

**COURT OF APPEAL FOR ONTARIO**

**BETWEEN:**

**MANFRED AND MARIA RICHTOFEN**

**(Appellants)**

**- and -**

**HER MAJESTY THE QUEEN (In Right of Canada)  
The ATTORNEY GENERAL OF CANADA  
The MINISTER OF PUBLIC SAFETY and  
The MINISTER OF TRANSPORT**

**(Respondents)**

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**APPELLANT'S / RESPONDENT'S FACTUM**  
**(Select One)**

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**NAME OF LAW FIRM**  
**Address of law firm**

**Names of Counsel (Include First and Last Names)**  
**Of Counsel for the Appellant / Respondent (select one)**

**Telephone:**

**Fax:**

**Email:**

**PART I:  
INTRODUCTION**

1. This case is about the **[insert a short summary of the main issue raised by this appeal]**.

**PART II:  
SUMMARY OF THE FACTS**

2. The Government of Canada and the governments of the United States and Mexico reached a consensus on air travel safety measures which is known as the North American Air Safety Agreement (NAASA). This document requires the three governments to subject air travel into the United States to special security arrangements that do not apply to other countries. The Agreement has many features, such as requiring Canadian and Mexican travellers to have valid passports and visas if travelling by air, advance screening for business travellers and special exemptions for certain categories of people (mostly those who live on one side of a border and work on the other). Air travellers are also subject to special security screening measures when leaving Canada or Mexico to travel to the United States. One of these is that a traveller may be required to step into a full body scanner.
3. The scanners will see through the clothing of a person being examined and produce an image of the contours of the body. The examiner is not on scene with the actual passenger but at another, central location in the airport where the image obtained from the scanner is sent to be examined. If the examiner determines that there is anything suspicious about the person being examined, they will be required to undergo further, direct examination, such as a pat down search by a member of the same sex or a wand with a metal detector. It is possible that a passenger could be subject to a further search, if they fail these types of searches and wish to continue to travel by air. Once a passenger is cleared by the scanner, their image is deleted. The level of detail shown in the scanned image can be adjusted from general (or fuzzy, lacking in detail) to precise.
4. The Appellants are Canadian citizens, resident in London, Ontario and members of the

Seventh Congregation of the Reformed Church of the Black Forest. This Church was created as a result of several schisms with the Christian faith. The original schism relevant for this case was that following the posting of The Ninety-five Theses by Martin Luther in Wittenberg, Germany in 1517. The Lutheran Church was eventually created as a result. Several other sects arose in response to doctrinal issues, such as the Anabaptists. Further schisms arose. It is not necessary to trace all the history which led to the creation of the Reformed Church of the Black Forest. It is sufficient to hold that this is a recognised religion.

5. The Appellants are members of the Seventh Congregation, which simply refers to a group within a geographical area, which may or may not correspond to modern political boundaries. Their faith requires them to live what they have described as a “pure” life. They eschew great wealth, instead distributing monies to all members of the faith in a somewhat egalitarian fashion. They believe all life is sacred, so will not eat animals or even kill vermin. They believe in the transmigration of souls. They have a moral code which states that after puberty, a person shall not appear unclothed before any other person except his or her lawfully wedded spouse (wedded within their church, not according to civil law). The exceptions to this are only for the most dire medical needs and even then, medical doctors are to be the same sex as the person being treated. This religion believes technology is for the good of all, and embrace it to the extent it does not harm others, according to their religious views. The bona fides of this faith as a religion are not in question.
6. It was the Appellants’ intention to attend a gathering of members of their faith in the Black Forest region of Germany. They would travel by air to New York, where congregants were meeting for several days of prayer and discussion of issues affecting their religion. From there, they would travel to Frankfurt and then to the Black Forest. Because of the travel to New York, the Appellants would be required to pass through full body scanners. They objected to this on the ground that it would violate their religious principles, and sought another way to comply with the need for flight security while not being subject to a full body scan. The Canada Border Services Agency, which operates the scanners, refused any accommodation after consultation

with the United States' Department of Homeland Security. The Appellants sought relief from the Courts, seeking a declaration that their rights had been infringed and an order that they be exempted from the use of full body scanners.

7. During the trial, the Appellants claimed that to pass through the scanners would violate their rights under the *Canadian Charter of Rights and Freedoms*, specifically: freedom of religion under s. 2(a); mobility rights under s. 6 and does so in a manner contrary to the principles of fundamental justice, set out in section 7.
8. At the Superior Court of Justice, Madam Justice Roy-Brown dismissed the Appellant's application.

[This is where you will need to summarize the trial judge's decision, by explaining how Justice Roy-Brown decided on each of the four issues. All quotes should be indented and single-spaced, like this paragraph. All quotes must be referenced immediately after the paragraph, noting the page or paragraph number of the quote.]

### PART III GROUNDS OF APPEAL

#### ISSUE ONE: FREEDOM OF RELIGION UNDER S. 2(A)

9. [Insert your firm's argument on this issue. Refer to the explanatory notes, How to Prepare a Factum, for information on how to refer to cases and how to structure your argument.]

#### ISSUE TWO: MOBILITY RIGHTS UNDER S. 6

10. [Insert your firm's argument on this issue. Refer to the explanatory notes, How to Prepare a Factum, for information on how to refer to cases and how to structure your argument.]

**ISSUE THREE – RIGHT TO LIFE, LIBERTY AND SECURITY OF THE PERSON UNDER S. 7**

11. [Insert your firm's argument on this issue. Refer to the explanatory notes, How to Prepare a Factum, for information on how to refer to cases and how to structure your argument.]

**ISSUE FOUR – REASONABLE LIMITS UNDER S. 1**

12. [Insert your firm's argument on this issue. Refer to the explanatory notes, How to Prepare a Factum, for information on how to refer to cases and how to structure your argument.]

**APPLICATION TO THIS CASE**

13. [Insert a concluding statement, summarizing how the preceding arguments support the order you have requested (to grant or deny an exemption to the Appellants).]

**PART IV  
ORDER REQUESTED**

14. It is respectfully requested that [Explain what it is that you are requesting – whether you are requesting that the appeal be granted or dismissed.]

**ALL OF WHICH** is respectfully submitted by

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**Name of all four counsel**

Of Counsel for the Appellant/Respondent (**Select One**)

**DATED AT (LOCATION)** this \_\_\_\_<sup>th</sup> Day of (month), (year)

## APPENDIX A

### AUTHORITIES TO BE CITED

[List all the cases and/or statutes that you have referred to in your factum using proper legal citation. Refer to the explanatory notes, *How to Prepare a Factum*, for formatting guidelines.]