IN THE SUPREME COURT OF CANADA

ON APPEAL FROM THE COURT OF APPEAL OF ALBERTA

BETWEEN:

THE LAW SOCIETY OF ALBERTA,

Appellant,

- and -

ROBERT G. BLACK, G. PATRICK H. VERNON, BASIL R. CHEESEMAN, L. THOMAS FORBES, JAMES C. McCARTNEY, DOUGLAS S. EWENS, D. MURRAY PATON, RICHARD A. SHAW, EDWARD P. KERWIN, G. BLAIR COOPER-SMITH, PETER D. QUINN, carrying on the practice of law under the firm name of BLACK & COMPANY,

Respondents.

FACTUM OF THE APPELLANT

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I N D E X

PART I

STATEMENT OF FACTS

1. In February 1982 the Benchers of the Appellant Law Society of Alberta enacted the following rule:

> Rule 154
>
> An active member who ordinarily resides in and carries on the practice of law within Alberta shall not enter into or continue any partnership, association or other arrangement for the joint practice of law with anyone who is not an active member ordinarily resident in Alberta.

This rule came into force January 1, 1983.

2. In November 1982 the Benchers of the Appellant Law Society of Alberta enacted the following rule:

> Rule 75(b)
>
> No member shall be a partner in or associated for the practice of law with more than one law firm.

This rule came into force on March 31, 1983.

3. Rule 154 was enacted in eventual and considered response to advice to the Law Society received in February 1981, from the Toronto law firm of McCarthy & McCarthy to the effect that they intended to establish an office in Alberta as part of a broader object of becoming a national law firm with offices in cities across Canada.

4. Upon receipt of this advice from McCarthy & McCarthy, the Appellant made McCarthy & McCarthy aware that it was unlikely their proposal would receive the approval of the Benchers. The concerns of the Benchers were that the arrangement would contemplate a partnership, some of the partners of which were not members of the Law Society of Alberta practicing law in Alberta. This raised concerns regarding discipline, ethics, education and insurance in

relation to members of the partnership who are not members of the Law Society. It was also of immediate concern that the non-member partners would be participating in the earnings of the practice of law in Alberta and would thus be practicing improperly.

5. While a Benchers' Committee was considering the issue of inter-provincial law firms in several contexts, the Law Society received advice from the Alberta partner of the proposed firm, Mr. Robert Black, that he intended to establish a firm composed solely of lawyers authorized to practice in Alberta under the name "Black & Partners".

6. In May 1981 the Benchers of the Law Society adopted the principle that inter-provincial law firms should not be allowed.

7. Notwithstanding that they had been advised that the original advice received from McCarthy & McCarthy and the second advice received from Mr. Black were under consideration by the Law Society, the Respondents opened a Calgary branch of McCarthy & McCarthy under the name Black & Company on September 1, 1982. The partnership agreement of McCarthy & McCarthy was amended as of that date to accommodate eleven partners of McCarthy & McCarthy in establishing a "separate" partnership in Alberta. The separate partnership agreement entered by those partners was called the "Alberta Partnership Agreement" and could not be altered in any way without the consent of the management committee of McCarthy & McCarthy. The profits of the Alberta partnership were accumulated with the profits of McCarthy & McCarthy for distribution. The clients of McCarthy & McCarthy were advised of the opening of "their Calgary office" and that it was manned by partners of McCarthy & McCarthy.

8. In February of 1982 the Benchers completed their deliberations on the subject of inter-provincial law firms and enacted Rule 154 previously quoted.

9. In June 1982 a committee of the Federation of Law Societies of Canada issued a report on the subject of inter-provincial law firms. In the report the committee concluded that the arguments in favour of inter-provincial law firms slightly outbalanced the arguments against. A minority report of one

member of the committee, Mr. R.B. Fraser of Alberta, concluded that the establishment of inter-provincial law firms would be contrary to the public interest. The committee's report was submitted to but not adopted by the Federation of Law Societies of Canada.

10. Having considered the committee's report and representations from the Respondents and other members of the Law Society, the Benchers decided to proceed with the implementation of Rule 154 as of January 1, 1983.

11. In November 1982 the Benchers adopted Rule 75(b) as quoted above and decided to implement it as of March 31, 1983.

12. The Respondents brought action in the Court of Queen's Bench of Alberta challenging the rules. The trial was held in June, 1984 and the Learned Trial Judge handed down reasons on August 20, 1984 rejecting the Respondents' attack on the rules.

13. The Respondents appealed to the Court of Appeal of Alberta which heard the appeal in May, 1985 and handed down reasons allowing the appeal on March 4, 1986.

14. The Appellant was granted leave to appeal from the Court of Appeal of Alberta to the Supreme Court of Canada on June 12, 1986.

PART II

POINTS IN ISSUE

15. The points in issue are those stated by the Chief Justice in the Notice of Constitutional Questions, Case, V. 1, p. 23:

(i) Does Rule 154 or Rule 75(b) of the Law Society of Alberta infringe or deny mobility rights guaranteed by s. 6(2)(b) of the Canadian Charter of Rights and Freedoms?

(ii) If Rule 154 or Rule 75(b) of the Law Society of Alberta infringe or deny mobility rights guaranteed by s. 6(2)(b) of the Canadian Charter of Rights and Freedoms, are Rule 154 and Rule 75(b) justified by s. 1 of the Canadian Charter of Rights and Freedoms and therefore not inconsistent with the Constitution Act, 1982?

(iii) Does Rule 154 or Rule 75(b) of the Law Society of Alberta infringe or deny freedom of association guaranteed by s. 2(d) of the Canadian Charter of Rights and Freedoms?

(iv) If Rule 154 or Rule 75(b) of the Law Society of Alberta infringe or deny freedom of association guaranteed by s. 2(d) of the Canadian Charter of Rights and Freedoms, are Rule 154 and Rule 75(b) justified by s. 1 of the Canadian Charter of Rights and Freedoms and therefore not inconsistent with the Constitution Act, 1982?

PART III

ARGUMENT

MOBILITY RIGHTS

RULE 154

16. It is respectfully submitted that Rule 154 does not violate the mobility rights guaranteed to the Respondents by s. 6(2)(b) of the Charter.

Not a right to work guarantee

17. The Courts below erred in holding that because Rule 154 places limits on the mode of practice available to the Respondents and thus limits their ability to gain a livelihood in Alberta, it limits their mobility rights.

18. The reasoning of the Learned Trial Judge on the subject of mobility rights appears at page 412 of the Case on Appeal, V. 3. In the Court of Appeal that reasoning was adopted without significant elaboration (Case, V. 3, p. 435; p. 494).

19. The Learned Trial Judge quoted from the Reasons of Estey, J. in Law Society of Upper Canada v. Skapinker, [1984] 1 S.C.R. 357, to establish the scope of the protection guaranteed by s. 6 of the Charter. He then observed that neither of the impugned rules "... bear on the right of the Plaintiffs to move to Alberta and practice law in this province or, being residents elsewhere, to practice law in Alberta". (Case, V. 3, p. 414, l. 16).

20. It is submitted that this finding was sufficient to bring an end to the s. 6 inquiry.

21. However, the Learned Trial Judge went on to hold that if it were shown that the rule limited the Respondents' right to pursue a livelihood in Alberta, then an infringement of s. 6 would be made out. Because the rule

places limits on the Respondents' ability to practice in partnership - a mode of practice traditionally used by lawyers - they were held to "... infringe the right of the Plaintiffs to pursue the gaining of a livelihood in the Province of Alberta". (Case, V. 3, p. 414, l. 36).

22. It is submitted on the authority of Law Society of Upper Canada v. Skapinker that it does not follow from that conclusion that the rule limits the Respondents' mobility rights.

23. In Skapinker the complainant was not a Canadian citizen and therefore did not meet the statutory qualifications for membership in the Law Society of Upper Canada. The effect of the statutory provision in question was to limit his ability to gain a livelihood by practicing law in Ontario. He had alleged that the statutory requirement of citizenship violated the mobility right guaranteed to him by s. 6(2)(b) of the Charter.

24. This Honourable Court held that the right which s. 6 protects is the right to move from province to province where the movement is undertaken for the purpose of taking up residence, or of pursuing a livelihood, whether or not residence is established. This section does not guarantee a right to gain a livelihood - it protects a right to move for that purpose.

> I conclude, for these reasons, that para. (b) of subs. (2) of s. 6 does not establish a separate and distinct right to work divorced from the mobility provisions in which it is found. The two rights (in para. (a) and in para. (b)) both relate to movement into another province, either for the taking up of residence, or to work without establishing residence. Paragraph (b), therefore, does not avail Richardson of an independent constitutional right to work as a lawyer in the province of residence so as to override the provincial legislation, the Law Society Act, s. 28(c), through s. 52, of the Constitution Act 1982.
>
> Law Society of Upper Canada v. Skapinker, supra, p. 382.

25. Although the legislation in question in Skapinker clearly limited the complainant's ability to earn a livelihood by practicing law in Ontario, it did not do so by impairing his mobility.

26. The complainant in that case was a resident of Ontario and it was Ontario legislation which limited his ability to earn a livelihood.

27. It is submitted that it would have made no difference whatsoever to the disposition of the case if the complainant had been a resident of Alberta but, not being a Canadian citizen, was prevented from practicing law in Ontario by the same statutory requirement. The provision would still have infringed his ability to earn a livelihood by practicing law in Ontario. It would not, however, have infringed his mobility rights anymore than those rights were infringed on the actual facts of the case.

28. Accordingly, it does not constitute an infringement of their mobility rights that the impugned rules limit the Respondents' ability to gain a livelihood by practicing law in the Province of Alberta.

Essence of the right - mobility of people

29. It is submitted that the proper approach to s. 6 is to determine whether, on the evidence, the effect of the rule is to impede any of the Respondents in physically moving into Alberta to practice law in Alberta. If the answer is positive, the next inquiry is whether the law is one of general application. If the answer to that is positive, the third inquiry is whether the law discriminates on the basis of province of present or previous residence.

30. Section 6 guarantees mobility of persons - it does not guarantee mobility of goods, services, capital or anything other than persons. The inter-provincial law firm established by the Respondents is a vehicle by which those of the Respondents who are in Ontario are able to deliver legal services in Alberta and those of the Respondents who are in Alberta are able to deliver legal services in Ontario. The thing which moves in this arrangement is legal services, not people. To the extent Rule 154 limits movement of anything, it limits movement of legal services. Limitations on the movement of legal services from province to province do not violate the mobility rights guaranteed by s. 6.

Effect on non-resident lawyer practicing in Alberta

31. In the Alberta Court of Appeal, Kerans, J.A. observed "... the impugned rule prevents a non-resident from providing those services in partnership with others even if he is within Alberta at the time". (Case, V. 3, p. 439, l. 44).

32. The effect of the rule in the situation described by Kerans, J.A. does not arise for determination in this case. None of the Respondents reside out of Alberta and maintain their practice in Alberta. Seven of the Respondents reside in Ontario and practice in Ontario. Four of the Respondents reside in Alberta and practice in Calgary. (Statement of Claim, Case, V. 1, p. 2, l. 10). The number of occasions when the Ontario Respondents are in Alberta for the purposes of their practices is so small as to make it clear that they do not maintain a practice in Alberta except through the vehicle of partnership with the Alberta Respondents.

Evidence of R. Black, Case, V. 2, p. 195, l. 44 - p. 197, l. 12.

33. It is submitted that in any event it is clear, notwithstanding the clumsy drafting of Rule 154, that it is not intended to have the effect described by Kerans, J.A. in the above quoted passage. The rule was not intended to operate on the basis of the province of a lawyer's personal residence. It was intended to operate on the basis of the province in which he conducts his legal practice.

34. This was clearly recognized by Kerans, J.A. who, after quoting the rule, said,

> It is difficult to see a connection between the place where a lawyer has his dwelling and his professional duty. Nothing was made of this by the solicitors, no doubt because everybody equates their residence with permanent chambers.

Case, V. 3, p. 431, l. 44.

35. The evidence also demonstrates that the Law Society did not intend the rule to affect a lawyer who lives outside Alberta but maintains his practice in Alberta. When it was brought to the attention of the Benchers of the Law Society that on a literal reading of Rule 154, it could be interpreted as applying to a lawyer who resides outside of Alberta but maintains his practice in Alberta, they exercised their power of waiver to relieve against the operation of the rule in such a case.

Evidence of W.B. Kelly, Case, V. 3, p. 351, l. 23 - l. 36.

Exhibit 1, part 35, Case, V. 4, p. 627.

Exhibit 1, part 36, Case, V. 4 p. 641.

36. If the application of the rule read literally in one situation (which for the purposes of this appeal is hypothetical), could constitute a violation of s. 6, and the point is considered significant to this appeal, then it is submitted that this Honourable Court should read the provision down. It should be held that the rule would be invalid in that situation, but not generally.

McKay v. The Queen, [1965] S.C.R. 798.

37. Such an approach does not require the Court to "fill in the details that will render legislative lacunae constitutional".

Hunter v. Southam Inc., [1984] 2 S.C.R. 145 at 168.

RULE 75(b)

38. In the Court of Appeal of Alberta, Kerans, J. A. said:

> I agree with the trial judge that Rule 75(b) does not violate s. 6. Rule 75(b) is not, on its face, directed towards non-residents, and in the absence of a finding of colourability, is a law or practice of general application falling within ss. (3).

Case, V. 3, p. 440, l. 7.

39. It is respectfully submitted that this statement is accurate. The same disposition of the issue might have been made by observing that Rule 75(b) does not affect the mobility of persons.

FREEDOM OF ASSOCIATION

RULE 154 AND RULE 75(b)

40. It is submitted that the scope of the freedom of association guaranteed by s. 2(d) of the Charter was accurately described by the Learned Trial Judge. The statement of the scope of that freedom by Kerans, J.A. in the Court of Appeal of Alberta is consistent in principle with that of the Learned Trial Judge and is also accurate. However, Kerans, J.A. erred in holding that the activity proscribed by Rules 154 and 75(b) was within the scope of the freedom of association as he defined it.

Scope of Freedom of Association

41. The Learned Trial Judge considered freedom of association in its historical sense and in the context of the freedoms with which it is associated in the Charter and concluded that it is not the purpose of s. 2(d) to guarantee to the individual the freedom to participate in every conceivable connection between two or more persons. He said:

> In general terms, 2(a) and 2(b) give an individual freedom of religion and speech. 2(c) gives him the right of peaceful assembly so that he is free to meet with others to exercise his (a) and (b) freedoms and 2(d) gives him freedom of association so that he is free to join with others and to organize with others to advance his (a) and (b) freedoms.
>
> It seems to me that that kind of approach to construction is appropriate for a nation which views its attitudes towards law and the place of people and government in society in an historic perspective. On the other hand, if one is to look at the fundamental freedoms without an historical context, and simply with the aid of a dictionary, a rather different approach to construction emerges.
>
> In an historic sense 'freedom of association' is seen in the context of the struggle of trade unionists to join together to press for economic purposes, or socialists for political purposes, etc. In such a context, there is a connection between the freedoms expressed in 2(a) and 2(b) and

> freedom of association which expands and enlarges those freedoms by recognizing the right to exercise those freedoms in ways that from time to time in our history have been proscribed. The freedom is expressed as fundamental to restrain further proscription.
>
> Absent such historical context the freedom extends to almost any context between two or more persons. A law requiring separate toilet facilities for men and women would infringe as would a law prohibiting unnamed partners in a used car business or almost any restriction on the ability of people to form contracts ...
>
> As I read the Charter the s. 2(d) freedom lets me join others in professional or trade societies or unions, in churches or synagogues, in political or quasi-political organizations, and the like. Indeed anything that enhances and expands or is connected with the s. 2(a) and 2(b) rights. ...
>
> In my view s. 2(d) was not intended to extend to situations restraining the ability of people to enter into commercial contracts with one another unless such a restraint can be said to bear on the person's freedom of religion, speech or assembly. No such connection is present here.
>
> Case, V. 3, p. 419, l. 15 - p. 420, l. 26

42. The interpretation of Kerans, J.A. in the Court of Appeal of Alberta is essentially the same. Freedom of association is not a freedom to engage in every conceivable relationship - it is:

> The freedom to associate with others in exercise of Charter-protected rights and also those other rights which - in Canada - are thought so fundamental as not to need formal expression: to marry, for example, or to establish a house and family, pursue an education or gain a livelihood.
>
> Case, V. 3, p. 445, l. 5 - l. 10.

43. The difference between this description of the scope of freedom of association and that stated by the Learned Trial Judge is that the Learned Trial Judge did not address his mind to fundamental rights other than those listed in the Charter. No damage is done to the Learned Trial Judge's

reasoning by including those other fundamental rights, if they exist, with the fundamental rights listed in s. 2.

44. Kerans, J.A. emphasized that the freedom of association does not protect a relationship which is merely commercial - though it does protect associations formed to exercise what he conceived to be the fundamental right to pursue a livelihood in the form of a trade or calling.

Case, V. 3, p. 445, l. 36.

45. He concluded that the impugned rules infringe the Respondents' freedom of association because they affect their "... right to associate among themselves, and with others inside and outside Alberta for the purpose of seeking a livelihood in the profession for which they were qualified".

Case, V. 3, p. 446, l. 21.

Respondents' undertaking is purely commercial

46. It is submitted that Kerans, J.A. erred in concluding that the activity of the Respondents which each of the rules proscribes is anything other than pure commercial activity which, as noted, he emphasized is not protected by s. 2(d) of the Charter. The Respondents' motivation for establishing an Alberta branch of the Respondents' Ontario law firm was commercial. This was amply demonstrated in the evidence at trial:

> Q. And the object of setting up McCarthy & McCarthy's presence in Alberta was what?
>
> A. It was two fold, it was to take advantage, to be a step in the development of what we proposed and still propose to be the objective of developing a law firm on a national basis, inter-provincial branching if you want and it was also to take advantage of the level of business activity in Alberta and to reflect the fact that because of that level of business activity numbers of our lawyers were engaged in inter-provincial transactions and found themselves in Alberta for extended periods of time.
>
> Q. Was it fair to say, sir, that in 1979 it was apparent there was a lot of active legal work

formally (sic) done in Toronto and elsewhere that was now being done in Calgary?

A. I don't know whether it was necessarily normally done in Toronto or elsewhere, certainly it was apparent there was a great volume of legal work and I think it was our perception there was actually a need for more people in Calgary to help meet that demand.

Q. Client need you mean?

A. Need from the point of view of the level of activity.

Q. You mean the public wasn't being adequately served in Alberta, that was your perception?

A. I don't think we would say that, I think it is a question of looking at where, you know, the volume of transaction being developed.

Q. And there was a big volume developing in Calgary?

A. Yes.

Q. And to seek to tab (sic) some of that market was at least in part your motivation.

A. It was certainly in part what would happen out of the Alberta law firm, we were certainly conscious of that.

Evidence of J. Clarry, Case, V. 1, p. 46, l. 31 - p. 47, l. 21.

47. There was no evidence at trial that the rules in question hampered the ability of any of the Respondents to gain a livelihood. The Respondents' thesis is that the inter-provincial law firm prohibited by Rule 154 and the "common member law firms" prohibited by Rule 75(b) are commercially more efficient that the forms of practice presently used.

48. The "right" for which the Respondents seek Charter protection is the "right" to associate to practice law in the manner they consider most commercially effective. If such a right exists at all, it is submitted it is

not one of those rights which is, in the words of Kerans, J.A., "... so fundamental as not to need formal expression".

Case, V. 3, p. 445, l. 8.

49. It is submitted that the freedom of association protected by s. 2(d) of the Charter does not extend to associational activity which is undertaken purely or primarily for commercial reasons. The freedom does not extend to protect the associational activity proscribed by Rules 154 and 75(b) of the Law Society of Alberta.

SECTION 1

50. It is submitted that the application of the principles which govern the s. 1 inquiry as established in R. v. Oakes demonstrate that both Rule 154 and 75(b), if they limit the Respondents' freedom of association or mobility rights, are reasonable limitations of that freedom and those rights demonstrably justified in a free and democratic society.

51. In Oakes Dickson, C.J.C. set out the following principles as governing the analysis of a law under s. 1:

> 1. The object of the law under consideration "... must be of sufficient importance to warrant over-riding a constitutionally protected right or freedom. ..." The object must "... relate to concerns which are pressing and substantial in a free and democratic society before it can be characterized as sufficiently important".
>
> 2. The means chosen by the lawmaking body to achieve the object must be reasonable and demonstrably justified. The Court should have regard to several matters in this regard:
>
> > First the measures adopted must be carefully designed to achieve the object in question. They must not be arbitrary, unfair or based on irrational considerations. In short, they must be rationally connected to the objective...
> >
> > Secondly, the means, even if rationally connected to the objective in [the] first sense, should impair 'as little as possible' the right or freedom in question. ...
> >
> > Thirdly, there must be a proportionality between the effects of the measures which are responsible for limiting the Charter right or freedom, and the objective which has been identified as of 'sufficient importance'. In this context it is

> appropriate to consider the importance of the right or freedom limited in the circumstances of the case.
>
> R. v. Oakes, [1986] 1 S.C.R. 103 at 138.

Object of the Rules

52. The function of the Law Society of Alberta generally is to ensure that the highest standards of quality are maintained in the system by which legal services are delivered to the public of Alberta. The Law Society perceives that the phenomenon of the inter-provincial law firm jeopardizes its ability to fulfill that function properly. It also views the phenomenon of common member law firms as inconsistent with and prejudicial to the high standards of legal practice which it is charged to protect. The object of each of the impugned rules is to prevent depreciation of the quality of the system by which legal services are delivered to the public of Alberta which these two phenomena would cause.

RULE 154

53. The specific aspects of the system by which legal services are delivered to the public of Alberta which are endangered by the inter-provincial law firm addressed by Rule 154 are the following:

(a) Practice by Non-Members

54. Legal services are delivered in Alberta only by persons who are members of the Law Society and who therefore are subject to the government of the Society. In the inter-provincial law firm it is contemplated that legal services would be delivered in Alberta by lawyers who are not members through the vehicle of their partnership with lawyers who are members.

55. This is demonstrated in the evidence at trial of Mr. John Clarry, the Chairman of the Management Committee of McCarthy & McCarthy.

> Q. Yes Mr. Clarry, I am sure the Toronto partners of Black and Company are competent commercial lawyers and would feel reasonably comfortable in a number of fields, I am addressing at the moment the suggestion that McCarthy & McCarthy by having an Alberta presence would be able to lend to the Alberta public the expertise of its resources in Toronto?
>
> A. Yes of course, those resources extend beyond the Toronto partners of Black & Company.
>
> Q. Thank you, sir, that is what I feared and of course that is what the Law Society fears.
>
> A. I don't have any hesitation in saying that.
>
> Evidence of J. Clarry, Case, V. 1, p. 51, l. 22 - l. 33.

(b) Local Competence and Expertise

56. The Law Society considers it in the best interest of the Alberta public if specialized legal advice is available in Alberta to the Alberta public. The inter-provincial law firm would promote and foster the centralization out of Alberta of expertise in specialized areas of the law . The Law Society considers it appropriate to inhibit structures that do not necessitate the persons possessing expertise ever entering Alberta.

57. That this was part of the motivation for the rule was stated in the 1982 Annual Report of the President of the Law Society.

> The principal reason for so doing [enacting Rule 154] is that the Benchers feel it is in the interest of the public in Alberta and the profession that the members of the Law Society practicing in Alberta be able to develop a strong, knowledgeable and experienced profession to serve the needs of the people of [the] province. The Benchers felt conversely that it was not in the interest of the profession or the public that the experience and expertise in certain fields be acquired by lawyers

> who are located some distance from their clients outside the province.
>
> Statement of the President for the year ending March 31, 1982 as quoted in Exhibit 5, Case, V. 5, p. 969 at p. 973.

58. In the Court of Appeal of Alberta Kerans, J.A. found it troubling that this point should be raised. (Case, V. 3, p. 434, l. 6). He had concluded that because the Law Society "... has no present statutory power to make residency a qualification for membership ..." the issue of "... whether Alberta can or should protect an indigenous bar ... must await another day". (Case, V. 3, p. 431, l. 12). He considered that this justification was "a thinly disguised argument for the protection of an indigenous bar". (Case, V. 3, p. 434, l. 8).

59. It is respectfully submitted that in these comments Kerans, J. A. failed to distinguish between the question of the establishment of an exclusively indigenous bar - which is not raised in this case - and the question of the promotion of the highest practical standards of expertise in the local bar - which is both in issue and manifestly a proper subject of concern for the Law Society.

60. As the Learned Trial Judge correctly observed in his reasons:

> It is not in the public interest for the Law Society to so order its affairs that members of the public seeking legal advice in different and complex areas of the law, find that they must leave the province or seek out of province lawyers to secure needed legal advice. Clearly, the competence of the local bar is a matter of on-going concern for the Defendant. If it perceives that market forces, left alone will discourage the growth of local expertise or encourage the best and brightest to leave the province then it is in the public interest for the Defendant to intervene in the market to assure that the public of this province is not left with a Bar not competent to meet its needs.
>
> Case, V. 3, p. 401, l. 31.

(c) Assurance Fund

61. As required by statute, the Law Society maintains:

> ... a fund known as the 'Assurance Fund', for the reimbursement, in whole or in part at the discretion of the Benchers, of persons sustaining pecuniary loss by reason of the misappropriation or wrongful conversion by a member of the Society of money or other property entrusted to or received by him in his capacity as a barrister and solicitor.

Legal Profession Act, R.S.A. 1980, c. L-9, s. 76(1).

62. While other provincial law societies maintain similar funds, there is considerable variation among law societies as to the conditions governing payments to claimants, and Alberta's plan is the oldest and most comprehensive and generous.

Evidence of W.B. Kelly, Case, V. 3, p. 338, l. 35 - p. 339, l. 21.

63. The Law Society considers it important that this fund be available to and preserved for claimants who have sustained loss as a result of the defalcation by lawyers who were entrusted with clients' property in the course of providing legal services in Alberta. The inter-provincial law firm facilitates the delivery of legal services in Alberta by lawyers practicing in other provinces through the vehicle of partnership with lawyers practicing in Alberta. The Law Society apprehends that this phenomenon could result in considerable confusion as to whether in the event of defalcation the client would have a just claim against the Alberta Assurance Fund or the fund maintained in another province. The result would be a substantial depreciation in the security now possessed by the public of Alberta when dealing with members of the Law Society of Alberta.

(d) Discipline

64. The Law Society is empowered in the interest of the public to discipline members who engage in conduct deserving of sanction.

Legal Profession Act, supra, Part 3, Discipline and Control of Competence.

65. It is important for the effectiveness of this discipline power that it be clear when the conduct in question is within the jurisdiction of the Law Society of Alberta. No conduct deserving of sanction should go unpunished because of uncertainty as to which law society has jurisdiction. In the past the Law Society of Alberta has experienced a problem of this nature in the case of a member who practiced primarily in another province. There is no coordination of the discipline functions of the various provincial law societies, and no reciprocal disability befalls the member of two (or more) societies who is disciplined by one of them.

Evidence of A. Andrekson, Case V. 1, p. 288, l. 45 - p. 290, l. 9.

66. The penalties which can be imposed against a member who is found guilty of misconduct include suspension of membership and exclusion from the Society. The effectiveness of the discipline power is closely related to the effectiveness of these penalties. Effectiveness would be substantially depreciated where the member in question could maintain his membership in another law society and, by virtue of association in an inter-provincial law firm, continue to deliver legal services in Alberta through the vehicle of partnership with lawyers in Alberta.

67. The effectiveness of other remedial powers available to the Law Society such as the power to take control of an Alberta practice would also be substantially reduced if a portion of the practice in question was carried out from another province.

Legal Profession Act, R.S.A. 1980, c. L-9, ss. 81, 82, 83.

(e) Competence Support Programs

68. The Law Society has several programs which are intended to maintain the competence of the profession. It conducts loss prevention seminars, and offers its members the assistance of a practice advisor and voluntary "mentors". The public benefits by these programs only to the extent that they are used by the members of the Law Society. Members who are in other provinces cannot practically use them. A form of practice which facilitates delivery of legal services in Alberta from another province frustrates the utility of these programs.

(f) Respect for the Government of the Profession

69. The effectiveness of the government of the legal profession by the Law Society of Alberta depends in considerable measure on members of the Law Society paying primary allegiance to that government. The effectiveness of the Law Society can be prejudiced where a member's conduct is directed by some entity over which the Law Society of Alberta has no authority. The manner in which the Respondents set up their inter-provincial law firm in Alberta is a vivid demonstration of this.

Evidence of C.G. Virtue, Case, V. 2, p. 324, l. 33 - p. 325, l. 16.

(g) Ethics - Fee Splitting

70. It is unethical for a member of the Law Society to participate in any arrangement whereby the fees he earns from the practice of law are distributed among persons who are not members of the Law Society of Alberta. The inter-provincial law firm violates this traditional principle.

Evidence of J. Clarry, Case, V. 1, p. 63, l. 12 - p. 64, l. 47.

Evidence of M. Freedman, Case, V. 1, p. 95, l. 1 - l. 23.

Evidence of R. Black, Case, V. 2, p. 208, l. 38 - p. 209, l. 33.

RULE 75(b)

71. The specific aspects of the system by which legal services are provided to the public of Alberta which are endangered by the common member law firms addressed in Rule 75(b), are the following:

(a) Confidentiality and Conflicts

72. The phenomenon of common member law firms multiplies exponentially occasions where the conflicting interests of two or more parties will be entrusted to lawyers in association with each other. The recognition and handling of conflicts of interest is a significant problem in all law firms and increases with the size of the firm and the number of offices it maintains. However, the problem in the case of common member law firms is of a different complexion. In order for there to be a workable system for their recognition and resolution, it is necessary for the client to waive his privilege of confidentiality so that the fact of his having sought the advice of one firm and the nature of his legal problem can be communicated to the other firm. The Law Society considers this undesirable. Clients should not be obliged to waive their rights of confidentiality to accommodate common member law firms.

Evidence of J. Clarry, Case, V. 1, p. 66, l. 37 - p. 67, l. 13.

Evidence of M. Freedman, Case, V. 1, p. 104, l. 48 - p. 106, l. 10.

Evidence of R. Black, Case, V. 2, p. 171, l. 12 - l. 22.

Evidence of A. Andrekson, Case, V. 2, p. 291, l. 9 - l. 14.

(b) Touting and Steering

73. It is the duty of a lawyer when seeking legal services for a client that he or his firm is unable to provide, to be guided only by the interest of his client in receiving the best available advice. He behaves unethically if he steers the client to another firm primarily because the two firms are related and not primarily because the other firm offers the best available service.

74. Similarly, it is unethical for a lawyer to tout his own or another firm - especially another firm, the success of which inures to his benefit.

75. The evidence at trial demonstrates that in common member law firms unethical conduct of both kinds is fostered. Only a modest imagination is necessary to see the abuses that could flow from the use of this vehicle in the hands of less scrupulous persons than the Respondents.

Evidence of J. Clarry, Case, V. 1, p. 127, l. 12 - l. 43.

Exhibit 13, V. 6, p. 1126.

Evidence of R. Black, Case, V. 2, p. 192, l. 45 - p. 194, l. 22.

Evidence of R. Black, Case, V. 2, p. 199, l. 4 - l. 27.

Evidence of W.B. Kelly, Case, V. 3, p. 346, l. 12 - p. 347, l. 2.

76. The Learned Trial Judge observed:

> Notices to McCarthy clients of the opening of the Calgary office may be regarded as minor touting if the Plaintiffs are, in fact, a branch of McCarthy. The same notices constitute serious touting and steering if the Plaintiffs are a separate and independent firm. Counsel for the Plaintiffs, at trial, went to some length to make the point that touting and steering are not prohibited by the Alberta Professional Handbook. Whether in the

> Handbook or not, touting and steering are conduct unbecoming.
>
> Case, V. 3, p. 405, l. 18.

77. It is submitted that the concerns addressed by Rule 154 and 75(b) are pressing and substantial. They are of sufficient importance to warrant overriding a constitutionally protected right.

Means Chosen Are Reasonable and Demonstrably Justified

(a) Rationality

> First, the measures adopted must be carefully designed to achieve the objective in question. They must not be arbitrary, unfair or based on irrational considerations. In short, they must be rationally connected to the objective.
>
> R. v. Oakes, supra p. 139.

RULE 154

78. The Learned Trial Judge concluded that Rule 154 is rationally connected to the objective of the Law Society.

> The first inquiry that comes to mind on Rule 154 is this: If the defendant wanted to control the conduct of its members, why make distinctions between those in the province and those out of the province? The simple answer given to that inquiry by the defendant is that the defendant's control mechanisms were effective against those in the province and were not effective against those out. That is really the whole burden of the Defendant's case on Rule 154. The defendant sees itself as a society with obligations to the public of Alberta but with lawyers available to serve the needs of that public, both inside and outside of the province. It recognizes that its effective powers and authorities in issues of competence, discipline, insurance, assurance and risk management generally stop at the border. How does it resolve this dilemma? By Rule 154 it bunches those whom it can control and influence, i.e., the residents, in one group, and the non-residents over whom it enjoys only 'after breach' disciplinary authority, in another. It then prohibits practice between the groups. This dichotomy recognizes the division of the profession into those who are regularly available to answer the legal needs of the public of the province and those, who not being a resident, are not regularly available for that purpose.
>
> The plaintiffs oppose this analysis and argue that there is no evidence which justifies, let alone demonstrably justifies, the plaintiffs' (sic) basic proposition that its procedures to control the conduct of non-residents is not effective. If what the plaintiffs expect is hard evidence but non-

> residents fail in greater numbers than residents to attend upgrading educational seminars, fail to use the facilities of the practice officer, fail to comply with the various rules and canons of the Society, etc., etc., they expect too much. As indicated earlier it is not necessary for the defendant to stand and watch a situation of risk increase until the event occurs before taking action. The defendant became entitled to act to reduce and control the risk when evidence of the risk arose.
>
> Case, V. 3, p. 423, l. 43.

79. The question of the rationality of Rule 154, however, troubled the majority of the Court of Appeal:

> In defending R. 154, the Law Society invoked a number of concerns, concerns which specifically relate to non-resident practitioners. It simply is not a rational response to those concerns to single out, and prohibit practice by, those non-residents who choose to form a partnership with resident practitioners. Section 1 cannot protect an irrational response.
>
> Case, V. 3, p. 494, l. 45.

80. A law making body does not act irrationally when it does not prohibit activity which has some undesirable effects, if the incidence of that activity is insignificant and out-weighed by the benefits to the public.

81. Neither does a law making body act irrationally when it prohibits a related activity producing similar undesirable side effects, where the incidence of the activity is reasonably expected to be very significant and the benefit to the public virtually non-existent.

82. Stevenson, J.A. correctly observed that some of the Law Society's concerns which motivated Rule 154 are raised by the phenomenon of non-resident practice generally. Some of them are not unique to the inter-provincial law firm.

83. However, the extent of extra-provincial practice is not great. It appears to fluctuate with the state of the economy.

Evidence of W.B. Kelly, Case, V. 3, p. 338, l. 22 - l. 33.

84. Some members of the public of Alberta, and probably more members of the public of other provinces, have an interest in being able to use the services of lawyers from other provinces in Alberta from time to time. The benefit accruing to those members of the public outweighs the undesirable consequences of extra-provincial practitioners on the effectiveness of the government of the Law Society. Because of the small numbers, these undesirable consequences are modest.

85. There is every reason to expect, however, that commercial forces would make inter-provincial law firms an ever expanding and very prominent form of legal practice. Certainly that has been the experience in the accounting profession in Canada.

Evidence of W. Anderson, Case, V. 1, p. 154, l. 30 - p. 155, l. 14; p. 155, l. 43 - p. 56, l. 8.

86. The evidence demonstrates that similar development can be expected if inter-provincial law firms are allowed.

Evidence of R. Black, Case, V. 2, p. 183, l. 33 - p. 185, l. 44.

87. The incidence of inter-provincial law firms threatens to be many times more significant than the incidence of extra-provincial practice. Evidence of corresponding benefit to the public was non-existent at trial. The Respondents did not call any witnesses to testify that they wanted to be served by inter-provincial law firms or were not satisfied with the present system. In fact, the evidence was that the major public benefits which the Respondents perceive as flowing from inter-provincial law firms - access for Albertans to the research facility and expert legal services of McCarthy &

McCarthy - are available to the Alberta public without the establishment of an inter-provincial law firm.

Evidence of R. Black, Case, V. 2, p. 206, l. 20 - l. 26; p. 207, l. 25 - p. 208, l. 11.

88. It is submitted that Rule 154 bears a rational connection to the reasonable objective of the Law Society.

RULE 75(b)

89. The Learned Trial Judge concluded that Rule 75(b) is also a rational response to the concerns raised by common member law firms.

> The risks of fee-splitting, conflict of interest and breach of confidentiality inherent in multi-partnerships is patent. The procedures which the Plaintiffs have had to institute in order to cope with the conflict problem shows, as I mentioned earlier, a disturbing willingness to down grade the significance of client confidentiality. The dangers of fee-splitting, touting and steering were discussed at length at trial. The procedures instituted to meet the problem, point out eloquently that rules which prohibit breaches of ethics are not by themselves sufficient to the task. What is needed are rules which act so as to reduce the risk of breaches occurring. The enactment of Rule 75(b) accomplishes this without unreasonably affecting the ability of members whether resident or non-resident to practice law.
>
> Case, V. 3, p. 426, l. 34.

90. The Court of Appeal did not find fault with the rationality of Rule 75(b) - they faulted its proportionality.

Case, V. 3, p. 495, l. 13.

91. It is submitted that the analysis of the Learned Trial Judge is accurate. Rule 75(b) is rationally connected to the reasonable objectives of the Law Society.

(b) Proportionality - Seriousness of the Limitation

> ... there must be a proportionality between the effects of the measures which are responsible for limiting the Charter right or freedom, and the objective which has been identified as of 'sufficient importance'.
>
> ... Some limits on rights and freedom protected by the Charter will be more serious than others in terms of the nature of the right or freedom violated, the extent of the violation and the degree to which the measures which impose the limit trench upon the integral principles of a free and democratic society.
>
> R. v. Oakes, supra, p. 139.

RULE 154
Mobility Rights

92. It is submitted that if Rule 154 limits the Respondents' mobility rights at all, the extent and seriousness of that limit is relatively insignificant. It will be recalled that the Learned Trial Judge concluded that:

> ... neither Rule 75(b) nor Rule 154 bear on this right of the Plaintiffs to move to Alberta and practice law in this province or, being residents elsewhere, to practice law in Alberta.
>
> Case, V. 3, p. 414, l. 60.

93. If Rule 154 limits mobility it does so by constraining one form of practice to some extent - it does not even entirely exclude that form of practice. Members practicing in Ontario are not prohibited by the rule from practicing in association with other lawyers in Ontario. They are not confined to practicing as sole practitioners.

94. It is also significant to observe that the rule does not affect the continuation of the traditional method by which legal advice is provided by

lawyers of one province to the public of another - through the agency relationship.

Freedom of Association

95. If Rule 154 limits freedom of association the impact of that limit is also of a minor nature. It is not a complete prohibition of association for the joint practice of law. It only prohibits that activity when it is undertaken by lawyers in Alberta with lawyers out of Alberta. Also the rule does not prohibit associations between those two groups which do not constitute associations for the joint practice of law - such as the agency relationship.

Evidence of A. Andrekson, Case, V. 2, p. 245, l. 19 - p. 246, l. 7.

96. If it is held that Rule 154 limits freedom of association at all, it will have been held that freedom of association extends to commercial associations. It would then be relevant to the proportionality issue to observe that the exercise of freedom of association for purely commercial motives cannot have the same degree of importance as the exercise of that freedom in the furtherance of the other constitutionally guaranteed rights and freedoms, or in the type of situation where freedom of association has historically been recognized as invaluable and fundamental, such as struggles for economic, religious or political justice. Accordingly, a limitation of commercial association is not of the same degree of significance.

97. Further, if Rule 154 limits freedom of commercial association, it is reasonable to measure the seriousness of that limit in commercial terms. There was no evidence at trial as to the extent of the financial consequences enforcement of Rule 154 against the Respondents would have on them. It is submitted that if those consequences were significant there would have been evidence on the subject.

Public demand

98. It is relevant to the issue of the extent of the limit created by Rule 154 in both contexts to note that there was no evidence that the public is dissatisfied with the existing manner in which legal services are provided. Neither was there any evidence proffered to establish that anyone other than the Respondents would consider the the establishment of an inter-provincial law firm beneficial.

RULE 75(b)
Freedom of Association

99. If Rule 75(b) limits the Respondents' freedom of association at all, the limit is not of great significance. This is demonstrated by the following observation made by Kerans, J.A.:

> Rule 75(b) is less troubling. In point of fact very few resident lawyers would have any occasion to enter into more than one partnership. Nevertheless, it has importance for the solicitors because that is the way they have organized their affairs. It is conveivable that such a firm could be formed without multiple partnerships, but I rather suspect that the two-level firm renders an inter-provincial law firm more feasible.
>
> Case, V. 3, p. 484, l. 31.

100. There was no evidence at trial to support this suspicion. The Respondents employed the "two-level firm" model because they thought it less likely to offend the Law Society of Alberta.

Evidence of J. Clarry, Case, V. 1, p. 53, l. 30 - p. 54, l. 33.

101. It is submitted that the nature and extent of the benefit derived by the exercise of freedom of association in becoming members of two law firms, demonstrates that this exercise of the freedom is of very limited significance and importance in the range of all exercises of freedom of association.

(c) Proportionality - "As little as possible" Impairment

> ... the means, even if rationally connected to the objective ... should impair 'as little as possible' the right or freedom in question ...
>
> R. v. Oakes, supra p. 139.

102. The Learned Trial Judge's conclusions on this point were as follows:

> The fact that the Society governs lawyers places it in a unique position even among professions. The law accords privileges to lawyers not enjoyed by others. Solicitor-client privilege, the right to receive and hold trust funds and the exclusive right of audience at court, are but a few. The objections of business people or trades people or even professionals such as accountants to such rules might be understandable. But the situation with lawyers is different. Rules designed to prevent breaches and to deal with the concerns heretofore described or to reduce the risk of them, are reasonably necessary to protect the public.
>
> That the rules adversely effect the commercial aspirations of some lawyers or restrict, to some degree, the options otherwise available to the legal consuming public, is undeniable. The Defendant obviously considered those issues and concluded that protection of the public from the perceived risks was of more importance than the interests restrained. I cannot say that the rules are not reasonably necessary to achieve that end, nor that in drafting the rules the Defendant has covered more than was reasonably necessary to affect its purpose.
>
> Case, V. 3, p. 410, l. 29.
>
> I cannot say that Rule 154 is the only way the Defendant could have exercised the need of control but I cannot think of any other way in which the needed controls could be put in place in any reasonably practical way except by making distinctions between those who are resident in the province and available to serve the public on a regular basis, and those who are not. Obviously in a federal state where there is a separation of powers, such situations will arise and must in the national interest be accommodated. There is here no

> raising of artificial barriers but instead a reasoned response to a reasonably apprehended risk.
>
> Case, V. 3, p. 425, l. 37.

103. Kerans, J.A. in the Court of Appeal of Alberta, was of the view that the Learned Trial Judge had not applied the correct test.

> At this point, the Learned Trial Judge did not, with respect, apply the correct test, which is to ask himself whether the Law Society has satisfied him that no equally effective but less intrusive means exist. I should add that, if I am right, the test is whether the solicitors have satisfied him that an equally effective but less intrusive means exist. In any event, he only inquired whether the action of the Law Society was 'reasoned and measured'. A law might be neither irrational nor extravagant and yet be unnecessarily intrusive of human rights.
>
> Case, V. 3, p. 488, l. 35.

104. The majority of the Court of Appeal were of a similar view:

> The Learned Trial Judge's acceptance of 'a reasoned and measured response' in discussing s. 1 (in relation to Rule 154) is not the correct test to sustain a Charter violation. The Court must apply a proportionality test, perhaps best described in terms of the availability of less intrusive means, recognizing that the impairment of the right or freedom is to be kept to a minimum.
>
> Case, V. 3, p. 495, l. 23.

105. It is respectfully submitted that these criticisms focus on semantics and not on substance. The evidence before the Learned Trial Judge supports the conclusion that if these rules impair the rights or freedom of the Respondents at all, they do so as little as possible - no more than is necessary to achieve the reasonable objective of the Law Society.

RULE 154

Relationship between intrusiveness of the limit and importance of the rights limited in the context.

106. It is submitted that the measurement of the degree of intrusiveness of the limiting law cannot be divorced from considerations regarding the seriousness of the right or freedom limited in circumstances of the case. Where the significance of the limit is considered to be relatively minor, the requirement for precision in minimizing that limit should not be strict.

Absence of inter-provincial co-ordination

107. The consideration of whether Rule 154 represents the least intrusive means of accomplishing the objective of the Law Society should be undertaken in recognition that in the opinion of a committee of the Federation of Law Societies which considered inter-provincial law firms, inter-provincial law firms could not be effectively established in Canada unless the various law societies enacted rules to facilitate their formation and should not be established in Canada unless the various law societies act to co-ordinate various aspects of their government. These pre-conditions have not occurred. Rule 154, therefore, was enacted in an environment which already substantially limited the ability of the Respondents to effectively establish an inter-provincial law firm.

Report to the Federation of Law Societies of Canada on Inter-Provincial Law Firms, June, 1982, Exhibit 9, Case, V. 6, p. 980 at p. 1011 and 1021.

Alternative Measures

108. Kerans, J.A. in the Court of Appeal of Alberta suggested some alternative measures which the Law Society might have adopted to relieve the concerns addressed by Rule 154. He suggested provisions requiring non-resident members of the Law Society:

- to be members in good standing of another Law Society
- to attend continuing education programs offered by the Law Society of Alberta
- to keep all records, materials and clients' money in Alberta
- to submit and pay for inspections and audits by Law Society agents,

and that the Law Society exercise its discretion regarding the Assurance Fund against clients of non-resident lawyers.

109. It is respectfully submitted that these suggestions address only some of the concerns of the Law Society - and only those that arise from a form of inter-provincial practice not addressed by Rule 154.

110. Rule 154 was enacted to address the concerns which inter-provincial law firms raise. These concerns have been described previously as being:

- practice by non-members
- deterioration of local competence and expertise
- availability and preservation of the Assurance Fund
- effectiveness of discipline
- effectiveness of competence support programs
- level of essential respect for government of the Society
- maintenance of ethical standards.

111. The Law Society could enact different rules designed to meet these concerns. It could enact rules requiring:

- that no legal services be provided directly or indirectly to persons in Alberta except by members of the Law Society of Alberta
- that inter-provincial law firms holding themselves out as having expertise in any given area of the law maintain that expertise in Alberta
- that all members of every firm delivering legal services in Alberta be members of the Law Society of Alberta
- that no member of the Law Society of Alberta associate for the practice of law with anyone who is not a member of the Law Society of Alberta
- that the Assurance Fund be available only to persons resident in Alberta or who had been served by a member who was in Alberta when he provided the service
- that no lawyer in another province be allowed to acquire membership in the Law Society of Alberta except upon providing the undertaking of the law society of the other province that any penalty assessed against the member by the Law Society of Alberta will be recognized by the other law society and a similar penalty be imposed by that law society in order to make the Alberta penalty effective.

112. It is submitted that these 6 rules would be required to address the Law Society's concerns - even then they do not address the concern regarding the effectiveness of competence supporting programs.

113. It is submitted that it is simply not possible for anyone to say that the intrusiveness of these alternative rules on the Respondents' mobility rights or freedom of association would be any different in degree from the intrusiveness of Rule 154. The legislative function is not capable of unbounded and exacting precision in the design of laws enacted to address legitimate concerns. The judicial function is not capable of unbounded and exacting precision in measuring the degree of precision attained in the legislative function.

RULE 75(b)

114. It is respectfully submitted that the majority in the Court of Appeal erred in their assessment of the intrusiveness of Rule 75(b).

115. The majority were under the impression that the "sole justification for the rule" offered by the Law Society was that common member law firms present "difficulties in preventing situations of conflict of interest from arising".

Case, V. 3, p. 495, l. 8.

116. The evidence at trial and the judgment of the Learned Trial Judge clearly demonstrate that this was not the justification offered at all. The justification was:

- the difficulty presented by common member law firms to the recognition of conflicts of interest
- the fact that any system which ensures that conflicts of interest are recognized requires the client to waive his privilege of confidentiality
- the fact that common member law firms foster the unethical conflict of touting and steering.

117. Contrary to the opinion of the majority of the Court of Appeal, the Respondents did not offer any scheme which would eliminate these risks. Neither did they establish that a less drastic means than Rule 75(b) could be effective in meeting the Law Society's concerns.

118. It is respectfully submitted that the reasons of Kerans, J.A. on this point (Case, V. 3, p. 491, l. 42) suffer from exactly the same deficiency as those of the majority.

119. It is submitted that there is no means of accomplishing the objective addressed by Rule 75(b) which has a less limiting effect on the Respondents' freedom of association than Rule 75(b) - assuming Rule 75(b) affects the freedom at all.

PART IV

NATURE OF THE ORDER DESIRED

120. The Appellant prays that this Court answer the Constitutional Questions set by the Chief Justice as follows:

(i) Question:
Does Rule 154 or Rule 75(b) of the Law Society of Alberta infringe or deny mobility rights guaranteed by s. 6(2)(b) of the Canadian Charter of Rights and Freedoms?

Answer:
No.

(ii) Question:
If Rule 154 or Rule 75(b) of the Law Society of Alberta infringe or deny mobility rights guaranteed by s. 6(2)(b) of the Canadian Charter of Rights and Freedoms, are Rule 154 and Rule 75(b) justified by s. 1 of the Canadian Charter of Rights and Freedoms and therefore not inconsistent with the Constitution Act, 1982?

Answer:
Yes.

(iii) Question:
Does Rule 154 or Rule 75(b) of the Law Society of Alberta infringe or deny freedom of association guaranteed by s. 2(d) of the Canadian Charter of Rights and Freedoms?

Answer:
No.

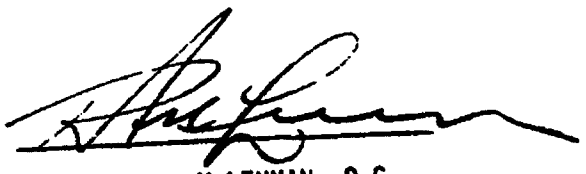
(iv) Question:
If Rule 154 or Rule 75(b) of the Law Society of Alberta infringe or deny freedom of association guaranteed by s. 2(d) of the Canadian Charter of Rights and Freedoms, are Rule 154 and Rule 75(b) justified by s. 1 of the Canadian Charter of Rights and Freedoms and therefore not inconsistent with the Constitution Act, 1982?

Answer:
Yes.

121. The Appellant prays that its appeal be allowed and that the declaration of the Court of Appeal of Alberta that Rules 154 and 75(b) of the Law Society of Alberta are invalid and of no force or effect be set aside.

122. The Appellant prays that it be awarded costs of this appeal, of the appeal in the Court of Appeal of Alberta and of the trial.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.



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March 1987.

PART V

TABLE OF AUTHORITIES