

Court of Appeal File No.: C57775
Superior Court File No.: 05-CV-301832-PD3

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

MICHAEL MCATEER, SIMONE E.A. TOPEY
and DROR BAR-NATAN

Applicants/Appellants

-and-

THE ATTORNEY GENERAL OF CANADA

Respondent/Respondent

COURT OF APPEAL FOR ONTARIO
FILED / DÉPOSÉ
OCT 17 2013
REGISTRAR / GREFFIER
COUR D'APPEL DE L'ONTARIO

NOTICE OF APPEAL

THE APPELLANTS, Michael McAteer, Simone E.A. Topey and Dror Bar-Natan, APPEAL to the Court of Appeal from the judgment of Mr. Justice Edward Morgan of the Ontario Superior Court of Justice dated September 20, 2013 made at Toronto.

THE APPELLANTS ASK that the judgment of the Ontario Superior Court Justice be set aside, and that judgment be granted as follows:

- i) The appeal be allowed;
- ii) This Honourable Court issue declarations that requiring applicants for Canadian citizenship to take an oath or affirmation that contains the phrase "*I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the*

Second, Queen of Canada, Her Heirs and Successors” contravenes the rights enshrined in sections 2(a), 2(b) and 15(1) of the *Canadian Charter of Rights and Freedoms* and that those contraventions are not saved by section 1 of the *Charter*.

- ii) Such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS OF APPEAL are as follows:

1. The Superior Court Justice made errors of law, errors of fact, and errors of mixed fact and law.
2. The Superior Court Justice erred in his interpretation of section 2(a) of the *Charter*.
3. The Superior Court Justice erred in applying principles appropriate to section 1 analysis to his consideration of section 2(a) of the *Charter*.
4. The Superior Court Justice erred in holding that "In taking the position that the mere recitation of the oath is an infringement of her subjectively held religious belief, Ms. Topey runs up against the settled notion that the rights of some cannot be a platform from which to strike down rights of others:"
5. The Superior Court Justice considered the freedom of religion claim of one of the Applicants but erred in failing to consider the freedom of conscience claims of the two other Applicants.

6. The Superior Court Justice erred in his section 1 analysis.
7. The Supreme Court Justice erred in holding that the impugned portion of the oath had only one meaning and, in particular, in ignoring the evidence of what citizenship applicants might be told is the meaning.
8. The Superior Court Justice erred in holding that there is a "prevalent view that eschews 'plain meanings' as an approach to legal texts."
9. The Superior Court Justice erred in his interpretation and application of section 15 of the *Canadian Charter of Rights and Freedoms* and, in particular, erred in failing to consider the Applicants' claim of discrimination on the basis of national origin.
10. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

- (a) The Court of Appeal's jurisdiction over this matter is established by s. 6(1)(b) of the *Courts of Justice Act*, R.S.O. 1990, c. C43;
- (b) This matter originated as an application before the Ontario Superior Court of Justice under Rule 14 of the Ontario Rules of Civil Procedure;
- (c) The Order appealed from is a final order of the Superior Court of Justice and is not an order referred to in s. 19(1)(a) of the *Courts of Justice Act*; and

- (d) This is not a matter on which leave to appeal is required.

October 15, 2013

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Applicants/Appellants

-and-

ATTORNEY GENERAL OF CANADA

Respondent/ Respondent
Court File No. 05-CV-301832 CP 00
Court of Appeal File No. C54775

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Proceeding commenced at TORONTO

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