

COURT OF APPEAL FOR ONTARIO

BETWEEN:

HER MAJESTY THE QUEEN

(Appellant)

- and -

RAHEEM KHAN

(Respondent)

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

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 Respondent, born and raised in Canada, is a member of a prominent Toronto family. His parents emigrated from Pakistan many years ago and became Canadian citizens. They own and operate a very successful media company based in Toronto. The family is known for its out-spoken views against Canadian involvement in the war in Afghanistan and is involved in charitable work directed at improving the living conditions of the war-affected in Afghanistan. It is alleged by the Crown that members of the family have connections to individuals in Al Qaeda and the Taliban. It is these alleged connections which gave rise to the charges against the Respondent.
3. On February 7, 2008, the Respondent's father and older brother were arrested and charged with "providing property or financial services, knowing that, in whole or part, they will be used by or will benefit a terrorist group" contrary to section 83.03 of the Criminal Code. A year later, the Respondent was charged with this same offence.
4. While the charges against the Respondent's father and brother were recently stayed, the allegations against all three individuals are that they have been raising money in Canada and sending it to Pakistan in order to finance Al Qaeda and Taliban operations in Afghanistan. It is alleged these operations involve attacks on NATO forces in southern Afghanistan, which includes members of the Canadian Armed Forces.

5. In March of 2008, when the Respondent was 17 years old, he spent two weeks visiting extended family in Pakistan while on holiday from school. At that time, the Crown's prosecution was focused on the activities of the Respondent's father and older brother; the Respondent, a minor then, was not charged with any offence nor was he a suspect in the investigation.
6. On March 17, 2008, the Respondent was detained by the Afghan Border Police (ABP) just inside the border of southern Afghanistan. While the Crown asserts he was attempting to cross the border illegally, the trial judge found that there was no evidence that would allow him to make such a finding. The Respondent, whose extended family lives close to the Afghanistan border in Pakistan, took the position that he did not intend to cross into Afghanistan and did so inadvertently.
7. When the Respondent's detention came to the attention of officials at the Canadian embassy in Kabul, the trial judge found that no Canadian consular official intervened on the Respondent's behalf or took any measures to assist him.
8. The trial judge found that Canadian embassy officials in Kabul contacted RCMP members responsible for the Canadian investigation of the Respondent's father and brother and informed them of the Respondent's detention. Subsequently, a decision was made by the RCMP in Canada to have RCMP officers in Afghanistan question the Respondent in respect of the allegations against his father and brother.
9. These particular RCMP officers were present in Afghanistan as part of NATO's international mission and were responsible for training and supporting Afghanistan's various national police forces. The RCMP in Canada, who were responsible for the investigation of the Respondent's father and brother, requested that the RCMP in Afghanistan interview the Respondent in order to see whether his activities had any connection to the financing terrorism charges pending against the Respondent's father and brother.

10. The RCMP sent two members of the ABP to question him. The trial judge found that the Respondent was not given access to any consular officials or legal counsel. The Respondent, a minor at the time, was detained by the ABP in the company of his cousins, who were also minors. At no point were adult family members contacted and informed of the youths' detention.
11. The trial judge also found that the RCMP instructed the ABP not to tell the Respondent that they were questioning him in respect of a criminal prosecution against his father and brother in Canada. They provided the Afghan police with a list of questions to ask the Respondent about his activities in Pakistan and his reasons for crossing the border. The RCMP also provided the ABP with an audio recording device and asked them to record their interview with the Respondent.
12. The ABP would have released the Respondent (returning him to Pakistan) within 24 hours after determining his identity and satisfying themselves that he was not engaged in any illegal activity. However, as a result of the RCMP's decision to interview the Respondent, the ABP had to detain the Respondent for another two days as the RCMP travelled with officers of the ABP to the border post for the interview.
13. The interview lasted approximately three hours. There was no evidence of torture or other oppressive circumstances. While the ABP did not explain to the Respondent the purpose of the interview or the reason for his continued detention, the trial judge found that it was clear that the Respondent suspected these reasons; he inquired, half-way through the interview, whether the questioning had anything to do with his family in Canada.
14. One year following his interview in Afghanistan, the Respondent was charged with "providing property or financial services, knowing that, in whole or part, they will be

used by or will benefit a terrorist group" contrary to section 83.03 of the *Criminal Code*. At trial, the Crown sought to introduce statements made by the Respondent to the ABP in Afghanistan. The Respondent opposed the introduction of these statements into evidence. He brought an application before the trial judge, arguing that his *Charter* rights had been violated and the statements had to be excluded. The trial judge granted his application and the statements were excluded.

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

PART III

GROUND OF APPEAL

ISSUE ONE: DOES THE CHARTER APPLY?

15. [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: WERE THE APPLICANT'S CHARTER RIGHTS VIOLATED? (9, 10(A))

16. [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: SHOULD THE STATEMENTS BE EXCLUDED FROM EVIDENCE?

17. [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: DOES THE ADMISSION OF THE STATEMENTS VIOLATE THE APPLICANT'S
RIGHT TO A FAIR TRIAL?**

18. [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

19. [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**

20. 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

Name of all four counsel

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

DATED AT (LOCATION) this ____th 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.]