**IN THE SUPREME COURT OF REYNOLDS**

BETWEEN

MANFRED AND MARIA RICHTOFEN

Appellant

-and-

HER MAJESTY THE QUEEN

Respondent

**FACTUM OF THE APPELLANT**

**MANFRED AND MARIA RICHTOFEN**

Rachel Scott

Jordan Eddy

Landen Dobsi

Sean Kruger

Luc Mondoux

Steve Burbine

Kory Gavin

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**PART I – STATEMENT OF THE FACTS**

1. In this application, once again, a Court is being called upon to determine the delicate balance between the rights and the need for public safety. This is not an enviable task. The basic facts of the case are that straightforward, but the issues engaged have great importance for all Canadians.
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 the 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 use of scanners has been controversial. Some have called this process a “virtual strip search” while others have stated that it is a necessary step to ensure public safety. The scanners will see through clothing of a person being examined and produce and image of the contours of the body. According to the evidence that has been heard, the examiner is not on the 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 wanding 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 vy the scanner, their image is deleted. The level of detail shown in the scanner image can be adjusted from general (or fuzzy, lacking in detail) to precise.
4. The applicants 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 of the Reformed Church of the Black Forest. It is sufficient to hold that this is a recognized religion.
5. The Applicants 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 Applicants’ 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 Applicants 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 Applicants 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. Due to the pressing nature of this issue and the timing of their religious retreat, the application was treated as a matter of priority. I am indebted to all counsel for the highly professional way they acted.

**PART II – STATEMENT OF ISSUES AND THE LAW**

1. The Applicants claim that to pass through the scanner 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 matter contrary to the principles of fundamental justice, set out in section 7.

**Section 2(a):**

*Everyone has the following fundamental freedoms:*

1. *Freedom of conscience and religion*

**Section 6(1):**

*Every citizen of Canada has the right to enter, remain in and leave Canada*

**Section 7:**

*Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.*

The Crown counters that none of these rights have been violated and in any event, the use of airport security scanners fall within section 1 of the *Charter*, being a reasonable limit on freedoms.

**Section 1:**

*The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.*