

COURT OF APPEAL FOR ONTARIO

BETWEEN:

NOEL CLEARWATER

(Appellants)

- and -

**HER MAJESTY THE QUEEN (In Right of Canada)
HER MAJESTY THE QUEEN (In Right of Ontario)
The ATTORNEY GENERAL OF CANADA and
The ATTORNEY GENERAL OF ONTARIO**

(Respondents)

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. In 2004, a major titanium deposit was discovered near the border of Polar Bear Provincial Park in Northern Ontario. An application was made to the Ministry of Lands and Forests to develop the mine, and both the Federal and Provincial Ministries of the Environment conducted assessments to determine if the mine would meet the legal standards set out for mining. In 2010, both the Federal and Provincial governments gave their approval for the development of the mine.
3. The development of the mine has been opposed by various environmental activists. The Appellant, Mr. Clearwater, is the president of a group of environmental activists known as Friends of the North. This group opposes the development of the mine and has expressed their concerns by avenues of rallies, occupied politicians' constituency offices for limited periods, conducted mailing campaigns and stated that they would block road access to any mine that is to be developed.
4. Another group of environmental activists, the Environmental Liberation Movement has expressed its concerns by ways of violence. Since 2004, members of the group have attempted to plant explosives at the Ministry of the Environment offices located just outside the provincial park. They have sabotaged construction equipment which was part of the environmental assessment. In 2010, they claimed responsibility for targeting (although not injuring) Tom Hardy, the Mayor of Casterbridge, Ontario, and a mine proponent, in a drive-by shooting.
5. Last week, the Provincial Lands and Forests Minister was kidnapped by the Environmental Liberation Movement. An ultimatum was delivered to the Premier's

office that the Minister would be killed if the mine was not stopped. The Minister's whereabouts are still unknown. In response, the Premier asked the Prime Minister to declare that a public order emergency existed. The Federal cabinet agreed and, using the powers granted by the *Emergency Measures and Public Order Act*, invoked a state of public order emergency.

6. In accordance with the *Emergency Measures and Public Order Act*, the Attorney General declared the Environmental Liberation Movement to be a criminal organization and signed warrants for the arrest of all its known members. The Public Order Emergency was limited to the counties of Kenora and Cochrane, which are the areas where all activities of the subject groups have occurred

7. In response to the declaration, Mr. Clearwater, President of Friends of the North, stated on television:

“This is insane. A bunch of fascists are in power! We have to stop them! I agree with the goals of the ELM, but maybe not their methods. I hope they release the Minister, but I can see what has driven them to it. These guys in Toronto don't care about us up here; they just want their payoffs from big mining companies. Maybe they deserve what they get.”

8. Following this statement, the Attorney General of Canada declared that Friends of the North was a supporter of a criminal organization and ordered the arrest of Mr. Clearwater.
9. Upon his arrest, Mr. Clearwater brought an application for *habeas corpus*. Justice Lockup dismissed the application.

[This is where you will need to summarize the trial judge's decision, by explaining how Justice Lockup 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'S OF APPEAL

ISSUE ONE: FREEDOMS OF SPEECH, ASSOCIATION AND PEACEFUL ASSEMBLY (S. 2(B), 2(C) & 2(D))

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 TWO: RIGHT TO LIBERTY (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 THREE: ARBITRARY DETENTION OR IMPRISONMENT (S. 9)

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.]

ISSUE FOUR: REASONABLE LIMITS ON THE RIGHTS OF THE APPLICANT (S. 1)

13. [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

14. [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

15. 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.]