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Oath of allegiance to the King and Quebec's National Assembly: A ticking time bomb

By **Lawrence David**



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Law360 Canada (September 29, 2026, 12:20 PM EDT) -- On Oct. 5, Quebecers will be voting for the politicians who are together supposed to constitute the 43rd legislature of Quebec's National Assembly. However, a law passed by the assembly following the election held on Oct. 3, 2022, risks undermining the legality of any parliamentary activities, votes and laws adopted by the new legislature after it begins sitting later this fall. This is the law titled *An Act to recognize the oath provided in the Act respecting the National Assembly as the sole oath required in order to sit in the Assembly*, S.Q. 2022, c. 30 (Act to recognize the oath).

The Act purports to discharge politicians elected to the assembly from taking the oath of allegiance to the King that is constitutionally required to be taken under s. 128 of the *Constitution Act, 1867* by every person elected to Parliament or any other Canadian provincial legislature. Even before Confederation in 1867, the oath of allegiance has been required to be taken by persons elected to a legislative body, and even *The Quebec Act, 1774* expressly required it.



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Before Dec. 9, 2022, every politician elected to the National Assembly complied with the requirement to take the oath. However, following the election held in October 2022, the elected politicians of the Parti Québécois and Québec solidaire refused to do so and were denied access to the "*salon Bleu*." The Speaker issued a spectacular ruling emphasizing that politicians who refuse to take the oath are not allowed to take their seat in the assembly.

Following the Speaker's ruling, Québec solidaire's members took the oath, but the Parti Québécois did not. Instead, the Parti reached a compromise with the governing Coalition Avenir Québec to enact the *Act to recognize the oath*.

The assembly purported to invoke the provincial unilateral power of constitutional amendment in s. 45 of the *Constitution Act, 1982* to exclude Quebec from the application of s. 128 of by entrenching a new s. 128Q.1 that states exactly that. As a result, politicians would henceforth only be required to take the oath to the people of Quebec provided in the *Act respecting the National Assembly*. The Parti

Québécois members began sitting in the assembly immediately after the passage of the Act on Dec. 9, 2022. Seven politicians were subsequently elected to the assembly in byelections and did not take the oath.

Importantly, the election to be held on Oct. 5 will be the first provincial general election since the adoption of the *Act to recognize the oath*. It is anticipated that most — if not all — of the newly elected politicians will not take the oath prior to taking their seat in the National Assembly.

There is, however, one major problem: the *Act to recognize the oath* is unconstitutional.

As argued in a constitutional challenge I launched as founder of the Public Interest Litigation Institute (PILI) in August 2026, Quebec could not unilaterally exclude itself from the application of s. 128. The unilateral provincial power of constitutional amendment does not include amendments that affect "the office of the Queen" (or King) or "the office of Lieutenant Governor." It is quite obvious that abolishing the oath affects both, as it directly undermines their respective roles, powers and status as the institutional personification of the Canadian state. Nor does this power authorize provinces to amend the text of the *Constitution Act, 1867* — which the assembly did by purporting to entrench a new s. 128Q.1 within it. These arguments are also made in an article by my colleague professor Yan Campagnolo and Camille Bontems that was published in the *McGill Law Journal* in 2026, which predicted that a legal challenge would likely be successful and helped inspire our legal challenge.

PILI also argues that the provincial power of unilateral constitutional amendment excludes amendments to the nature and structure of government institutions established under the Constitution. This includes Canada's identity and structure as a constitutional monarchy in which the King (or Queen) is the head of state and under which the King forms part of every Canadian legislature by way of the Governor General (for Parliament) and of the lieutenant-governors (for the provincial legislatures).

As well, the bilateral formula for constitutional amendment in s. 43 of the *Constitution Act, 1982* cannot authorize Parliament and the assembly to jointly agree to exclude Quebec from the application of s. 128. This is because s. 43 does not apply to provisions of the Constitution that apply to all provinces, such as s. 128.

Quebec's attempt to unilaterally exclude itself from s. 128's application also violates s. 3 of the *Canadian Charter of Rights and Freedoms*. If politicians do not take the oath following the Oct. 5 election, this will nullify the right to vote of every person who voted for them because the politicians will not be constitutionally qualified to sit in the National Assembly. The right to effective representation will also be violated because the votes and laws adopted by a majority of members of the assembly who did not take the oath will be illegal and therefore not legally effective.

This is a ticking time bomb for the National Assembly.

PILI's constitutional challenge asks the Quebec Superior Court to declare that every law adopted by the assembly following the Oct. 5 election by a majority of members who did not take the oath should be declared unconstitutional. The declaration of unconstitutionality should be suspended for the time it takes for a majority of members to take the oath and to adopt the same laws anew. In addition, any laws before the assembly on the date the court issues its declaration of unconstitutionality will be prohibited from receiving royal assent unless the law is adopted by a majority of members who have taken the oath.

The remedy may appear exceptional, but it is not unprecedented. It is, in fact, directly inspired by the *Manitoba Language Rights* litigation, where the Supreme Court of Canada held that laws adopted by Manitoba over several decades were unconstitutional due to having been published exclusively in English. This was contrary to the guarantee of legislative bilingualism enshrined in the *Manitoba Act, 1870*.

In Quebec's example, all laws adopted by the National Assembly by a majority of members who did not take the oath required by s. 128 are unconstitutional because the oath required by s. 128 is a condition precedent to validly sitting and voting in the assembly and because an assembly comprised of members who did not take the oath is not lawfully constituted. As well, the legislative powers of every province enshrined in ss. 92 to 95 of the *Constitution Act, 1867* can only be exercised by a

lawfully constituted legislature.

Despite these very grave consequences, these issues have surprisingly not been discussed during the election campaign. Instead, in the days following the filing of the constitutional challenge, Paul St-Pierre Plamondon attacked it as a reason for Quebec to separate from Canada, while Liberal leader Charles Milliard glibly dismissed it despite his party expressly highlighting that the Act may be unconstitutional immediately before voting for it in December 2022. Unsurprisingly, Minister of Justice Simon Jolin-Barrette pledged to defend the law in court. The other party leaders do not appear to have made public statements, and the issue was not raised during any of the leaders' debates.

Nevertheless, constitutional compliance is not a nicety but an essential requirement that ensures the legitimate exercise of government power. This should concern all Quebecers, and indeed all Canadians — whether one is a monarchist or a republican.

Abolishing the oath of allegiance is not impossible; it can, however, only be lawfully achieved by following the rules of constitutional amendment. The National Assembly failed to do so and is now left with a ticking time bomb. There is still time for politicians to prevent its detonation.

Lawrence David is the president and founder of the Public Interest Litigation Institute, a senior counsel/litigator and a professor at the University of Ottawa's Faculty of Law.

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