

## Charles Roach and the Citizenship Oath to the Queen

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Nov 23, 2020 · 16 min read

*Note for readers: This article has been narrated on the Mike on Much podcast by Max Kerman of the band Arkells. He is a close family friend and has included a short introduction with his own views on social change and leadership.*

<https://omny.fm/shows/mike-on-much-podcast/a-story-i-like-1>



Charley Roach at his office in Toronto

If you were meeting civil rights lawyer Charles Roach for the first time, he would have a very friendly smile as he offered his hand and said “Hi, I’m Charley Roach”. Unfortunately, you can’t meet him; he passed away on October 2, 2012.

If I had the time and energy, I would write a book about Charley. Lacking both, I will give a very short summary of a few of his many accomplishments and then explain his attempts to acquire Canadian citizenship without swearing allegiance to the Queen.

Charles Roach was born in Trinidad on September 18, 1933. He came to Canada to attend university and, luckily for us, lived in Canada for the rest of his remarkable life.

Charley received a degree from the University of Toronto Faculty of Law and was called to the Ontario bar in 1963. He then took a position with the legal department of the City of Toronto.

For several years in the sixties, Charley owned and operated a club called “Little Trinidad” that featured Caribbean music. Charley himself was a good musician who played piano, guitar and drums. He also sang and wrote songs, some of which I think are truly excellent.

In 1966, Charley was asked by an official of the Canadian government if he would find others to join him in planning a Caribbean festival to be held during 1967, Canada’s centennial year. Charley enthusiastically did so. The festival was a great success. Charley participated in organizing similar festivals in subsequent years. The festival grew into the huge annual gathering called Caribana. Charley was active in supporting Caribana for forty years; he served several terms as chair of its organizing committee.

Charley was very inspired by the civil rights movement in the U.S. during the 1960s. Fighting for social justice occupied much of his time. He was active in “Ban the Bomb” protests against nuclear weapons. He became involved in many demonstrations against the War in Vietnam and against racial discrimination.

Charley wanted to use his practice of law to support the political movements that he believed in. He therefore opened his own practice in 1968. He shared office space, and many cases, with Mike Smith during the years 1974 to 1986. I had the great privilege of working with Charley from about 1975 until he passed away.

Charley’s law office was a great place to work. During my time with him, there were generally about five to seven lawyers in his firm. The lawyers all shared Charley’s views about social justice. There were a wide variety of cases: criminal, immigration, constitutional, human rights, inquests and civil suits. Many of the clients were disadvantaged, and a number of the cases were done *pro bono*. The office was also frequently used for planning demonstrations.

Charley was a wonderfully friendly and energetic person. His kindness and optimism created a very positive atmosphere in the office. The office walls were adorned with Charley’s paintings, which were in various styles and various mediums.

There were office parties on many occasions and for many reasons. When a new lawyer or staff person joined the firm, there would be a party to welcome them. When someone left, there would be a goodbye party. Winning an important case would be celebrated by a party.

The parties would usually begin at about 6 p.m. There would be lots of good food. There would not be any alcohol; Charley did not drink. But alcohol was not missed. The gatherings were very cheerful. There would be lively discussions about legal cases and about political issues. A special feature was the following: Each person would make a short presentation, which could be singing a song, reciting a poem, telling a story or a joke. Charley would usually sing one of his songs or recite one of his poems.

Charley pursued human rights on two fronts simultaneously, in the courts and through political organizing.

One case that epitomized Charley’s fusing of law and politics came to be well-known as the “Case of the Seven Jamaican Mothers.” In 1978, women who had come from abroad to do domestic work in Canada were almost invariably denied the possibility of becoming permanent residents and were deported. The law offered little recourse; there was no *Canadian Charter of Rights and Freedoms* in those days.

Charley organized a number of demonstrations on behalf of seven such women who were facing deportation. I can picture (and hear) Charley leading the chant “Good enough to work, good enough to stay.” He also got many people to send letters to politicians and immigration officials. (There was no email at that time.) His representation of the women at immigration hearings delayed the deportations long enough for public pressure to mount in their favor. They are still here.

Beginning with the killing of Albert Johnson in 1979, Charley became very active in protesting against Toronto police shootings, especially, but not only, of Black men. Along with Dudley Laws, Lennox Farrell, Akua Benjamin and Sherona Hall, Charley founded the Black Action Defence Committee. BADC became very well-known for its demonstrations and other activities against racism. For many years, BADC demanded that investigations of police shootings must be conducted by people who are not police officers. Finally, in 1990, the civilian Special Investigations Unit was created in response to that demand. That did not, unfortunately, end the need for BADC to continue to monitor and protest police shootings and other instances of police racism.

Charley often sang at demonstrations and other gatherings. For example, I invited him to be a guest speaker to a class I was teaching at the University of Toronto’s Faculty of Law. He gave an interesting overview of the struggle against police racism. He also sang my favourite of his many really good songs, “Free the Land From Bigotry.” The students were very impressed.



Charley Roach singing “Free the Land from Bigotry”: [https://youtu.be/om\\_eSmURRg0](https://youtu.be/om_eSmURRg0)

Apartheid was the system of government in South Africa from 1948 to the early 1990's under which the white 10% of the population viciously repressed the Black majority. The UN held that Apartheid was a crime against humanity and did not allow its representatives to participate in any UN activities.

In the 1980's, there was a large movement, in Canada and much of the world, that called on governments to break diplomatic relations with South Africa and called on investors to divest from any companies that operated in South Africa.

Charley, Lennox Farrell and others organized the "Freedom Rides Against Apartheid" and a number of other demonstrations that demanded that the Canadian government break relations with South Africa.

The South African ambassador to Canada, a man named Glen Babb, spoke at several universities and on several radio shows, arguing that Canada should continue its relations with South Africa and that companies should not divest from South Africa. He got some good press.

In 1986, Babb was invited to speak publicly at the University of Toronto. There was much protest, but the invitation remained. Charley decided to seek a court order that an international criminal like Babb should not be allowed to give a public speech on campus. He knew that such a case could not possibly be won but he hoped that media coverage of it would contribute to public understanding of the criminality of the South African regime.

The first problem was finding plaintiffs who the court would agree had "standing" (i.e., the right to make such a case). This was not an easy problem to solve. Charley creatively decided to make the case on behalf of four University of Toronto professors (including me) who claimed that their reputations would be tarnished by an international criminal speaking publicly on campus.

Of course, we lost the case.

On the other hand, the case did get a lot of attention in the press, much of which reported that the South African government was guilty of crimes against humanity. Most commentators said that Babb had a right to "free speech." The Globe and Mail had four editorials within one week attacking us as professors who were "against learning". We responded to our critics by pointing out that there are lots of restrictions on "free speech", including, for example, criminal offences of counselling someone to commit a criminal offence. We asked rhetorically whether an unrepentant rapist should be allowed to give a public speech on campus.

Those who attacked us in the media typically said something like "Of course, Babb represents a criminal government, but he should still have the right to speak." Those who supported our position (there were some) said that the crimes of the South African government were so horrendous that its agents should be in a jail, not on a campus.

Charley argued our case in court several days before Babb was to speak; the case was dismissed just the day before Babb actually spoke. Charley and I (and many others) participated in a large demonstration outside the hall in which Babb was speaking.

Charley was one of the main activists in the Committee Against Racism. He organized MARTINSDAY, which was an annual gathering in honour of Martin Luther King Jr.



Charley singing a song he wrote about U.S. domination of Libya. The paintings on the wall were all done by Charley: <https://youtu.be/bCTMmcS8fQw>

He also founded the Movement of Minority Electors, an organization whose goal was to increase the number of visible minorities who ran for public offices. Ironically, Charley could not vote or run for office because he was not a citizen of Canada.

Charley was a permanent resident. He wanted to become a Canadian citizen. However, obtaining citizenship required swearing or affirming the following oath:

*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.*

Charley would have been happy to affirm that he would “faithfully observe the laws of Canada and fulfil my duties as a Canadian citizen”.

He could not, however, pledge allegiance to a monarch. As he wrote, “It would be hypocritical and contrary to the dictates of my conscience to swear fealty to a hereditary monarch, as this would violate my passionate belief in the equality of all human beings and my opposition to racial hierarchies”.

In addition, the ancestors of Queen Elizabeth the Second had colonized Trinidad and presided over the vicious enslavement of Charley’s ancestors. Charley was very knowledgeable about the horrors of slavery in Trinidad.

There was another aspect of our monarchy that Charley pointed out. Our monarch must be a member of the Church of England and has to have been raised in that faith. The Queen is our head of state. Is it acceptable in our multicultural nation to require that our head of state be of one specific faith?



Charley reciting a rap that he wrote about monarchy. The paintings on the walls are all by Charley: <https://youtu.be/yLxIdQWtmW8>

In 1988, as a result of changed rules, Charley was informed by the Law Society that he would not be allowed to continue to practice law unless he became a citizen before July 1, 1989. He then applied for citizenship. He filled out all the forms and passed the test about Canada that is required of applicants for citizenship. All that remained was for him to attend the ceremony at which he would take the oath.

When he attended, Charley told the citizenship judge who presided over the ceremony that he had conscientious objections to pledging allegiance to a monarch, and asked if he could just recite the latter part of the oath. The judge said that he could not; he must recite the entire oath. Therefore, Charley did not receive citizenship.

Charley could have just pretended that he was saying the first part of the oath and then actually say the last part. No one would have known or cared. Except Charley. Charley was extraordinarily principled. Even if it cost him his right to practice law, he was not willing to violate his conscience.

Very luckily, he was able to continue his legal practice. Before the deadline of July 1, 1989, the Supreme Court held (in an unrelated case) that it violated the *Canadian Charter of Rights and Freedoms* to require that lawyers must be citizens.

Charley still wanted to become a Canadian citizen. He had lived in Canada for all of his adult life. He identified as a Canadian. He wanted to travel on a Canadian passport. He wanted to vote, and to consider running for office.

In 1993, Charley decided to try to get the part of the oath that references the monarchy declared to be unconstitutional.

The *Canadian Charter of Rights and Freedoms* guarantees freedom of conscience and freedom of expression. Charley's conscience did not permit him to affirm allegiance to a monarch. The oath violated his freedom of expression in two distinct ways: to obtain citizenship, he was required to publicly express the words of the oath; and, if he did take the oath, he felt that its terms would have limited his expressing opposition to Canada's monarchy.

Charley started a case in the Federal Court of Canada. He lost, and he subsequently lost his appeal to the Federal Court of Appeal. That seemed to end the possibility of his obtaining citizenship.

Years later, in 2007, Charley decided to try again. This time he made an application to the Superior Court of Ontario. Counsel for the Attorney General argued that it would be an abuse of process to hear the case since it was the same as the case that he had lost in the Federal Court. After several twists and turns over several years, Charley won the right to continue, on the grounds that interpretations of relevant sections of the Charter had changed since the earlier case.

In 2011, Charley was diagnosed as having a malignant brain tumor. Part of the tumor was removed by surgery and he was also given radiation therapy. He became increasingly disabled and too weak to continue legal work. Moreover, it was clear that he would not survive long enough to see the hearing of the application. Therefore we needed new applicants (deceased people do not have Charter rights) and new lawyers.

Charley asked me and Mike Smith, Selwyn Pieters and Reni Chang to represent three new applicants.

Michael McAteer had immigrated to Canada from Ireland. He and his family fought for independence of Ireland from the British Crown. He said that swearing an oath to the Queen would be a betrayal of his republican heritage and would impede his activities in support of ending the monarchy in Canada.

Simone Topey was a Rastafarian from Jamaica. She said that swearing an oath to the Queen would be contrary to Rastafarian principles.

Dror Bar-Natan immigrated from Israel. He said that swearing an oath to the Queen would violate his belief in the equality of all people.

On May 29, 2012, Charley made his last appearance in a court. He attended as a spectator to watch our final pre-hearing motion. This motion deleted Charley as an applicant and added the three new applicants. It also settled some procedural technicalities. Charley was quite weak but in very good spirits.

Outside court, Charley gave a speech to a small group of supporters. He outlined the history and importance of the case. He thanked his supporters and the four lawyers. He ended his talk by

saying “I am going to live long enough to get my citizenship in this country.” You can see him speaking on that occasion on the video below.



Charley Roach, Selwyn Pieters, Peter Rosenthal and Mike Smith on May 29, 2012:  
[https://youtu.be/ssohc\\_EFkek](https://youtu.be/ssohc_EFkek)

Over the next few months, Charley got weaker and weaker. There were two different large gatherings in Charley’s honour which he attended in a wheelchair. He spoke to the crowd on both occasions and even sang at one of them. He was, as almost always, very positive and optimistic.

By the beginning of September in 2012, it became evident that Charley did not have much time left. The thought occurred to me that we should try to get Parliament to give citizenship to Charley. The Citizenship Act allows the cabinet to direct the Minister of Immigration and Citizenship to award citizenship to any person who has made exceptional contributions to Canada. Charley’s contributions to culture and to civil rights were certainly very exceptional.

I was told by Andrew Cash, a member of Parliament, that he would try to get the cabinet to make such an award if I presented a petition supporting that request with at least a hundred signatories. By early September, I was able to get more than a hundred signatures on a petition and present it to Andrew. I told Charley about the petition and he was very happy about it.

By September 29, 2012, Charley was very weak physically and also seemed to be unconscious most of the time. I visited Charley at his home on September 29 and September 30, as well as on October 1. Charley would squeeze my hand as I talked to him but he did not speak at all. When I told him that I was still hopeful about the petition, I think he understood, but I can't be sure.

Charley died on October 2, 2012. A day later, Andrew Cash gave a speech to Parliament in which he praised Charley and asked the Minister of Citizenship to award citizenship to Charley posthumously. The Minister said that there are no provisions that allow citizenship to be awarded to a person who is deceased.

That ended Charley's battle to become a citizen of Canada.

But it did not end the battle against the oath.

We finally got our day in court on July 12, 2013. At the end of the day, the judge reserved his decision. [The judgment was released on September 20, 2013.](#)

The essence of the [judgment](#) was the following: The Applicants were taking the oath literally but that is not its true meaning. The oath is not to the Queen as a person but as a symbol of Canada. Therefore, properly understood, it is an oath to Canada not to the Queen, so the Applicants' concerns are misplaced.

The judge did not really deal with the fact that a person who is strongly opposed to monarchy might feel that it violated their conscience to publicly say the words of the oath even if the Queen was just being used as a symbol for Canada. The fact that judges declare that the words do not really imply any personal allegiance to the Queen does not mean that many people (perhaps the majority of Canadians) might feel that affirming the oath evidences some positive support for the monarchy.

The judge said that the Applicants were arguing that the oath should be given its "plain meaning". That was not the case. We did not argue that people taking the oath are actually binding themselves to the Queen as an individual. Our position was simply that the "plain meaning" would cause many people to interpret the oath as the Manager of Legislation and Program Policy with the Department of Citizenship and Immigration did. She had testified that, in her view, it would be inconsistent with swearing the oath for a person to subsequently participate in activities designed to rid Canada of the monarchy. The judge did not refer to her testimony in his judgment.

With respect to our claim that the oath contravened the Applicants' rights to freedom of conscience and religion pursuant to section 2(a) of the *Canadian Charter of Rights and Freedoms*, the judge held "To the extent that the oath to the Queen reflects a commitment not to inequality but to equality ... it is not only a unifying statement but a rights enhancing one. ... The rights of some cannot be a platform from which to strike down the rights of others. ... The Applicants' desired remedy would itself undermine the values enshrined in section 2(a) of the Charter."

In my opinion, this "reasoning" was (and remains) absurd.

There was evidence that some polls had found that more than 50% of Canadians wanted Canada to abolish the monarchy. Is the oath really "a unifying statement"?

What rights does the oath enhance?

Our proposed remedy was to either replace the oath to the Queen by an oath to Canada or, alternatively, to give citizenship applicants a choice between taking the present oath or an oath to Canada. How could either of those remedies “strike down the rights of others”? What rights? Do others have a right to force people to swear an oath to the Queen? What values enshrined in section 2(a) of the *Canadian Charter of Rights and Freedoms* would be “undermined” by our desired remedy?

The judge did find that forcing the Applicants to take the oath to the Queen violated the rights of the Applicants to freedom of expression under section 2(b) of the Charter. However, that did not end the matter. He found that that violation was justified because “any impairment of the Applicants’ freedom of expression is minimal.”

Thus the oath to the Queen was found to be constitutional.

Charley didn’t quit, so neither did we; we appealed the judgment to the Court of Appeal for Ontario.

[The Court of Appeal dismissed our appeal.](#) They used some different legal language but essentially agreed with the previous judge.

The Court of Appeal’s treatment of the evidence of the Manager of Citizenship Legislation and Program Policy that affirming the oath would be inconsistent with subsequent activities against monarchy is quite surprising. The Court held “To the extent that the Manager appeared to agree with [the Applicants’ approach] it is indicative that the government needs to better equip those involved in citizenship policy to understand and convey the meaning and significance of the phrase ‘the Queen of Canada, Her Heirs and Successors’.”

It is obvious that many Canadians would interpret the oath as the Manager did. To overcome this, there would need to be a huge campaign to educate people on “the meaning and significance of the phrase”. Until that is done, the oath will convey, to many people, some support for monarchy. In fact, it is hard to imagine how conveying “the meaning and significance of the phrase ‘the Queen of Canada, Her Heirs and Successors’” could lead most people to completely disregard the connection to monarchy that is asserted by the oath.

If the oath really does have the same meaning as an oath to Canada would, why not just replace it by an oath to Canada?

The Court of Appeal’s ruling included “If the reference to the Queen in the oath were eliminated or made optional, such a remedy would only be a superficial cure for the appellants’ complaint. Because the Queen remains the head of our government, any oath that commits the would-be citizen to the principles of Canada’s government is implicitly an oath to the Queen... Thus, the appellants’ real complaint would not be addressed.”

This statement is astonishing. How could the Court (or anyone) say that granting the very remedy that the appellants had sought would not address the appellants’ “real complaint”?

The only remaining hope was that the Supreme Court of Canada would overturn the decision of the Court of Appeal.

There is no right to an appeal to the Supreme Court; leave to appeal must be granted. Each year there are about 500 to 600 applications for leave to appeal to the Supreme Court and only about 65 to 80 of them are granted. We did not beat the odds. Our application for leave was dismissed.

Sorry Charley.

A couple of weeks before he died, a reporter asked Charley how he maintains his activism in the face of failing health. Charley replied “The struggle is the important thing. Not how it ends. It is not whether I win or lose, it is whether I fight and do all I can.”

Charley did do all he could, and what he could do was extraordinary.

In addition to all of the above, Charley was a fine poet. The following poem that he wrote was read at his memorial in Convocation Hall at the University of Toronto.

*Synchronize with the Universe,  
Tune into Nature.  
Don't curse the seasons, the drizzle on the falling leaves.  
For those are arcs in the cycle of existence.  
If I pass on, don't fret with death.  
Take heart, pick up, press on.  
When I exist only in your thoughts,  
What thoughts will you conjure to ease your grief  
Or make me greater than I ever was?  
Do nothing for me or my memory,  
Except to continue in your lives  
Any example you may have found in mine.  
If you must shed tears, let them be  
To moisten the roots of trees  
That bear the fruit of equal liberty.  
Isn't death life as birth life?  
No tragedy except when wrought be wickedness.*

Toronto City Councillor Joe Mihevc arranged to have a laneway named “Charley Roach Lane.” That is a nice way to honour Charley’s memory. But I have a better proposal: The laneway should be named “Queen Elizabeth Lane” and the highway that is currently called “Queen Elizabeth Way” should be renamed “Charley Roach Way”.