answer is that the holiday has different meanings in different contexts. In my particular tradition of Judaism, there is no separating the religious history of Christmas and its symbols from its contemporary practice. This does not invalidate another person's experience of the holiday as non-religious; I want to insist that both treatments of the holiday are equally valid. For the purposes of a s 2(a) claim, the meaning that should matter at the infringement stage is the meaning experienced by the claimant (Dia Dabby and I have developed this argument in more detail here). Otherwise, a court is likely to override the subjective approach required for s 2(a) claims and to become an "arbiter of religious dogma", as prohibited by the jurisprudence (see *Syndicat Northcrest v Amselem*, 2004 SCC 47 (CanLII) at paras 50-56)

Second, the Court's interpretation of the Oath merits some further reflection. As noted above, the Court held that "the Oath of Allegiance is not directed at the Queen as a person; its object is the rule of law and the Canadian system of constitutional government" (at para 11). This view is, indeed, one shared by other courts in response to similar oaths (see the cases cited by the Court of Appeal, *McAteer v Canada (Attorney General)*, 2014 ONCA 578; *Roach v Canada (Minister of State for Multiculturalism and Citizenship)*, 1994 CanLII 3453 (FCA), [1994] 2 FC 406). This interpretation, in my view, demonstrates the conflicted relationship to the sovereign that appears throughout our legal system.

In some parts of our legal system, the sovereign (or the Crown), is extremely important. The "Office of the Queen" (now the King) is one of the few elements of Canada's Constitution that requires the unanimous consent of the Senate, House of Commons, and the legislature of each province for constitutional amendment (*Constitution Act, 1982*, s 41(a)). The Crown also looms large in much litigation of Indigenous interests, where the concept of the "honour of the Crown" plays a significant role in constraining and structuring executive action. And yet, at other moments our legal system minimizes the significance of the sovereign. For instance, despite the text of the Constitution vesting executive authority in the sovereign (*Constitution Act, 1867*, s 9) and giving power to the sovereign's representatives (see e.g. s 55), constitutional conventions

generally deprive those actors of real power. As the majority of the SCC explained in the *Re: Resolution to amend the Constitution*, 1981 CanLII 25 (SCC), [1981] 1 SCR 753:

> As a matter of law, the Queen, or the Governor General or the Lieutenant Governor could refuse assent to every bill passed by both Houses of Parliament or by a Legislative Assembly as the case may be. But by convention they cannot of their own motion refuse to assent to any such bill on any ground, for instance because they disapprove of the policy of the bill. We have here a conflict between a legal rule which creates a complete discretion and a conventional rule which completely neutralizes it. (at 881)

This conflicted approach to the sovereign – an approach that treats the sovereign simultaneously as being of enormous importance and of limited practical relevance – is precisely why the Oath of Allegiance is interpreted in a way that seems surprising to one reading its actual words. If the Oath is really about democracy and the rule of law, then why bother with the reference to the Queen or King, especially when met with objections from a citizen? It's not as if this saves time or words. It's that legal actors seem both proud of their association with the Crown and uncomfortable with the idea of being ruled by an unelected hereditary monarch.

How courts manage this conflict can have a real impact on legal subjects. If Mr. Wirring, for example, had articulated his religious beliefs just slightly differently, emphasizing a prohibition on swearing commitment to a person, he might have ultimately been unsuccessful in his claim given the "objective" interpretation of the Oath. Indeed, one option available to the legislature following the ABCA's decision is to replace the words "be faithful and bear true allegiance" to something reflecting a more "ordinary" commitment to the sovereign. Should someone challenge this hypothetical oath on the basis of freedom of conscience, freedom of religion, or another constitutional right, courts should be willing to accept that the words of the oath mean what they say. If legislatures really intend for such oaths only to foster commitments to the rule of law and democracy, they should use those words instead.

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