IN THE SUPREME COURT OF CANADA

(ON APPEAL FROM THE COURT OF APPEAL FOR THE PROVINCE OF BRITISH COLUMBIA)

BETWEEN:

19955

THE LAW SOCIETY OF BRITISH COLUMBIA

Appellant (Respondent)

AND:

THE ATTORNEY GENERAL OF BRITISH COLUMBIA

Appellant (Respondent)

AND:

MARK DAVID ANDREWS

Respondent (Petitioner)

AND:

GOREL ELIZABETH KINERSLY

AND:

Co-Respondent

THE ATTORNEY GENERAL OF ALBERTA,
THE ATTORNEY GENERAL OF SASKATCHEWAN,
THE ATTORNEY GENERAL OF ONTARIO,
PROCUREUR GÉNÉRAL DE LA PROVINCE DE QUÉBEC

Intervenors

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requiring the Appellant, the Law Society of British Columbia, to consider his application for call to the Bar and admission as a solicitor according to law.

Mr. Andrews' petition was dismissed by the British Columbia Supreme Court. Mr. Justice Taylor held that the citienzship requirement in the Barristers and Solicitors Act was not inconsistent with s. 15 of the Charter.

The British Columbia Court of Appeal allowed Mr. Andrews' appeal, declared that the Canadian citizenship requirement in the Barristers and Solicitors Act was inconsistent with s. 15 of the Charter and ordered that the Law Society of British Columbia consider his application for call and admission according to law.

Mr. Andrews has since been called to the bar and admitted as a solicitor in the Province of British Columbia pursuant to the Order of the Court of Appeal. He is presently applying for Canadian citizenship.

In order that the issue in this case not become moot, Mrs. Gorel Elizabeth Kinersly was added as a party to

these proceedings pursuant to an Order of this Court.

Mrs. Kinersly is an articled student in the Province of British Columbia. She is an American citizen. She obtained a Bachelor of Arts Degree from Carlton College, Northfield, Minnesota, U.S.A., and in 1982 received a J.D. Degree from the Northwestern School of Law of Lewis & Clark College in Portland, Oregon, U.S.A.

Mrs. Kinersly became a landed immigrant and permanent resident of Canada in March of 1985. Because of the three year residency requirement she will not be eligible to apply for Canadian citizenship before March 15, 1988. If the Canadian citizenship requirement in the Barristers & Solicitors Act is upheld by this Court, it is her intention to serve her residency requirement and obtain Canadian citizenship in order that she may practice law in the Province of British Columbia.

PART II

POINTS IN ISSUE

1. Does the Canadian citizenship requirement to be a lawyer in the Province of British Columbia as set out in section 42 of the Barristers & Solicitors Act, R.S.B.C. 1979, c. 26 infringe or deny the rights guaranteed by section 15(1) of the Canadian Charter of Rights and Freedoms?

2. If the Canadian citizenship requirement to be a lawyer in the Province of British Columbia as set out in section 42 of the Barristers & Solicitors Act, R.S.B.C. 1979, c. 26 infringes or denies the rights guaranteed by section 15(1) of the Canadian Charter of Rights and Freedoms, is it justified by section 1 of the Canadian Charter of Rights and Freedoms?

PART III

ARGUMENT

1. CANADIAN CITIZENSHIP

Canadian citizenship was well described by Mr. Justice Taylor in his reasons, at 22 D.L.R. (4th) 19-20 as follows:

> "A Canadian citizen is a person who by virtue either of birth or subsequent naturalization enjoys a special connection with this country. Canadian citizens alone have the constitutional right under Section 6 of the Charter to enter and leave Canada at will and under Section 3 of the Charter to participate in the process of parliamentary government, nationally and provincially. From an essentially legalistic perspective it might be contended that there are no recognized responsibilities attaching to citizenship, but I do not think it proper, certainly in the present context, to adopt that narrow view. There are duties of citizenship which have meaning to most people without the need of statutory definition or punitive sanctions. Voluntary recognition of these duties is essential in a community founded on principles of freedom and democracy, because to set them down in a statute and enforce them by threat of punishment would itself be contrary to those principles. Citizenship is, I think, a privilege which is understood to carry with it commitments to promote the security and welfare of the country, and to protect the way of life in which Canadians have come to believe, which are not expected of a permanent resident, even a resident sworn to allegiance. A citizen is a part of the country, a resident non-citizen never really more than an attachment to it."

2. THE ROLE OF THE LAWYER

Mr. Justice Taylor eloquently and accurately described the role and responsibilities of being a lawyer as follows (at D.L.R. p.20):

> "A barrister and solicitor has the authority, at his own discretion, to issue subpoenas and writs in the name of the sovereign in connection with matters in which has has no personal interest at all. He or she has the power to compel others to answer allegations, to produce documents, to attend for examination and to answer questions about their personal affairs. Those who fail to respond to a writ or subpoena, or to answer on examination, may be liable to execution, fine or imprisonment. These dangerous powers of the state are entrusted to the barrister and solicitor solely for proper purposes of the administration of justice, and they carry heavy responsibilities. The duties of barristers and solicitors have never been though to be limited to the interests of their clients. They owe important duties also to the community. A member of the legal profession has a duty to protect the system of justice from abuse, scrupulously to respect the laws of the land, to guard the rights of the individual and to give his or her assistance to the court. The common law, a continually developing body of non-statutory rules governing relations between citizen and citizen and between citizen and state, is a legacy committed as much to the care of the legal profession as to the judges. Both are trustees also of those important liberties which have now in part been proclaimed in the Charter, most particularly the right of everyone to equal protection of the law. These important responsibilities must be discharged by members of the profession not only in the courts but also in giving advice

in their law offices and in such activities as the work of their professional bodies and the continuing process of law reform."

The position of lawyers in our society was forcefully stated by this court in Attorney General of Canada v. Law Society of British Columbia [1982] 2 S.C.R. 307 per Estey, J. at pp.335-36:

> "There are many reasons why a province might well turn its legislative action towards the regulation of members of the law profession. These members are officers of the provincially-organized courts; they are the object of public trust daily; the nature of the services they bring to the public makes the valuation of those services by the unskilled public difficult; the quality of service is the most sensitive area of service regulation and the quality of legal services is a matter difficult of judgment. The independence of the Bar from the State in all its pervasive manifestations is one of the hallmarks of a free society. Consequently, regulation of these members of the law profession by the State must, so far as by human ingenuity it can be so designed, be free from State interference, in the political sense, with the delivery of services to the individual citizens in the State, particularly in fields of public and criminal law. The public interest in a free society knows no area more sensitive than the independence, impartiality and availability to the general public of the members of the Bar and through those members, legal advice and services generally."

3. SECTION 15 OF THE CHARTER

15.(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

4. EQUALITY

The idea of equality can be traced to Aristotle. See "Defining Equality Rights", Bayefsky, in Equality Rights and The Canadian Charter of Rights and Freedoms (1985) ed. by Bayefsky and Eberts, at p. 2, text acc. nn 1-5.

Stanley I. Benn, in the article on equality in the Encyclopaedia of Philosophy, summarizes the history of the concept in these terms:

> "This history has two noteworthy features. First, there is a recurrent theme, the idea of a universal but imprecisely defined equality: behind all differences of talents, merits, and social advantages there is some characteristically human nature by virtue of which all men are equal. Second, the focus of egalitarianism has shifted continuously, now

> attacking the differential treatment of barbarian and Greek, now of freeman and slave, noble and commoner, black and white, rich and poor, male and female. Egalitarianism might be said not so much to assert equality as to deny the justice of some existing inequality of treatment based on some allegedly irrelevant differences of quality or circumstance."
>
> "A system is said to be unequal only if the differences in privilege are considered unjustifiable because they are irrelevantly grounded or because the qualifications for assuming a role are unduly restrictive (for instance, if a white skin is a necessary condition for voting rights)."

It is submitted that the weight of authority of Canadian cases which have thus far interpreted Section 15(1) of the Charter is that equality means that those persons who are equally situated shall be treated equally. In Regina v. R.L. (1986) 26 C.C.C. (3d) 417 (Ont. C.A.) Morden, J.A. for the court said at 424-425:

> "The basic nature of the right or rights conferred by s. 15 requires some examination. The essentially relational nature of equality has been described as follows. 'The concept of equality is, by definition, relational or comparative. A person can only be found to be equal in relation to or in comparison with some other criterion.' Monroe H. Freedman, ''Equality in the Administration of Criminal Justice', Nomos IX (1967) 250 at pp.253-4. The concern for equality is that those who are similarly situated with respect to the purpose of the law be treated similarly: see Tussman and tenBroek, 'The Equal Protection of the

Laws', 37 Cal.L.Rev. 341 (1948), and Re McDonald and The Queen (1985), 21 C.C.C. (3d) 330 at pp.349-50, 21 D.L.R. (4th) 397, 51 O.R. (2d) 745 at p. 765 (C.A.) referring to the Tussman and tenBroek article."

See also:

Re McDonald and The Queen (1985) 51 O.R. (2d) 745; 21 D.L.R. (4d) 397; 47 C.R. (3d) 355, 21 C.C.C. (3d) 330; 16 C.R.R. 361 (Ont. C.A.).

Reference Re An Act to Amend the Education Act (1986) 53 O.R. (2d) 513; 25 D.L.R. (4d) 1 (Ont. C.A.) Chief Justice Howland and Robins, J.A. in a dissenting judgment (but on a point not addressed by the majority) at 554-5 O.R., 42-3 D.L.R.

Regina v. Swain (1986) 50 C.R. (3d) 97 at 148; 18 C.R.R. 209 at 248-49; 53 O.R. (2d) 609 at 646-47 at 148 (Ont. C.A.).

Re Blainey and Ontario Hockey Association (1986) 54 O.R. (2d) 513 at 524; 10 C.P.R. (2d) 450 at 461, 10 O.A.C. 194.

Rebic v. Collver Prov. J. [1986] 4 W.W.R. 401 at 422-23, (1986) 2 B.C.L.R. (2d) 364 at 385-6 (B.C.C.A.).

Regina v. Hamilton (1987) 57 O.R. (2d) 412 at 429-30 (Ont. C.A.).

The same approach to equality was taken by the British Columbia Court of Appeal in this case, and the Appellant takes no issue with the point on this appeal.

Andrews v. Law Society of British Columbia,

[1986] 4 W.W.R. 242 at 248, (1986) 27 D.L.R. (4th) 600 at 605; 2 B.C.L.R. (2d) 305 at 311 (B.C.C.A.).

5. DISCRIMINATION

Section 15(1) uses the words "without discrimination". What does "discrimination" mean in this context?

The issue here was stated but not answered by Morden, J.A. in Re McDonald and The Queen (1985) 51 O.R. (2d) 745 at 763-4; 21 D.L.R. (4th) 397 at 415-6 (Ont. C.A.):

> "At the outset I should deal very briefly with one particular question relating to what amounts to an infringement of rights under s. 15 having regard to its particular wording. On the one hand, the section can be read as provided that there is no infringement unless there is unequal treatment resulting from discrimination, that is, discrimination in the sense of invidiousness - unjustifiability, unreasonableness or irrelevance. On this approach, putting it in its simplest terms, there would be no infringement unless the person alleging infringement could show an inequality that was unreasonably imposed: see Gold, 'A Principled Approach to Equality Rights', 4 Supreme Court L.R. 131 (1982), at pp. 151-3, where this approach discussed (sic) on the basis that 'the equality rights ... in the Charter contain within them a non-absolutist conception' without reference in this part of the article to the words 'without discrimination'. On the other hand, it has been argued that discrimination should be read in a neutral sense, as meaning merely distinction or classification, with the result that 's.15 should be interpreted as providing

> for the universal application of every law. Where a law draws a distinction between individuals, on any ground, that distinction is sufficient to constitute a breach of s.15, and to move the constitutional issue to s.1 [to consider whether the law is justified]': Hogg, Constitutional Law of Canada, 2nd ed. (1985), pp. 799-801. Since, in my view, the result of this appeal would be the same no matter which approach is followed, I need not, beyond noting that this issue exists, express a concluded opinion on it."

In the case under appeal, the British Columbia Court of Appeal rejected the proposition that the word "discrimination" is used in s.15 in the sense of "neutral distinction", in favour of the "pejorative" connotation. (Supra W.W.R. 248-252) The Court of Appeal adopted the following test:

> "The ultimate question is whether a fair-minded person, weighing the purposes of legislation against its effects on the individuals adversely affected and giving due weight to the right of the legislature to pass laws for the good of all, would conclude that the legislative means adopted are unreasonable or unfair."

The reasoning of the British Columbia Court of Appeal and the above quoted test were adopted by the Ontario Court of Appeal for the case before it in Century 21 Ramos

Realty v. The Queen, unreported, No. 592/85, Feb. 27, 1987, at pp. 34-36.

The test was put similarly in the Queen v. LeGallant [1986] 6 W.W.R. 372, 47 C.R. (3d) 170; (1986) 6 B.C.L.R. (2d) 105 (B.C.C.A.) per Hinkson, J.A. for the Court at W.W.R. 380:

> "The decisions of this Court to which I have referred have concluded that discrimination involves the drawing of an unreasonable or unjustifiable distinction. The question to be answered in determining whether or not a law is discriminatory is whether the law is reasonable or fair, having regard to its purpose and effect. Involved in this approach there is the consideration that a law may be discriminatory if it treats some persons unduly prejudicially."

The above quoted test was also cited with approval in Century 21 Ramos Realty v. The Queen, supra, at page 36. The court also cited The European Court of Human Rights in the Belgian Linguistic case (1968) 1 E.H.R.R. 252 at 284 adopting the pejorative meaning of "without discrimination":

> "...[T]he principle of equality of treatment is violated if the distinction has no objective and reasonable justification. The existence of such a justification must be assessed in relation to the aim and effects of the measure under consideration, regard being had to the principles which normally prevail

> in democratic societies. A difference of treatment in the exercise of a right laid down in the convention must not only pursue a legitimate aim: Article 14 is likewise violated when it is clearly established that there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised."

For other cases which have adopted the same or a similar approach see:

> Rebic v. Collver, supra, (B.C.C.A.) at W.W.R. 420-421.
>
> Re Aluminum Co. and The Queen, (1986) 55 O.R. (2d) 522 (Ont. D.C.) Montgomery, J. for the majority at 532.

The Appellant submits that the word "discrimination" in s.15 is used in its pejorative sense.

There are appellate court decisions which are not in keeping with the above tests: Shewchuk v. Ricard [1986] 4 W.W.R. 289, (1986) 28 D.L.R. (4th) 429, 2 B.C.L.R. (2d) 324 (B.C.C.A.) per Macfarlane, J.A. for the majority. Note that Nemetz, C.J.B.C. dissented on this point and chose the pejorative connotation of the word "discrimination". His judgment was later followed in The Queen v. LeGallant, supra. See also: Smith, Kline & French Laboratories

Limited v. Attorney General of Canada (F.C.A.) unreported December 9, 1986 No. A-909-85, Hugessen, J. for the Court at pp. 10-11.

6. PROPORTIONALITY

Note that a sense of proportionality is involved in all the above quoted decisions on discrimination. In the case under appeal, the Court of Appeal indicated that one of the tasks for the court is to weigh the purposes of the legislation against the effects on persons adversely affected. In R. v. LeGallant, Hinkson, J.A. said that one should look at the purpose and effect of the law to see if it treated some persons "unduly prejudicially". In the Belgian Linguistic case the court used the expression "no reasonable relationship of proportionality" between the aim of the legislation and the means employed.

On the subject of proportionality, Lysyk, J. in Wilson v. Medical Services Commission of British Columbia, (1987) 9 B.C.L.R. (2d) 350 (S.C.) at 55-60 cautions against applying the exacting test of proportionality under Section 1 of the Charter formulated in R. v. Oakes [1986] 1 S.C.R. 103 at 139-140. His reasoning is that a Section 1 analysis

should be strict because there has already been a breach of a right or freedom before Section 1 comes into play; whereas such is not the starting point for the Section 15 analysis. Further support for this will be found in Section 9 of this Factum.

7. LEGISLATIVE PURPOSES

The legislated classifications which make differentiations between people must be tied to some valid legislative purpose. If the purpose is offensive to the Charter then, of course, the legislation must fall. If the purpose is valid, then it is submitted that the means used in the legislation must not be arbitrary or capricious. Put another way, they must not be unreasonable or unfair.

In this respect, the leading decision in its application to the Charter has become the Canadian Bill of Rights case MacKay v. The Queen [1980] 2 S.C.R. 370, particularly the concurring reasons of MacIntyre, J. (for himself and Dickson, J.) where he said at page 407:

> "There are many such cases where the needs of society and the welfare of its members dictate inequality for the achievement of socially desirable purposes. It would be difficult, if not impossible, to propound an all-embracing test to determine what departures from the general principle of the equal application of law would be acceptable to meet a desirable

> social purpose without offence to the Canadian Bill of Rights. I would be of the opinion, however, that as a minimum it would be necessary to inquire whether any inequality has been created rationally in the sense that it is not arbitrary or capricious and not based upon any ulterior motive or motives offensive to the provisions of the Canadian Bill of Rights, and whether it is a necessary departure from the general principle of universal application of the law for the attainment of some necessary and desirable social objective. Inequalities created for such purposes may well be acceptable under the Canadian Bill of Rights."

Cases in which MacKay v. The Queen, supra, has been cited with apparent approval include the following:

The Queen v. LeGallant, supra, (B.C.C.A.) Hinkson, J.A. At W.W.R. 379.

Rebic v. Collver, supra, (B.C.C.A.) Esson, J.A. for the majority at W.W.R. 420.

The Queen v. Hamilton, supra, (Ont. C.A.) Dubin, J.A. at 437.

Regina v. Killen (1986) 24 C.C.C. (3d) 40, (1986) 25 D.L.R. (4th) 192 (N.S.S.C., App. Div.) Macdonald, J.A. at C.C.C. 47-48.

The Appellant generally agrees that the approach in MacKay v. The Queen may properly be applied to the Charter, subject to the observations in Section 9 of this Factum.

8. RELEVANCE

It is submitted that in considering whether people are similarly situated, the inquiry is whether or not they differ in characteristics which are relevant to the purpose of the law under consideration. This point is made by Professor H.L.A. Hart in The Concept of Law (1961). He says, at p.155, that, while "treat like cases alike and different cases differently" is a "central element in the idea of justice", the precept:

> "is by itself incomplete and, until supplemented, cannot afford any determinate guide to conduct. This is so because any set of human beings will resemble each other in some respects and differ from each other in others and, until it is established what resemblance and differences are relevant, 'Treat like cases alike' must remain an empty form. To fill it we must know when, for the purposes in hand, cases are to be regarded as alike and what differences are relevant."
>
> (emphasis added)

For example, the purpose of the driver's licence provisions of motor vehicle statutes is the safety of users of highways. The ability to see and the disability of blindness are both clearly relevant to that purpose. Those characteristics are not however relevant for other purposes, such as the right to vote in a municipal election.

The inquiry into relevance permeates the case law. For some examples note the following:

> Regina v. R.L. (1986) 26 C.C.C. (3d) 417 (Ont. C.A.) Morden, J.A. for the court at 425:
>
> "The concern for equality is that those who are similarly situated with respect to the purpose of the law be treated similarly;"
>
> (emphasis added)
>
> and at p.431:
>
> "Since an adult and the respondent are not similarly situated in a sense relevant to the purpose of the law making the distinction between them, it appears reasonably clear to me that no case has been made that s.52 of the Young Offenders Act breaches, s.15 of the Charter."
>
> Andrews v. Law Society, supra, (B.C.C.A.) McLachlin, J.A. at W.W.R. 253-59.
>
> Rebic v. Collver, supra, (B.C.C.A.) Esson, J.A. at W.W.R. 422-24.

In the jurisprudence on the equality provisions of the Canadian Bill of Rights the importance of the concept of relevance was recognized. In Bliss v. A.G. Can [1979] 1 S.C.R. 183, 192 Ritchie, J. referred to and applied this test, formulated by Pratte, J. in the Federal Court of Appeal:

> "...the right to equality before the law could be defined as the right of an individual to be

> treated as well by the legislation as others who, if only relevant facts were taken into consideration, would be judged to be in the same situation."

Ritchie, J. continued:

> "Mr. Justice Pratte concluded that where difference in treatment of individuals is based on a relevant distinction, the right to equality before the law would not be offended."

Beetz, J. (McIntyre, J. conc.), in dissent in The Queen v. Beauregard [1986] 2 S.C.R. 56, 106-107, emphasized the importance of this test in the Bill of Rights equality cases.

9. DIVIDING LINE BETWEEN LEGISLATURES AND THE COURTS

It is submitted that the courts should be careful to leave scope for the legislatures and Parliament to decide what social objectives are necessary and desirable. This, of course, does not mean that the courts should shrink from stepping in where motives offensive to the provisions of the Charter are concerned. Apart from that however, it is submitted that it is far more difficult for the courts to determine what legislative policies are "desirable" and what

ones are not. As was pointed out by Taylor, J. in Harrison v. University of British Columbia [1986] 6 W.W.R. 7 at 12, (1986) 30 D.L.R. (4th) 206 at 210:

> "The present case may serve, perhaps, to emphasize that the courts lack both the exposure to public opinion required in order to discharge the essentially 'political' task of weighing social or economic interests and deciding between them, and also the ability to gather the information they would need for that task. "

This observation can equally be applied to the means chosen to achieve the purpose of the legislation. In this context, it is submitted that the approach of Strayer, J. in Smith, Kline & French Laboratories v. the Attorney General of Canada (1986) 24 D.L.R. (4th) 321, [1986] 1 F.C. 274, is apposite:

> "The question then remains as to whether the means are rationally related to the achievement of that objective.
>
> In deciding this issue it is necessary first to make two observations. Since s.1 of the Charter is not in issue here, the presumption of validity of the legislation still applies, which means that the onus is on the plaintiffs to demonstrate that the means are not appropriate. Further in judging that question, it is not for the courts to weigh the evidence finely to ascertain if the means chosen are perfect or even the best available. The choice among various possible means is and should remain a political choice: all the

court should do is to see whether the means chosen are patently unsuited or inappropriate for the purpose, and if not then the choice of the Legislature should be respected."

In Quebec Association of Protestant School Boards v. Attorney General of Quebec (No. 2) (1982) 140 D.L.R. (3d) 33 (Quebec S.C.) [aff'd [1983] C.A. 77; aff'd [1984] 2 S.C.R. 66] Deschenes C.J.S.C. at p. 77 said:

"The courts must not yield to the temptation of too readily substituting their opinion for that of legislature."

In Regina v. Saxell (1980) 59 C.C.C. (2d) 176 (Ont. C.A.) Weatherstone, J.A. at page 187 said in respect of the Canadian Bill of Rights:

"It may well be that in individual cases that underlying assumption is not valid, but that does not mean that the legislative scheme, in itself, offends the right of equality before the law or authorizes or effects arbitrary detention or imprisonment. Parliament must necessarily paint with a broad brush."

(Emphasis added)

In Re Federal Republic of Germany and Rauca (1982) 141 D.L.R. (3d) 412 (Ont. H.C.), [aff'd (1983) 145 D.L.R. (3d) 638 (C.A.)] Evans, C.J.H.C. formulated a test of

rationality which he applied to Section 1, but which, it is submitted, may equally be applied to Section 15. He said at page 423:

> "The question is not whether the judge agrees with the limitation but whether he considers that there is a rational basis for it - a basis that would be regarded as being within the bounds of reason by fair minded people accustomed to the norms of a free and democratic society. That is the crucible in which the concept of reasonableness must be tested."

The American general rule as to latitude is set out in Plyler v. Doe 72 L. Ed. 2d 786, (1982) Brennan J. at 798:

> "A legislature must have substantial latitude to establish classifications that roughly approximate the nature of the problem perceived, that accommodate competing concerns both public and private, and that account for limitations on the practical ability of the State to remedy every ill. In applying the Equal Protection Clause to most forms of state action, we thus seek only the assurance that the classification at issue bears some fair relationship to a legitimate public purpose."

10. RELATIONSHIP TO SECTION 1

From the case law to date it appears that the concepts of reasonableness and justification are involved in the question of whether there has been a breach of s.15(1).

Similar questions are also fundamental to s.1. How do these sections fit together?

This was addressed by Esson, J.A. for the majority in Rebic v. Collver, supra, at W.W.R. 420-22. He held that although s.1 and s.15(1) must be kept analytically distinct (citing R. v. Oakes [1986] 1 S.C.R. 103) it did not follow that in analyzing the meaning of the words in s.15(1) no regard may be had to the kind of considerations required by s.1. These he said included reasonableness and rationality.

The question was also addressed in the case under appeal. McLachlin, J.A. noted (supra W.W.R. at 253) that there is a "limited" (although "essential") role left for s.1 because of the concepts of fairness and reasonableness embodied in s.15(1). She cited, as a possible example of where s.1 may come into play, the internment of enemy aliens in times of war. This might be discriminatory under s.15(1) but perhaps justifiable in the circumstances under s.1.

Andrews was cited on this point (in the context of the relationship between s.1 and s.2(b)) in Re Cromer and

B.C. Teachers Federation (1986) 29 D.L.R. (4th) 641 (B.C.C.A.) Lambert, J.A. for the court at 653-4.

The Appellant takes no issue with the approach on this subject taken in the court below and in Rebic v. Collver and Re Cromer and B.C. Teachers Federation, supra.

It should be noted that the Federal Court of Appeal in Smith, Kline & French Laboratories v. The Attorney General of Canada, supra, at pp. 10-11 disagreed with the above approach.

11. THE JUDGMENT OF THE BRITISH COLUMBIA SUPREME COURT

Taylor J. held that there was nothing irrational in the view which has been taken by the legislature that only Canadian citizens ought to exercise the powers of lawyers and be entrusted with their responsibilities. He found that it was rational and reasonable that such a requirement should extend to all whose work is central to the operation of our legal system, lawyers, jurors and judges alike. He found that citizenship is a personal characteristic which is relevant to the practice of law because of the special commitment to the community which citizenship involves. He

also held that the citizenship requirement, with its three years' waiting period, is not out of proportion to the relevance which citizenship has in this context.

12. THE JUDGMENT OF THE BRITISH COLUMBIA COURT OF APPEAL

McLachlin, J.A. endeavoured to summarize the arguments of the Law Society and the Attorney General as follows:

> "The respondents submit that the requirement of citizenship achieves the following goals:
>
> 1. Citizenship ensures a familiarity with Canadian institutions and customs;
>
> 2. Citizenship implies a commitment to Canadian society;
>
> 3. Lawyers play a fundamental role in the Canadian system of democratic government and as such should be citizens."
>
> (1986) 2 B.C.L.R. (2d) 305 at 318.

The learned judge then proceeded to apply a "close scrutiny" standard to the examination of each of the above three points. She found that citizenship offered "no assurance" of familiarity with Canadian institutions and customs. She also held that citizenship "does not ensure" a

commitment to Canadian society. As for the contention that lawyers play a fundamental role in the Canadian system of democratic government, she held that the practice of law does not involve the performing of a state or government function. In support she cited a passage from the majority judgment of Powell, J. in Re Griffiths, 413 U.S. 717, 93 S.Ct. 2851, 37 L.Ed. 2d 910 at 919 where he held that lawyers are not officials of government by virtue of being lawyers. In summary, she held that none of the reasons put forth by the respondents offered "a convincing justification" for the requirement of citizenship.

The Court of Appeal also rejected an argument made by the Attorney General of British Columbia that the citizenship requirement was a defining of the province's political community.

13. ERRORS IN THE JUDGMENT OF THE COURT OF APPEAL

It is submitted that the Court of Appeal applied the wrong standard of scrutiny to the points raised by the Law Society. The Court in substance applied the close or strict scrutiny test used in the United States for cases of racial and similar discrimination. (See Section 14 of this

Factum). On the first of the three above listed goals, the Court said that "citizenship offers no assurance" that a person will be conscious of the fundamental traditions and rights in our society. This is quite different from asking whether citizenship helps achieve this end. It is submitted that it does. To obtain citizenship the applicant must demonstrate to a citizenship judge an adequate knowledge of Canada and the responsibilities and privileges of being a citizen. He must also have lived in Canada for three years.

Citizenship Act, S.C. 1974-75-765, c. 108

Citizenship Regulations, C.R.C. 1978 c. 400, ss. 14-15

On the second goal the Court opined that citizenship "does not ensure" a commitment to Canadian society. Of course, it cannot ensure such a commitment. However, there can be no doubt that it helps. That it may not do so in any exceptional case does not take away from the general proposition that a country may expect more loyalty and commitment from those who are its citizens whether by birth right or because they have made the effort and the commitment of becoming citizens.

The third rationale put to the Court of Appeal for lawyers being citizens was that they play a fundamental role in our governance under the rule of law. The Court of Appeal appeared to accept this proposition in part and rejected it in part. The Court accepted that it was reasonable to require persons who are involved in the processes or structures of government, broadly defined, to be citizens. McLachlin, J.A. said at page 319 (supra):

> "The first premises in the respondents' submission is sound. The requirement that only citizens be allowed to participate in the structures or processes of government is common in free and democratic societies. Aristotle defined a citizen as "a man to shares in the administration of justice and in the holding of office": Politics (Transl., Barker, Bood 3,c. 1, pp. 107-109).
>
> It is this rationale which underlies the common requirement that legislators, voters, judges, police and senior civil servants be citizens. See, for example, Provincial Court Act, R.S.B.C. 1979, c.341, s.5; Police Act, R.S.B.C. 1979, c.331, s.12(5), as amended by the Charter of Rights Amendments Act, S.B.C. 1985, c.68, s.105; Constitution Act, R.S.B.C. 1979, c.62, s.30; Election Act, R.S.B.C. 1979, c.103, s.2(1)(b), as amended by the Election Amendment Act, S.B.C. 1985, c.5, s.2; Public Service Act, R.S.B.C. 1979, c.343, s.34."

What the Court disagreed with was the proposition that lawyers are involved with the processes of government,

broadly defined. McLachlin, J.A., with respect, took a narrow view of government, and distinguished the practice of law as a private profession which does not perform a state or government function. She said that the only privilege lawyers are given is the right to charge fees for representing clients. She further said that the power to issue writs, discover documents and subpoena witnesses is shared by every member of our society. It is submitted that these findings were erroneous.

With deference, it is submitted that the legal profession is absolutely essential to our governance under the rule of law. Lawyers advise clients on a day to day basis on how to conduct their affairs in accordance with law. Lawyers transfer land, draw contracts, draw and probate wills, advise on disputes and settle them. They conduct court proceedings on behalf of their clients. They subpoena witnesses to court and require them to give testimony. They require the discovery of the intimate affairs of members of our society. They have responsibilities as officers of the court to see that cases are presented properly and in accordance with the rules of the court and the canons of legal ethics. They are entitled

to audience in court to present cases for any client. This includes taking on cases for and against all levels of government. The cases involve all causes, some of which are fundamental to our Canadian society. Without lawyers our system of law and justice as it has developed over the centuries would no longer properly function. The legal profession is fundamental to how we govern ourselves, and in this sense lawyers are as much a part of the governmental process as legislators, voters, judges, jurors, police and senior civil servants. In this regard, see:

> Legal Ethics, Orkin, pp.17-18;
>
> More Than A Mere Citizen (1980) 14 L.S.U.C. Gazette, 284 (Meechan)
>
> Canons of Legal Ethics, Law Socity of B.C.
>
> Code of Professional Conduct, pp.48-50, C.B.A.
>
> Schware v. Board of Bar Examiners 1 L.Ed. 2d 796, 806 (1957) (Frankfurter, J. conc.)

It is submitted that the Court of Appeal erred in its finding that only two provinces have Canadian citizenship requirements for its lawyers. The fact is that all of the provinces have some form of citizenship requirement. In five of the provinces, namely, British Columbia, Newfoundland, Alberta, Quebec and Prince Edward Island, the requirement is that a person must be a Canadian citizen to

be a lawyer. In the provinces of Manitoba and New Brunswick the applicant must file a declaration of intention to become a Canadian citizen. In Ontario, Nova Scotia and Saskatchewan one must be either a Canadian citizen or a British subject.

Law Society Act S.N. 1977 c.77 s.39

Charter Omnibus Act S.A. 1985 c.15, s.20(1); see also R.S.A. 1980 c.L.-9

Loi Sur le Barreau de Quebec R.S.Q. 1977 c.L-9 sections 43 and 50

Law Society and Legal Profession Act S.P.E.I. 1977 c.23, sections 1 and 2

Law Society Act R.S.O. 1980 c.233, s.26

Barristers and Solicitors Act R.S.N.S. 1967 c.18, s.3

Legal Profession Act R.S.S. 1978 c. L-10, s.5(3)

Law Society Act R.S.M. 1979 c.6-100, s.36 as amended in S.M. 1978 c.32

Barristers Society Act S.N.B. 1973 c.80, s.9 as amended by S.N.B. 1975 c.67, s.2

It is submitted that the Court of Appeal was incorrect in its assertion that "In the Tradition of the British Commonwealth, citizenship has never been a requirement for the right to practice law". See 2 Hals

(1st) 363; 26 Hals. (1st) 710;Cordery on Solicitors (6th) 13-14; 3 Hals. (3d) 6-7.

14. AMERICAN CASE LAW

As was noted above the Court of Appeal cited with approval the majority judgment of the Supreme Court of the United States in Re Griffiths, supra. In that case, by a 7 to 2 majority, it was held that a citizenship requirement to be a lawyer in the State of Connecticut contravened the equality requirement in the Fourteenth Amendment of the United States Constitution. Powerful dissents were delivered by Chief Justice Burger and Mr. Justice Rehnquist, as he then was.

To understand Griffiths it must be appreciated that the American approach of applying different levels of scrutiny to legislation impugned under the Fourteenth Amendment played a significant role. Powell, J. for the majority said at page 915 (L.Ed.) that he was dealing with a "suspect classification" which required a heavy burden of justification by the State endeavouring to uphold the law. At page 916 he held that the State had not discharged that burden. The reason for citizenship being treated as a suspect class

can be traced to earlier decisions of the U.S. Supreme Court in which citizenship-based classifications were struct on the ground that they really masked racial discrimination. See Tribe, American Constitutional Law (1978), 1052-56, esp. text acc. nn. 6-13, 23-33.

Chief Justice Burger eschewed the "suspect classification" as being a "code phrase" which "tends to stop analysis while appearing to suggest an analytical process". (page 920).

Moreover, Chief Justice Burger looked upon the role of the lawyer not simply as someone in a private profession. He described lawyers in terms which, it is submitted, are equally applicable to lawyers in Canada, and in particular, to British Columbia. He said at L.Ed. pp.90-91:

> "I am unwilling to accept what seems to me a denigration of the posture and role of a lawyer as an 'officer of the court'. It is that role that a State is entitled to rely on as a basis for excluding aliens from the practice of law. By virtue of his admission a lawyer is granted what can fairly be called a monopoly of sorts; he is granted a license to appear and try cases; he can cause witnesses to drop their private affairs and be called for depositions and other pretrial processes that, while subject to the ultimate control of the court, are conducted by lawyers outside courtrooms; the enormous power of cross-

> examination of witnesses is granted exclusively to lawyers. Inherent in these large powers is the ability to compel answers subject, of course, to such limiting restraints as the Fifth Amendment and rules of evidence. In most States a lawyer is authorized to issue subpoenas commanding the presence of persons and even the production of documents under certain circumstances. The broad monopoly granted to lawyers is the authority to practice a profession and by virtue of that to do things other citizens may not lawfully do. In the common law tradition the lawyer becomes the attorney - the agent - for a client only by virtue of his having been first invested with power by the State, usually by a court. The lawyer's obligations as an officer of the court permit the court to call on the lawyer to perform duties which no court could order citizens generally to do, including the obligation to observe codes of ethical conduct not binding on the public generally.
>
> The concept of a lawyer as an officer of the court and hence part of the official mechanism of justice in the sense of other court officers, including the judge, albeit with different duties, is not unique in our system but it is a significant feature of the lawyer's role in the common law."

Burger, C.J. further said at page 921:

> "The role of a lawyer as an officer of the court predates the Constitution; it was carried over from the English system and became firmly embedded in our tradition. It included the obligation of first duty to client. But that duty never was and is not today an absolute or unqualified duty. It is a first loyalty to serve the client's interest but always within - never outside - the law, thus placing a heavy personal and individual responsibility on the lawyer. That this is

> often unenforceable, that departures from it remain undetected, and that judges and bar associations have been singularly tolerant of misdeeds of their brethren, renders it no less important to a profession that is increasingly crucial to our way of life. The very independence of the lawyer from the government on the one hand and client on the other is what makes law a profession, something apart from trades and vocations in which obligations of duty and conscience play a lesser part. It is as crucial to our system of justice as the independence of judges themselves."

The authority of the majority judgment in Griffiths has been undermined in subsequent cases. In Foley v. Connelie 55 L.Ed. 2d (1978) the court by a 6 to 3 margin upheld a New York citizenship requirement for its police force. Stevens, J. (Brennan, J. concurring) in a dissenting judgment said that the decision of the majority could not be reconciled with Griffiths. Stewart, J. in a judgment concurring with the majority said that the decision was not easy to reconcile with earlier decisions but he was concurring "... because I have become increasingly doubtful about the validity of those decisions (in some of which I concurred)." See page 295; note that he concurred with the majority in Griffiths.

In Ambach v. Norwick 60 L.Ed. 2d 49 (1979) the court by a 5 to 4 margin upheld the requirement of citizenship (actual or intended) for school teachers. Blackmun, J. in dissent (joined by Brennan, Marshall and Stevens, J.J.) said at page 64 that it was logically impossible to differentiate between this case and Griffiths.

In Cabell v. Chavez-Salido 77 L.Ed. 2d 677 (1982) the Supreme Court upheld a California requirement of citizenship for peace officers. The majority drew an analogy with an earlier decision which upheld a requirement that jurors be citizens: Perkins v. Smith 370 F.Supp. (Md. 1974), summarily affirmed 49 L.Ed. 2d 368 (1976).

In State ex rel Mansfield v. State Board of Law Examiners 601 P. 2d 174 (1979) the Supreme Court of Wyoming struck down a citizenship requirement to be a lawyer. However, the reasons are illuminating. Raper, C.J. felt bound to follow Griffiths though he left no doubt that he disagreed with it. Rooney, J., who concurred on other grounds, held that Griffiths was superseded by Foley and Ambach.

As for the American problem of different levels of review, namely "rationally related to a legitimate State interest", "somewhat heightened review", and "strict scrutiny", great doubt has been raised about the utility of these standards. See City of Cleburne, Texas v. Cleburne Living Center 87 L.Ed. 2d 313 (1985). See particularly the concurring opinion of Stevens, J. with whom Chief Justice Burger joined at pages 327 to 329. In this case, the majority of the court applied the "rational basis" standard of review on the ground that the ordinance relating to group homes for the mentally retarded was economic and social legislation.

This level of scrutiny, which was not applied by the majority in Griffiths, is well described by Brennan, J. in Plyler v. Doe 72 L.Ed. 2d 786 at 798 as follows:

> "A legislature must have substantial latitude to establish classifications that roughly approximately the nature of the problem perceived, that accommodate competing concerns both public and private, and that account for limitations on the practical ability of the State to remedy every ill. In applying the Equal Protection Clause to most forms of state action, we thus seek only the assurance that the classification at issue bears some fair relationship to a legitimate public purpose."

A further reason to treat the Griffiths case with caution is the significant difference in the history of the United States compared to Canada and in particular British Columbia. For over one hundred years of its initial existence there was no alienage restriction on the practice of law in any of the United States. In contrast, British Columbia has had, right from the start, an alienage restriction on the practice of law. See the Court Order made by Begbie, J. on December 24, 1958, found in Laws of British Columbia, 1871, No. 27. This was a requirement of being a British subject. It next appears in the Legal Professions Act, 1863. This is found in the Laws of British Columbia, 1871, No. 47. This requirement remained in the statutes of British Columbia until 1971 when it was changed to being a Canadian citizen (S.B.C. 1971, c.31).

15. CONCLUSION ON SECTION 15

It is submitted that Taylor, J. was correct in the following findings:

> "It cannot in my view be said that there is anything irrational in the view which has been taken by the legislature that only Canadian citizens ought to exercise such powers in this province and be entrusted with such responsibilities."
>
> (D.L.R. pp. 20-21)

> "I think it understandable in Canada, which is both a country based, as the preamble to our Charter emphasizes, on the rule of law and a federal state in which the courts must review the work of the elected legislators, that there should be a desire that those engaged in the legal process be themselves citizens. I think it rational and reasonable that such a requirement should extend to all whose work is central to the operation of the system: lawyers, jurors and judges alike."
> (D.L.R. p. 21)
>
> "I find citizenship to be a personal characteristic which is relevant to the practice of law on account of the special commitment to the community which citizenship involves and not merely because the practical familiarity with the country necessary for that occupation can generally be expected in the case of citizens." (D.L.R. p. 21)

Whether one considers this case on the issue of equality or the issue of discrimination, it is submitted the result is the same. Relative to the purpose of entrusting our governance under the rule of law to Canadian citizens only, it is submitted that Canadian citizens and non-citizens (including permanent residents) are not similarly situated. If this is so, it follows that there is no inequality as contemplated by Section 15. As for the issue of discrimination, the distinction is not arbitrary or capricious, but rather is reasonably and fairly related to the purpose of the citizenship requirements. Thus there has been no discrimination.

As for proportionality, this issue did not arise in the Court of Appeal's decision. Taylor, J. held that the citizenship requirement was not out of proportion to the relevance of citizenship in the context of the practise of law. (See pages 19 and 20 of his Reasons). It is submitted that the decision of Taylor, J. on this issue was correct. This is not a case involving an immutable characteristic such as race. Canadian citizenship can be acquired in a relatively short time if the person is prepared to make the commitment to this country.

It may be helpful to be reminded here of the need of a reasonable dividing line between the legislatures and the courts, and to consider again the formula suggested by Evans, C.J.H.C. in Re Federal Republic of Germany and Rauca (1982) 141 D.L.R. (3d) 412 (Ont. H.C.), affirmed (1983,) 145 D.L.R. (3d) 638 (C.A.) at page 423:

> "The question is not whether the judge agrees with the limitation but whether he considers that there is a rational basis for it - a basis that would be regarded as being within the bounds of reason by fair minded people accustomed to the norms of a free and democratic society. That is the crucible in which the concept of reasonableness must be tested."

16. SECTION 1

Should this court disagree with the above submission that elements of reasonableness and fairness are embodied in Section 15(1) of the Charter, Section 1 will then come into play. For the reasons offered in the preceding sections of this Factum it is submitted that the citizenship requirement to be a lawyer in British Columbia is both reasonable and justifiable in the sense of those concepts as used in Section 1. As was pointed out earlier, all of the provinces of Canada have some form of citizenship requirement. Also, see appendices 1 and 2 to this Factum for laws of Canada and of British Columbia which involve citizenship requirements on subjects other than the law profession.

PART IV

NATURE OF ORDER SOUGHT

That the appeal be allowed and the Order of the British Columbia Court of Appeal set aside and the Petition of the Petitioner dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Duncan W. Shaw, Q.C.

Rhys Davies

Counsel for the Appellant
The Law Society of British Columbia

April 16, 1987
Vancouver, B.C.

LIST OF AUTHORITIES

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Belgian Linguistic case (1968) 1 E.H.R.R. 252 at 284 13

Re: Aluminum Co. and The Queen (1986) 55 O.R. (2d) 522 (Ont. D.C.) 14

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Smith, Kline & French Laboratories Limited v. Attorney General of Canada (F.C.A.) unreported, December 9, 1986, No. A-909-85 14

Wilson v. Medical Services Commission of British Columbia (1987) 9 B.C.L.R. (2d) 350 (S.C.) 15

R. v. Oakes [1986] 1 S.C.R. 103 15

MacKay v. The Queen [1980] 2 S.C.R. 370 16

Regina v. Killen (1986) 24 C.C.C. (3d) 40; (1986) 25 D.L.R. (4th) 192 (N.S.S.C., App. Div.) 17

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Bliss v. A.G. Can. [1979] 1 S.C.R. 183 19

The Queen v. Beauregard [1986] 2 S.C.R. 56 20

Harrison v. University of British Columbia [1986] 6 W.W.R. 7; 30 D.L.R. (4th) 206 (B.C.S.C.) 21

LIST OF STATUTES

APPENDIX 1

SCHEDULE ONE

Federal Statutes that refer to Canadian Citizenship

1. Access to Information Act, S.C., 1980-81-82-83, c.111, s.4
2. Access to Information Act, S.C., 1980-81-82-83, c.111, s.12
3. Air Canada Act, 1977, S.C., 1977-78, c.5, s.7
4. Athletic Contests and Events Pools Act, S.C., 1980-81-82-83, c.161, s.4
5. Athletic Contests and Events Pools Act, S.C., 1980-81-82-83, c.161, s.11
6. Bank of Canada Act, s.6
7. Bank of Canada Act, s.10
8. Quebec Savings Banks Act, s.15
9. Broadcasting Act, s.35
10. Canada Deposit Insurance Corporation Act, s.6
11. Canada Development Corporation Act, S.C., 1970-71-72, c.49, s.12
12. Canada Development Corporation Act, S.C., 1970-71-72, c.49, s.16
13. Canada Development Corporation Act, S.C., 1970-71-72, c.49, s.20
14. Canada Development Corporation Act, S.C., 1970-71-72, c.49, s.34
15. Canada-Nova Scotia Oil and Gas Agreement Act, S.C., 1984, c.29, s.34
16. Canadian Aviation Safety Board Act, S.C., 1980-81-82-83, c.165, s.6
17. Canadian National Railways Act, s.6
18. Canadian Radio-television and Telecommunication Commission Act, S.C., 1974-75-76, c.49, s.5
19. Canadian Security Intelligence Service Act, S.C., 1984, c.21, s.16

APPENDIX 2

SCHEDULE TWO

British Columbia Acts that refer to Canadian Citizenship

1. Barristers and Solicitors Act, R.S.B.C. 1979, c.26
2. Dentists Act, R.S.B.C. 1979, c.92
3. Election Act, R.S.B.C. 1979, c.103
4. Estate Administration Act, R.S.B.C. 1979, c.114
5. Fisheries Act, R.S.B.C. 1979, c.137
* 6. Forest Act, R.S.B.C. 1979, c.140
* 7. Foresters Act, R.S.B.C. 1979, c.141
* 8. Home Purchase Assistance Act, R.S.B.C. 1979, c.172
9. Jury Act, R.S.B.C. 1979, c.210
* 10. Land Act, R.S.B.C. 1979, c. 214
11. Land Tax Deferment Act, R.S.B.C. 1979, c. 218
* 12. Notaries Act, R.S.B.C. 1979, c.299.1
13. Police Act, R.S.B.C. 1979, c. 331
14. Resources Investment Corporation Act, R.S.B.C. 1979, c.366
* 15. Scholarship Act, R.S.B.C. 1979, c.374
16. School Support (Independent) Act, R.S.B.C. 1979, c.378
17. University Act, R.S.B.C. 1979, c. 419
18. Municipal Act, R.S.B.C. 1979, c.290
19. Property Land Act, R.S.B.C. 1979, c.340
20. Wildlife Act, R.S.B.C. 1979, c.433.1
21. Public Service Act, R.S.B.C. 1979, c.343
22. Land Title Act, R.S.B.C. 1979, c.219
23. Mineral Act, R.S.B.C. 1979, c.259

Acts marked * are changed by the Charter of Rights Amendments Act S.B.C. 1985 c. 68 so that a citizenship requirement is replaced by a requirement of citizenship or permanent resident status. Now only public service employees (preferentially), voters, jurors, lawyers and directors of BCRIC are required to be citizens.

20. Canagrex Act, S.C., 1980-81-82-83, c.152, s.4
21. Canagrex Act, S.C., 1980-81-82-83, c.152, s.11
22. Canada Mortgage and Housing Corporation Act, s.9
23. Citizenship Act, S.C., 1974-75-76, c.108, s.34
24. Copyright Act, s.16
25. Copyright Act, s.28
26. Criminal Code, s.6
27. Criminal Code, s.46
28. Criminal Code, s.254
29. Criminal Code, s.433
30. Canada Elections Act, R.S.C., c.14 (1st Supp.) s.16
31. Family Allowances Act, 1973, S.C., 1973-74, c.44, s.3
32. Farm Credit Act, s.16
33. Federal Business Development Bank Act, S.C., 1974-75-76, c.14, s.9
34. Foreign Extraterritorial Measures Act, S.C., 1984, c.49, s.9
35. Canadian Human Rights Act, S.C., 1976-77, c.33, s.32
36. Immigration Act, 1976, S.C., 1976-77, c.52, s.27
37. Immigration Act, 1976, S.C., 1976-77, c.52, s.33
38. Immigration Act, 1976, S.C., 1976-77, c.52, s.44
39. Immigration Act, 1976, S.C., 1976-77, c.52, s.79
40. Immigration Act, 1976, S.C., 1976-77, c.52, s.97
41. Canadian and British Insurance Companies Act, s.17
42. Labour Adjustment Benefits Act, S.C. 1980-81-82-83, c.89, s.13
43. Canada Labour Code, s.111
44. National Energy Board Act, s.3

45. Ocean Dumping Control Act, S.C., 1974-75, c.55, s.19

46. Official Secrets Act, s.13

47. Old Age Security Act, s.3

48. Old Age Security Act, s.17.1

49. Privileges and Immunities, s.2

50. Privileges and Immunities, s.3

51. Public Service Staff Relations Act, s.13

52. Royal Canadian Mint Act, s.10

53. Canada Shipping Act, s.113

54. Canada Shipping Act, s.120

55. Canada Student Loans Act, s.2

56. Telesat Canada Act, s.13

57. Transfer of Offenders Act, S.C., 1977-78, c.9, s.2

58. Veterans Benefit Act, s.9

59. Visiting Forces Act, s.22

60. Western Grain Stabilization Act, S.C., 1974-75-76, c.87, s.7

61. Canada Business Corporations Act, S.C., 1974-75-76, c.33, s.2

62. North Pacific Fisheries Convention Act, s.6

63. Immigration Act, 1976, S.C., 1976-77, c.52, s.39

64. Immigration Act, 1976, S.C., 1976-77, c.52, s.115

65. Canadian and British Insurance Companies Act, s.6

66. Pilotage Act, S.C., 1970-71-72, c.52, s.15

67. Canada Oil and Gas Act, S.C., 1980-81-82-83, c.81, s.19

68. Citizenship Act, S.C., 1974-75-76, c.108, s.2

69. Citizenship Act, S.C., 1974-75-76, c.108, s.31

70. Civilian War Pensions and Allowances Act, s.13

71. Coastal Fisheries Protection Act, s.2

72. Canada Elections Act, R.S.C., c.14 (1st Supp.) s.14

73. Immigration Act, 1976, S.C., 1976-77, c.52, s.4

74. Public Service Employment Act

75. Marine and Aviation War Risks Act, s.2

76. Canada Elections Act, R.S.C., c.14 (1st Supp.)

77. Foreign Extraterritorial Measures Act, S.C., 1984, c.49, s.3

78. Immigration Act, 1976, S.C., 1976-77, c.52, s.43

79. Citizenship Act, S.C., 1974-75-76, c.108, s.5

80. Civilian War Pensions and Allowances Act, s.75

81. Immigration Act, 1976, S.C., 1976-77, c.52, s.2

82. Income Tax Act, R.S.C., 1952, c.148, s.149

83. Citizenship Act, S.C., 1974-75-76, c.108, s.33

84. Civilian War Pensions and Allowances Act, s.75

85. Canada Elections Act, R.S.C., c.14 (1st Supp.)

86. Income Tax Act, R.S.C., 1952, c.148, s.19

87. Canada Corporations Act

88. Foreign Investment Review Act, S.C., 1973-74, c.46, s.3

89. Canadian Institute for International Peace and Security Act, S.C., 1984, c.37