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 COWPER-SMITH, PETER D. QUINN, carrying on the practice of law under the firm name of BLACK & COMPANY,

Respondents

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PART I

A. Events Relating to Passage of Rules 154 and 75B

1. McCarthy & McCarthy's March 1981 Proposal

1. The Respondents, partners of the law firm Black & Company at the time this action was commenced, are all qualified active members of The Law Society of Alberta ("Law Society"). Some of the partners reside in Calgary; some in Toronto.

2. In early March 1981 the law firm McCarthy & McCarthy advised the Law Society of its intention to open a Calgary office about July 1 that year. 4 Case on Appeal ("C.A.") 514 & 507. It would operate under the firm name McCarthy & McCarthy and be comprised solely of lawyers qualified to practice in Alberta. 4 C.A. 510. The Law Society was told that any further information it required would be provided. 4 C.A. 507 & 514. Approval of the proposal was not sought.

2. Law Society Response to the March 1981 Proposal

3. The Deputy Secretary of the Law Society informed Mr. Black that the proposal would be referred to the Ethics Committee at its meeting on March 16, 1981. 4 C.A. 515.

4. Committees of the Benchers and the Benchers discussed the matter at several meetings. 4 C.A. 521, 666, 676 & 678.

5. On April 9, 1981, without notice to Mr. Black or McCarthy & McCarthy, the Benchers discussed the McCarthy & McCarthy proposal and passed the following motion:

> MOTION: That the Motion be amended and that a Committee be requested to consider the principle that members practising and resident as lawyers in Alberta should not be permitted to be in partnership or associated by employment other than on an isolated basis with lawyers or other persons who are not members of The Law Society of Alberta and that the Committee be requested to bring in a formal rule embodying this principle for consideration at the next Convocation in Jasper.

4 C.A. 678.

6. The amended motion was adopted after the observation had been made that it was the sense of the resolution that the committee would look at the principle and bring in recommendations "as to what power the Society had, and whether the Society should use it or not and under what rule it should be done." 4 C.A. 678.

7. A special committee, under the chairmanship of Mr. Landerkin, was created to consider the resolution which had been adopted. 4 C.A. 678.

8. No notice was given to Law Society members of the resolution by the Benchers or of the creation of the Landerkin Committee.

3. Mr. Black's April 1981 Plan

9. Having received no reply from the Law Society by late April 1981, Mr. Black wrote inquiring as to the acceptability of a partnership for the practice of law in Alberta being named "Black & Partners". 4 C.A. 524. This query was consistent with the determination by McCarthy & McCarthy that it not infringe the Rules of the Law Society. It was felt that there could be no objection to the formation of a firm which operated in Alberta under a name other than "McCarthy & McCarthy". The Ethics Committee referred Mr. Black's letter to the Benchers. 4 C.A. 525.

4. Consideration of the Landerkin Report

10. The Landerkin Committee presented to the Benchers, at the June 1981 Convocation in Jasper, a report entitled in part "The Law Society of Alberta vs. The Interlopers". 4 C.A. 695 & 697.

11. The Benchers discussed the report and adopted the following motion:

> That the Benchers approve in principle the rule that members practising and resident as lawyers in Alberta should not be permitted to practise law in partnership or -

associated by employment with lawyers or other persons who are not members of The Law Society of Alberta and that the matter be referred to the Legislation Committee for the drafting of a proper statement of the rule.

4 C.A. 695-96.

5. Introduction of Draft Rule 154 in October 1981

11. As directed, the Legislation Committee drafted a rule and submitted it to the Benchers at their meeting held toward the end of October 1981. 4 C.A. 704. It read:

ASSOCIATION AND PARTNERSHIP

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

4 C.A. 704. The most important difference between the draft rule and the resolution which had been passed by the Benchers is reflected in the words underlined.

12. Proposed Rule 154, as set out in the report, was defeated and deferred to the next meeting of the Benchers scheduled for January 1982. 4 C.A. 705-07.

6. Adoption of Rule 154 in 1982

13. In late January and early February 1982 the Benchers again considered draft Rule 154. The outcome of the meeting was the adoption of a rule which read:

[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 in Alberta with anyone who is not an active member ordinarily resident in Alberta.

4 C.A. 707-09. The most important differences between this rule and the one which had been prepared by the Legislation Committee are reflected in the words underlined. 3 C.A. 395:8-14.

14. There is nothing in any of the Benchers' minutes to indicate that they considered rules less sweeping than the absolute ban on partnerships between resident and nonresident members contained in Rule 154, and indeed it is acknowledged that they did not. 2 C.A. 331:12-13.

15. By a letter to all active members of the Law Society dated February 25, 1982 notice was given to the members, including the Respondents, of the passage of Rule 154. 4 C.A. 598. The members were informed that the rule was to come into effect on May 1, 1982. 4 C.A. 598. However, the Benchers subsequently delayed implementation until January 1, 1983. 4 C.A. 620 & 712.

7. Adoption of Rule 75B in November 1982

16. It was at the November 1982 meeting that Rule 75B was introduced. 2 C.A. 227:11-228:26 & 4 C.A. 714. Rule 75B states that "No person shall be a partner in or associated for the practice of law with more than one law firm." This rule was to be effective March 31, 1983. 4 C.A. 715. Rule 75B was introduced during, or immediately after, the consideration by the Benchers of an opinion from their counsel, Mr. McLennan, who was retained to advise them on Rule 154. 4 C.A. 712-13 & 2 C.A. 226:10-228:26. As the Appellant invoked privilege at trial the opinion given was not disclosed. It was also at this meeting that the Benchers waived the application of Rule 154 to members residing in Lloydminster. 4 C.A. 715.

B. Evidence Regarding National Law Firms

1. Federation of Law Societies Committee's Report

17. The Federation of Law Societies, a voluntary association of all Law

Societies in Canada, formed a committee in September 1981 to study the subject of national law firms. 1 C.A. 74:37-75:7.

18. The committee recommended in its reports that provincial law societies enact rules to permit, not obstruct, the formation of interprovincial law firms. 1 C.A. 80:43-48 & 6 C.A. 1089.

19. Mr. Fraser submitted a minority report. 6 C.A. 1099-1104.

2. National Accounting Firm Experience

20. Mr. Fraser suggested suggested in his report that the formation of national accounting firms had a devastating impact on local firms. Mr. Anderson, a former member of Price Waterhouse's national executive committee, gave evidence at the trial of this action that national accounting firms neither jeopardized the existence of nor the opportunities for local accounting firms. 1 C.A. 141-56. Before joining Price Waterhouse, Mr. Anderson had been a partner in a Calgary firm that amalgamated with Price Waterhouse to better serve its clients.

C. Justice Dea's Decision

21. This action was brought in December 1982, prior to Rules 154 and 75B coming into effect. The Respondents sought a declaration that the rules were ultra vires, invalid and of no force or effect. 1 C.A. 12-15.

22. Justice Dea held that as Rules 154 and 75B "infringe the right of the plaintiffs to pursue the gaining of a livelihood in the province of Alberta" they violate section 6(2)(b) of the Charter (3 C.A. 414:43) and while he did not agree that the rules contravened section 2(d) of the Charter, because the Law Society conceded the point, he "treat[ed] the Rules as an infringement of the plaintiffs' s. 2(d) freedom." 3 C.A. 416:16.

23. Section 6(3), in Justice Dea's opinion, saved Rule 75B, which he described as a law of general application which he concluded did not

"discriminate among persons primarily on the basis of province of present or previous residence." 3 C.A. 415: 14. But section 6(3) did not save Rule 154. "The Rules [sic] discriminate among persons on the basis of province of residence." 3 C.A. 415:27.

24. Justice Dea then turned to section 1 and held that Rules 154 and 75B were reasonable limits on the guaranteed Charter freedoms relied on by the Respondents. 3 C.A. 426:30-37 & 427:11-14. As a result, he dismissed the claim. 3 C.A. 427:25.

D. Court of Appeal of Alberta Decision

25. The Court of Appeal of Alberta allowed the Respondents' appeal. Justices Kerans and Stevenson filed reasons for judgment and Justice Liebermann concurred with Justice Stevenson. 3 C.A. 430-93 & 494-96. All agreed that Rules 154 and 75B violated section 2(d) of the Charter, that Rule 154 violated section 6(2) of the Charter, and that neither rule was saved by section 1. These judgments will be discussed further below.

PART II

26. The points in issue are those set out in the Notice of Constitutional Question dated July 3, 1986 (1 C.A. 23-24) and the following:

> Are Rules 154 and 75B unreasonable or an unreasonable restraint of trade and beyond the jurisdiction of The Law Society of Alberta?

Part III

A. Rules 154 and 75B Contravene Section 6(2) of the Charter

1. Canadian Citizens and Permanent Residents Are Free To Work in Any Province

27. This Court held in Law Society of Upper Canada v. Skapinker, [1984] 1

S.C.R. 357, 383 that Canadians are free to take up residence in any province of Canada and are free to work in any province of Canada without establishing a residence. See also Basile v. Nova Scotia, 11 D.L.R. 4th 219, 224 (N.S.S.C. App. Div. 1984) (regulation prohibiting nonresident from carrying on business as direct seller violates s. 6(2)(b) of Charter). In our case this means that Canadians or permanent residents of Canada who reside outside Alberta and meet the requirements for admission to The Law Society of Alberta have a constitutional right to practice law in Alberta.

28. Does a law which has the effect of impeding but not totally excluding a person's ability to gain a livelihood in a province contravene section 6(2)? Could the Law Society set the annual fees for nonresident members at $100,000 when the rate for resident members is $1000? See Watts, History of the Law Society, 29 Advocate 110, 114 (1971) (in 1943 B.C. Law Society imposed hefty fee on nonresidents over objection of minority who recognized adverse effect on Canadian unity).

29. The Court of Appeal of Alberta held that Rule 154 violates section 6(2)(b) (4 C.A. 521 & 3 C.A. 438:10-12 & 494:23-25) as did the trial judge. Justice Dea concluded that "it seems clear that the prohibitions in the Rules restrict the plaintiffs' ability to practice law in Alberta in one of the modes, i.e. partnerships, in which lawyers have traditionally practiced law in this country." 3 C.A. 414:39-42. The Court of Appeal did not invoke section 6(3) of the Charter because Rule 154 discriminates on the basis of province of residence. 3 C.A. 440:3-5.

30. Because Rule 154 severely impairs the mobility rights of Canadian lawyers, it is not necessary to decide if insignificant impediments to mobility rights contravene section 6(2) of the Charter. It is only necessary to determine if the Charter, which this Court has read broadly and generously, always mindful of the "language, structure, and history of the constitutional text, by constitutional tradition, and by the history, traditions, and underlying philosophies of our society" (Reference re Public Service Employee Relations Act, [1987] 1 S.C.R. 313, 394), allows the Law Society to pass rules which effectively serve as major roadblocks to deter law practice in Alberta by

members of partnerships, some of whose members reside outside of Alberta. See also Hunter v. Southam Inc., [1984] 2 S.C.R. 145, 156; The Queen v. Big M Drug Mart Ltd., [1985] 1 S.C.R. 295, 344, 346 & 349.

31. Canadian courts have not been reluctant to strike down laws which have had the effect of withdrawing from all Canadians the opportunity to take advantage of the rich resources Canada has wherever they may be. Justice Rand expressed this view in Winner v. S.M.T. (Eastern) Ltd., [1951] S.C.R. 887, 919 when he stated "that a province cannot by depriving a Canadian of the means of working, force him to leave it: it cannot divest him of his right or capacity to remain and engage in work there: that capacity inhering as a constituent element of his citizenship status is beyond nullification by provincial action." See also Bryden v. British Columbia, [1899] A.C. 580 (P.C.) (B.C.); Demaere v. Canada, 11 D.L.R. 4th 193, 195-96 (Fed. C.A. 1984); Basile v. Nova Scotia, 11 D.L.R. 4th 219, 224 (N.S.S.C. App. Div. 1984); Malartic Hygrade Gold Mines Ltd. v. Quebec, 142 D.L.R. 3d 512, 520 (Que. S.C. 1982); Mia v. Medical Services Commission of British Columbia, 17 D.L.R. 4th 385 (B.C.S.C. 1985); Wilson v. Medical Services Commission of British Columbia, 36 D.L.R. 4th 31, 51-52 (B.C.S.C. Chambers 1987); W. McConnell, Commentary on the British North America Act 359 (1977).

32. Others have spoken in like terms. Jean Chretien, in his capacity as Minister of Justice, wrote that "The Alberta investor must be able to put his money to work anywhere in Canada; the Quebec entrepreneur, to open branches in any provinces; the consultant from Ontario to bid for contracts in all regions; the businessman from the Atlantic, to sell his products to all governments in the country." Securing the Canadian Economic Union in the Constitution vii (1980).

33. These considerations compel the conclusion that Canadians, by virtue of section 6 of the Charter, have the right to pursue the gaining of a livelihood in any province free of any significant impediments attributable to their province of residence. If this were not so, interest groups intent on excluding or limiting competition from nonresidents could secure the passage of provincial legislation precluding Canadians who reside in other provinces from

providing certain services to the public, and so long as the outsiders were not deprived of all means of gaining a livelihood, not violate section 6.

2. Americans Are Free to Practice Their Occupation in Any State

34. The United States Constitution does not have a provision worded like section 6 of the Charter. However, the "privileges and immunities" clause (U.S. Const. art. IV, s.2 and art. XIV, s.1) has been interpreted to mean that Americans may "ply their trade, practice their occupation or pursue a common calling [in any state]." Hicklin v. Orbeck, 437 U.S. 518, 524 (1978). See also L. Tribe, American Constitutional Law 409 (1978); Laskin, Personal Mobility in the United States and the E.E.C. in Federalism and the Canadian Economic Union (Trebilcock, Prichard, Courchene & Whalley eds. 1983) [hereinafter cited as Laskin].

35. The United States Supreme Court has dealt in two recent cases with state laws denying bar membership to nonresidents. In Supreme Court of New Hampshire v. Piper, 470 U.S. 274, 299 (1985) the Court ruled that New Hampshire could not predicate membership on state residency. Such a practice was inconsistent with the privileges and immunities clause, a clause designed "to create an economic union." 470 U.S. at 280. In the second case, Frazier v. Heebe, 96 L. Ed. 2d 557 (1987), the Court struck down a rule of the Bar of the United States District Court for the Eastern District of Louisiana denying bar membership to those who do not live in or have an office in Louisiana. Justice Brennan, for the Court, did not address the constitutional questions presented. He instead relied on the Court's supervisory authority "to ensure that these local rules are consistent with 'the principles of right and justice'." 96 L. Ed. 2d at 565. It is important to note, however, that the Court characterized the rules as "unnecessary and irrational" and was unimpressed by the arguments that nonresidents could appear pro hac vice. 96 L. Ed. 2d at 565. See Annot., 53 A.L.R. 3d 1163 (1973) (validity of residency requirements).

3. European Economic Community Committed to Common Market in Provision of Legal Services

36. The European Economic Community is committed to the establishment of

a common market in the provision of services. Laskin at 476. A number of cases involving rights of members of the legal profession have been decided. Laskin at 487-88; Spedding, Freedom of Movement in the Legal Profession: European Perspectives, 11 Int'l Legal Persp. 54, 55-56 (1986). See generally, Bronkhorst, Lawyers' Freedom Under the New Directive, [1977] 2 Eur. L. Rev. 224; Wyatt & Dashwood, The Right of Establishment and the Freedom to Provide Services in The Substantive Law of the EEC 182 (1980); Edward, The Provision of Services by Lawyers, 22 J. L. Soc'y Scot. 188 (1977). However, one is of special interest. It is Ordre des Avocats au Barreau de Paris v. Klopp, [1985] 1 C.M.L.R. 99 (E.C.J. 1984). The European Court of Justice held that the Paris Bar Council could not deny membership to a German national who wished to establish offices in Paris and Dusseldorf contrary to a Paris rule which limited an advocate to one office.

4. Conclusion

37. In conclusion, Rules 154 and 75B are inconsistent with section 6(2) of the Charter. Rule 154 obviously places unconstitutional barriers in the way of those who wish to practice law in Alberta in a partnership consisting of resident and nonresident members of The Law Society of Alberta. Rule 75B also has the same effect, which is understandable, given the acknowledgment by a former President of the Law Society, that the considerations which prompted the passage of Rules 154 and 75B were "intermingled." 2 C.A. 318:37. See also 3 C.A. 484:32-33 (Rule 75B has little impact on resident members) & 4 C.A. 713-14 & 2 C.A. 226:10-228:26 (Rule 75B was passed immediately following consideration of opinion from counsel retained by the Law Society to advise on Rule 154).

B. Rules 154 and 75B Contravene Section 2(d) of the Charter

1. Established Freedom of Association Principles

38. Freedom of association was discussed in Reference re Public Service Employee Relations Act, [1987] 1 S.C.R. 313, Public Service Alliance of Canada v. Canada, [1987] 1 S.C.R. 424 and Saskatchewan v. Retail, Wholesale and

Department Store Union, [1987] 1 S.C.R. 460. The judgment of Justices Beetz, LeDain and LaForest in all three appeals was delivered by Justice LeDain. They held that there was no constitutional right to bargain collectively and to strike. [1987] 1 S.C.R. at 391; [1987] 1 S.C.R. at 453; [1987] 1 S.C.R. at 484. Chief Justice Dickson and Justice Wilson held that freedom of association protected the freedom to bargain collectively and to strike. [1987] 1 S.C.R. at 371; [1987] 1 S.C.R. at 438; [1987] 1 S.C.R. at 475; [1987] 1 S.C.R. at 455 per Wilson, J.; [1987] 1 S.C.R. at 485 per Wilson, J. Justice McIntyre concluded that freedom of association does not guarantee the right to strike. [1987] 1 S.C.R. at 409; [1987] 1 S.C.R. at 453; [1987] 1 S.C.R. at 484. Justice Wilson did not agree that section 1 saved the legislation challenged in the last two cases and wrote separate reasons to express her reasons for that opinion.

39. While the reasons for judgment are different in many respects, they display some common features. First, it would appear that Chief Justice Dickson's definition of freedom of association attracted unanimous support. He held that: "Freedom of association is the freedom to combine together for the pursuit of common purposes or the advancement of common causes." [1987] 1 S.C.R. at 334. The opinions of Justices McIntyre and LeDain are in accord with it. Both judgments describe activities protected by freedom of association and those are of the nature contemplated by Chief Justice Dickson's definition. Justice McIntyre states that "The freedom to mingle, live and work with others gives meaning and value to the lives of individuals and makes organized society possible." [1987] 1 S.C.R. at 393. Justice LeDain referred to "the freedom to work for the establishment of an association, to belong to an association, to maintain it and to participate in its lawful activity" as protected activities. [1987] 1 S.C.R. at 391.

40. Second, freedom of association is important because it allows individuals to pursue goals which are best attained if action is in concert. Chief Justice Dickson and Justice McIntyre expressly make this point. [1987] 1 S.C.R. at 334. See also [1987] 1 S.C.R. at 365 & 366. By implication Justice LeDain supports these views. [1987] 1 S.C.R. at 391.

41. Third, the enhancement of individual initiative promotes the welfare of the collective and, more particularly, inculcates democratic values. Justice McIntyre wrote that the "exercise of freedom of association serves more than the individual interest, advances more than the individual course; it promotes general social goals." [1987] 1 S.C.R. at 396. See also [1987] 1 S.C.R. at 395. In the same vein, Chief Justice Dickson described freedom of association as the "sine qua non of any free and democratic society." [1987] 1 S.C.R. at 334. Justice LeDain acknowledges the impact freedom of association has on democratic institutions by his statement that this freedom "has been suppressed in varying degrees from time to time by totalitarian regimes." [1984] 1 S.C.R. at 391.

42. Fourth, as would be expected, it is acknowledged that the purposive interpretive approach is appropriate for the freedom of association provision. Chief Justice Dickson and Justice McIntyre say so ([1987] 1 S.C.R. at 363 and 394) and while Justice LeDain did not, it is implicit in his approach. [1987] 1 S.C.R. at 390-91.

43. Beyond these four points no majority view was expressed about freedom of association other than that there is no constitutional right to strike. [1987] 1 S.C.R. at 391 per LeDain, Beetz & LaForest, JJ.; [1987] 1 S.C.R. at 409 per McIntyre, J.; contra [1987] 1 S.C.R. at 372 per Dickson, C.J. & Wilson, J.

44. It is, therefore, necessary to examine each of the three opinions to determine whether they support the proposition that members of the Law Society have the constitutional right to practice law in partnership with other members regardless of where they reside.

45. It should be noted that the freedom for which the partners of Black & Company seek recognition is very limited. As Justices Stevenson and Kerans acknowledged (3 C.A. 494:38 & 446:1-2), they simply seek a declaration that they have a constitutionally protected right to associate with other lawyers. Obviously, they have been deprived of this very basic benefit. Rules 154 and 75B deny them the freedom to practice law in partnership with other members of

the Law Society. (There are several labour law cases which have indicated that one must not overlook the value inherent in the simple right to associate with other workers in a trade union. See Collymore v. Attorney-General, [1970] A.C. 538, 547-48 (P.C. 1969) (Trin. & Tob.) (Industrial Stabilization Act did not effect right to join trade union); United Nurses of Alberta Local 147 v. Board of Governors of the Northern Alberta Institute of Technology 35 (Alta. P.S.E.R.B. April 11, 1985) (U.N.A. members wanted U.N.A. and not certified bargaining agent to represent them); Canadian Pacific Ltd. v. Canadian Telecommunication Union Division No. 1, 8 C.L.R.B.R. (NS) 378 (Can. 1984) (reorganization of bargaining unit resulting in change of bargaining agent not violation of freedom of association)).

46. Black & Company is not asking for an exemption from rules of general application to all members of the Law Society. They do not suggest that the form of organization they favor warrants special favourable treatment. But they do object to special hostile treatment because of the form of organization they have chosen. They recognize that national law firms, like other large law firms, must be sensitive to the problems created by size and the existence of more than one office. However, they oppose vigorously rules which deprive them of the very opportunity to come to grips with these challenges. They believe that the collective professional expertise their members have will allow them to fashion an organization which can make available to firm clients legal services of the very highest quality.

47. Chief Justice Dickson concluded that "s. 2(d) normally embraces the liberty to do collectively that which one is permitted to do as an individual." [1987] 1 S.C.R. at 366. He stated earlier that "What freedom of association seeks to protect is not associational activities qua particular activities, but the freedom of individuals to interact with, support, and be supported by their fellow humans in the varied activities in which they choose to engage." [1987] 1 S.C.R. at 366. He also acknowledged that "There will be ... occasions when no analogy involving individuals can be found for associational activity, or when a comparison between groups and individuals fails to capture the essence of a possible violation of associational rights." [1987] 1 S.C.R. at 367. In those instances "The overarching consideration remains whether a legislative

enactment or administrative action interferes with the freedom of persons to join and act with others in common pursuits. The legislative purpose which will render legislation invalid is the attempt to preclude associational conduct because of its concerted or associational nature." [1987] 1 S.C.R. at 367.

48. Justice McIntyre held that "Charter protection will attach to the exercise in association of such rights as have Charter protection when exercised by the individual ... and for the purposes of activities which are lawful when performed alone." [1987] 1 S.C.R. at 409.

49. Justice LeDain suggested that at the very least freedom of association includes "the freedom to work for the establishment of an association, to belong to an association, to maintain it and to participate in its lawful activity without penalty ... ." [1987] 1 S.C.R. at 391. See generally Norman, Freedom of Association 20-24 (October 1987) (paper given at Canadian Bar Association Charter Program held in Montreal on October 23 & 24, 1987).

2. Application of Established Principles to Practice of Law

50. The test adopted by Chief Justice Dickson and Justices McIntyre and Wilson obliges one to consider whether the Charter protects the activity in which the partners of Black & Company engage and, if the activity is not under the aegis of the Charter, whether what is done together would be lawful if done by the individual lawyers. As the right to practice law is not dealt with expressly by the Charter, one must ask whether the freedom Black & Company claims is one available to the partners individually. And the answer is yes. All members of the Law Society are free to practice law in Alberta, whether resident in Alberta or not. It follows that members of the Law Society are free to practice law in association with other members and are entitled to join a partnership, or more than one partnership. It also follows that section 2(d) affords members of the Law Society the right to practice law in association with others whether or not they are members of the Law Society. Whether an association will survive the section 1 review will depend on the nature of the

association and the nature of the limits under review.

51. Rules 154 and 75B are inconsistent with the Respondents' freedom to associate. The former restricts the Respondents' choice with respect to prospective partners and the latter limits the number of partnerships to which the Respondents may belong.

52. This is also the result if one applies Justice LeDain's test. He contemplates a freedom to belong to an association, and that is the only claim the Respondents advance.

53. It may well be that the practice of law is a Charter-protected activity. Justice Kerans thought so: "It can also be argued that the legal profession is specially protected by the Charter on the basis of a narrower conception of the rule of law. ... The maintenance of a legal profession thus is essential to the rule of law in this sense, and the right to work as a lawyer is fundamental." 3 C.A. 446:9-19. There is certainly clear evidence in the Charter that the role of lawyers in Canada is a celebrated one. The preamble proclaims that Canada "is founded upon principles that recognize ... the rule of law" and section 10 confirms that "Everyone has the right on arrest or detention ... to retain and instruct counsel without delay ... ." See generally J. Lyon & R. Atkey, Canadian Constitutional Law in a Modern Perspective 6-13 (1970). See also Allen v. Alberta, 78 A.R. 120, 126 (Q.B. 1987).

3. Court of Appeal of Alberta Finds Rules Violate Freedom of Association

54. As noted above, the Court of Appeal of Alberta held that the challenged rules were inconsistent with the Respondents' freedom to associate. Justice Stevenson reached that conclusion by starting from the premise that section 2(d) covered the formation of trade unions. If persons are free to combine to improve working conditions they must be free to join together for the purpose of earning a living. 3 C.A. 494:36-39. Justice Kerans accepted Justice Stevenson's premise but sketched in the scope of freedom of association

with a broader brush:

> In my view, the freedom includes 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 to need no formal expression: to marry, for example, or to establish a home and family, pursue an education, or gain a livelihood.

3 C.A. 445:5-10.

4. Problems With Appellant's Position

55. The Appellant maintains, as Justice Dea held, that freedom of association gives an individual "freedom of association so that he is free to join with others and to organize with others to advance his [freedoms of religion, conscience and speech]" and that "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." 2 C.A. 420:21-25. There are several problems with this position. First, Justice Dea, with respect, did not consistently adhere to this principle, as Justice Stevenson noted. 3 C.A. 494:28-33. He thought that freedom of association protected the formation of trade unions: "[I]n 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 ... ." 3 C.A. 419:28-30. The primary purpose of trade unions may be debatable, but it certainly is not one that is protected by sections 2(a) and (b) of the Charter. Most would think that it is the improvement of working conditions, which encompasses a number of matters, including wages. Reference re Public Service Employee Relations Act, [1987] 1 S.C.R. 313, 368 per Dickson, C.J. Second, the Supreme Court of Canada has not read freedom of association this restrictively. Chief Justice Dickson and Justices McIntyre and Wilson interpreted it broadly and it appears that Justices Beetz, LeDain and LaForest would accord section 2(d) greater scope than Justice Dea did. Justice LeDain certainly did not base his decision on an understanding of section 2(d) which is comparable to Justice Dea's. He did not state that freedom of association was only available to those who wished to

combine for the advancement of section 2(a) and (b) freedoms. He recognized the freedom of workers to join together in trade unions when he held that:

> The freedom to work for the establishment of an association, to belong to an association, to maintain it, and to participate in its lawful activity without penalty or reprisal is not to be taken for granted. That is indicated in labour relations legislation. It is a freedom that has been suppressed in varying degrees from time to time by totalitarian regimes.

[1987] 1 S.C.R. at 391.

5. Unnecessary to Consider if the Pursuit of Exclusively Economic Objectives Protected

56. Chief Justice Dickson expressed no opinion as to "whether or not freedom of association generally extends to protecting associational activity for the pursuit of exclusively pecuniary ends" in Reference re Public Service Employee Relations Act, [1987] 1 S.C.R. 313, 371.

57. We have four observations to make with regard to this issue. First, if commercial associations are to be singled out for adverse treatment, then it would be inappropriate to characterize law firms as commercial associations. Justice Kerans agrees. 3 C.A. 445:37-40. The practice of law is a profession, "something apart from trades and vocations in which obligations of duty and conscience play a lesser part." Re Griffiths, 413 U.S. 717, 732 (1973). Professor Chroust writes:

> The term "profession", it should be borne in mind, as a rule is applied to a group of people pursuing a learned art as a common calling in the spirit of public service where economic rewards are definitely an incidental, though under the existing economic conditions a necessary by-product.

1 A. Chroust, The Rise of the Legal Profession in America x-xi (1965) [hereinafter cited as Chroust]. See also Schware v. Board of Bar Examiners of New Mexico, 352 U.S. 232, 247 (1957) (legal profession stands as a shield in defence of right and to ward off wrong); Wright, What Is A Profession?, 29 Can.

B. Rev. 748, 752-57 (1951); DeVries, The International Legal Profession - The Fundamental Right of Association, 21 Int'l Law. 845, 851 (1987) [hereinafter cited as International Legal Profession]; Dickson, The Public Responsibilities of Lawyers, 13 Man. L. J. 175, 175 (1983).

58. Second, if trade unions, whose primary purpose is probably collective bargaining, are not characterized as pursuing exclusively pecuniary ends, then neither can law firms be so described. See Supreme Court of New Hampshire v. Piper, 470 U.S. 274, 281 (1985).

59. Third, if it is held that there is a commercial dimension to the activities which national law firms engage in, which is hard to deny, that feature should only be evaluated in the context of section 1. There is nothing in the Charter to indicate that commercial associations are to receive less favourable treatment than other types of association for the purpose of determining compliance with section 2(d) of the Charter.

60. Fourth, appellate courts which have considered section 2(b) of the Charter have not created special rules for commercial speech. Grier v. Alberta Optometric Association, [1987] 5 W.W.R. 539 (Alta. C.A.) (price quotes); Skinner v. The Queen, 196 A.P.R. 8 (N.S.S.C. 1987) (prostitution communication); Irwin Toy Ltd. v. Quebec, 32 D.L.R. 4th 641, 650 (Que. C.A. 1986) (advertising); Quebec v. La Chaussure Brown's Inc., 36 D.L.R. 4th 374, 394 (Que. C.A. 1986) (commercial signs). See also, Linmarks Associates, Inc. v. Township of Willingboro, 431 U.S. 85 (1977) (community cannot prohibit "For Sale" signs to combat panic home sales by whites); Central Hudson Gas & Electric Corp. v. Public Service Commission of New York, 447 U.S. 557, 566 (1980) (four part test, similar to the Canadian test, used in commercial speech cases). There is a good reason to resist this development. Our society is sufficiently complex that forces which impact one part of society inevitably affect the others as well. Attempts to limit commercial associations may well adversely impact political associations. See 2 A. De Tocqueville, Democracy in America 115 (rev. P. Bradley 1953).

61. The Appellant submits at page 13 of its factum that "[T]he

Respondents' motivation for establishing an Alberta branch ... was commercial." That characterization is not completely accurate. The portion of Mr. Clarry's evidence the Appellant cites must not be read alone but together with the "Proposal for the Establishment of an office of McCarthy & McCarthy in Alberta" wherein the firm states that its expansion is designed to serve the needs of national and international clients. 4 C.A. 509.

6. Conclusion

62. In summary, Rules 154 and 75B restrict the freedom of Law Society members to choose with whom they will practice law. This constitutes a violation of freedom of association as defined by the Supreme Court of Canada in Reference re Public Service Employee Relations Act, [1987] 1 S.C.R. 313, 334. Whether the infringement is constitutional depends on the application of section 1 considerations.

C. Rules 154 and 75B Are Not Reasonable Limits Demonstrably Justifiable in a Free and Democractic Society

1. Section 1 Queries

63. Once it has been determined that a law is inconsistent with a right or freedom guaranteed by section 1 of the Charter, the side relying on the suspect law must prove on a balance of probabilities that it represents a "reasonable limit ... in a free and democratic society." The Queen v. Oakes, [1986] 1 S.C.R. 103, 136-37. The standard will be applied rigorously ([1986] 1 S.C.R. at 137) "[h]aving regard to the fact that s. 1 is being invoked for the purpose of justifying a violation of the constitutional rights and freedoms the Charter was designed to protect." [1986] 1 S.C.R. at 138.

64. The Queen v. Oakes, [1986] 1 S.C.R. 103 sets out the questions which must be answered in order to apply the constitutional measure which section 1 represents. They are as follows: 1) What is the objective of the challenged law? 2) Is the law a response to pressing and substantial concerns which are important enough to justify contravention of a Charter protected right or

freedom? 3) Do the law's means rationally promote the attainment of the objective? 4) Do the means impair the infringed right or freedom as little as possible? 5) Is the deleterious impact of the law on those whose rights or freedoms are infringed greater than the ameliorative values associated with the objective the law was designed to achieve? [1986] 1 S.C.R. at 138-140.

65. It may be that one further question is appropriate. In Smith Kline & French Laboratories Ltd. v. Canada, 12 C.P.R. 3d 386, 392 (Fed. C.A. 1986) Justice Hugessen suggested that decisions of statutory delegates are more vulnerable to reversal on judicial review than are decisions of Parliament and Legislative Assemblies. If this proposition is correct then it is appropriate to ask whether the impugned law is the act of a statutory delegate.

2. Objectives of Rules 154 and 75B

66. Only those objectives which the Law Society has claimed prompted the passage of Rules 154 and 75B may be considered. In Reference re Public Service Employee Relations Act, [1987] 1 S.C.R. 313, 374 Chief Justice Dickson declined to supplement the list of claimed reasons which prompted the Government of Alberta to pass the subject legislation.

67. Accordingly, it is appropriate to examine what representatives of the Law Society said at trial as to why the rules were passed and the Benchers' minutes and reports which were in evidence.

68. Mr. Virtue, a former president of the Law Society, candidly acknowledged in direct examination that "as far as I am concerned, the rule [154] was drafted as carefully ... as we could to rule against national law firms being established that would have branch offices in Alberta." 2 C.A. 320:26-29. In cross-examination he confirmed that the basis of Rule 154 was a desire to prohibit national law firms. 2 C.A. 331:23-27. The opinion is consistent with that given by the President of the Law Society in his annual report for the year ending March 31, 1982. 5 C.A. 973. Mr. Virtue also stated in direct examination that the considerations behind Rule 75B were "intermingled with the considerations of the 154 rule." 2 C.A. 318:37.

69. Mr. Andrekson, another former president of the Law Society, stated that the Benchers in April 1981 had concerns about ethics, discipline, audit, assurance, insurance, trust accounts, education and competence. 2 C.A. 248:30-41. He also testified that the "other consideration was the opportunity to increase the expertise of members within the province by permitting them to have the experience of performing certain types of work." 2 C.A. 255:11-27. Part of the concern he had in that regard, he said, was to enable members of the Law Society of Alberta "to gain expertise in special fields and therefore get the financial benefits of that expertise." 2 C.A. 261:7-14.

70. Mr. Andrekson also referred to the minutes of a meeting of the Committee on Out-of-Province Lawyers held April 2, 1981. 4 C.A. 667-69. The minutes record the Committee recommendation "that no law firm from other provinces should be permitted to open in Alberta unless an Alberta law firm could be able to extend into the province of that law firm." 4 C.A. 668.

71. Minutes of the Benchers and Benchers' Committees associate a perceived lack of control in respect of ethics, discipline, audit, assurance, insurance, trust accounts, education and competence in the context of members of the Law Society being in partnership with nonmembers. 4 C.A. 667-69, 667-78 & 697-703. Even the trial testimony of Mr. Virtue reveals this orientation:

> The rule was intended to have application to our members living in Alberta and we were telling them that ... you should not be in partnership with someone who is not a member of the Law Society resident outside of Alberta.

2 C.A. 329:17-22. (Emphasis added)

72. Whether these concerns survived the introduction of Rule 154 early in 1982 is not apparent from the record. 4 C.A. 706- 10. Rule 154 was not responsive to the motion passed by the Benchers at Jasper in May 1981. 4 C.A. 696. As one Bencher pointed out, the original motion dealt with partnerships between members and nonmembers of the Law Society and that the change to a ban on partnerships between resident and nonresident members could be perceived by

the public and the press as being for the benefit of lawyers and not for the benefit of the public. 4 C.A. 708-09.

3. Consideration of Alternatives

73. Significantly, the Benchers' minutes seem to reveal that no consideration was given by the Benchers to the possibility that such concerns as they might have had concerning discipline, insurance, assurance, could be effectively dealt with, and the public protected, by rules which were less sweeping than the absolute ban contained in Rule 154. Indeed, Mr. Virtue acknowledged that "there are many other ways in which we could have gone about this." 2 C.A. 331:12-13.

74. It would not be unfair to say that various committees and the Benchers themselves had not given any in-depth consideration to the issue of national law firms. On or about March 16, 1981 the Chairman of the Ethics Committee, Mr. Fraser, is said to have indicated to Mr. Black that there was not much point in having the proposal considered by the committee in view of the fact that a similar request had previously been considered by the Benchers. 4 C.A. 517. Just seven days later the Benchers passed a motion approving in principle "that members practising and resident as lawyers in Alberta should not be permitted to be in partnership or associated by employment ... with lawyers or persons who are not members of The Law Society of Alberta ... ." 4 C.A. 678.

75. When the issue first came before the Benchers prior to the June 1981 Convocation, they adopted a resolution with little recorded discussion and created the Landerkin Committee. 4 C.A. 677-78. The Landerkin Committee report, submitted to the June Convocation, had apparently disappointed the Benchers by its "lack of depth." 2 C.A. 250:5-25. Their attention, between the meeting at which that report had been discussed and October 1981, was directed toward the "Liknaitsky affair" which, to use the words of Mr. Andrekson, "then became one of the major, the major concerns of the Law Society from that period onward." 2 C.A. 251:5-7.

76. The report of the committee established by the Federation of Law Societies had not been completed when Rule 154 was adopted in February 1982. However, the Benchers were aware that a study was "underway." 4 C.A. 707. The initial report of the committee established by the Federation of Law Societies, which had been distributed by the Secretary of the Law Society of Alberta to the Benchers prior to their October 1982 meeting, was not discussed. 2 C.A. 229:7-20.

77. The Law Society alleges fears, expressed in very general terms, about its inability to exercise control over the legal profession in the manner which it considers appropriate.. However, it is clear from the evidence that no consideration at all was given by the Law Society as to whether its concerns could be satisfied by a rule less comprehensive than Rule 154.

78. Apart from a recommendation from the Committee on Out-of-Province lawyers regarding trust funds (4 C.A. 667-68) none of the minutes or other records show any attempt being made to consider what could be done by the Law Society to address any concerns it might have about resident members forming partnerships or associations with nonresident members so as to avoid risks to the public. Had the Benchers considered alternative strategies they would have discovered that their concerns could have been met by specific exercises of existing Law Society powers, as are set out in 4 below.

4. Analysis of Law Society Concerns

79. We will now examine the reasons advanced by the Law Society for Rules 154 and 75B in order to ascertain whether the concerns of the Law Society are justified and whether there are other ways to deal with those concerns which are less onerous yet equally effective.

(a) Practice by Nonmembers

80. In its factum the Law Society expresses the concern that interprovincial law firms will facilitate the delivery of legal services in Alberta by lawyers who are not members of the Law Society "through the vehicle of their partnership with lawyers who are members." At 17.

81. There is no evidence of any intention on the part of members of McCarthy & McCarthy to practice law in the province of Alberta without becoming members of The Law Society of Alberta. The Respondents have always maintained that members of McCarthy & McCarthy not members of the Law Society will not carry on the practice of law in Alberta. 4 C.A. 508-11, 524 & 589-91. That Black & Company may utilize the expertise of members of McCarthy & McCarthy who are not members of the Law Society cannot be impugned. Such activity is neither unethical nor illegal, because, as Justice Kerans recognized, the member lawyer is responsible for the work of a nonmember. 3 C.A. 482:31-42. See Note, Regulating Multistate Law Firms, 32 Stan. L. Rev. 1211, 1223 (1980) [hereinafter cited as Multistate Firms].

82. The American Bar Association Committee on Professional Ethics expressed the following opinion:

> 2. A lawyer ... may employ nonlawyers to do any task for him except counsel clients about law matters, engage directly in the practice of law, appear in court or appear in formal proceedings a part of the judicial process, so long as it is he who takes the work and vouches for it to the client and becomes responsible for it to the client.
> ...
>
> 4. The Canons of Ethics do not prohibit a lawyer in State I from entering into an arrangement with a lawyer in State II for the practice of law. ... Of course, only the individuals permitted by the laws of their respective states to practice law there would be permitted to do the acts defined by the state as the practice of law in that state, but there are no ethical barriers to carrying on the practice by such a firm in each state so long as the particular person admitted in that state is the person who, on behalf of the firm, vouched for the work of all of the others and, with the client and in the courts, did the legal acts defined by that state as the practice of law.

Opinion No. 316, 53 A.B.A.J. 353, 354 (1967).

83. If the Law Society believes that a person has engaged in the unauthorized practice of law it can proceed under sections 93 and 96 of the

Legal Profession Act, R.S.A. 1980, c. L-9. See Multistate Firms at 1224; O'Brien, Multistate Practice and Conflicting Ethical Obligations, 16 Seton Hall L. Rev. 678, 699-700 (1986) [hereinafter cited as Multistate Practice]. It may also be the case that a member who allows a partner or associate to carry on the unauthorized practice of law is guilty of conduct deserving of sanction. Canadian Bar Association, Code of Professional Conduct 58 (1974) (5 C.A. 852); Legal Profession Act, R.S.A. 1980, c. L-9, s. 47; Green v. Law Society of Northwest Territories, [1981] 1 W.W.R. 662, 665 (N.W.T.S.C. 1980); Singer Hutner Levine Seeman & Stuart v. Louisiana State Bar Association, 378 So. 2d 423, 425 (La. 1979).

84. The Law Society does not have to prohibit national law firms to prevent the unauthorized practice of law. Multistate Firms at 1224; Multistate Practice at 692-700. Available remedies are sufficient.

(b) Local Competence and Expertise

85. The gist of the Appellant's argument under this heading is that the specialists in national law firms will reside outside Alberta and thereby decrease the quality of legal services available to Albertans. See 3 C.A. 401:27-42. The basis for such a suggestion is not apparent. See 2 C.A. 406:20-21. There is no empirical evidence that this will occur. The Federation of Law Societies Committee dismissed the fear as unfounded. 6 C.A. 1020-21. And in Black & Company's firm there are specialists who reside in Calgary. 2 C.A. 162:30-43. See Edward, The Legal Profession in the Community in In Memoriam J.D.B. Mitchell 227 (S. Bates, W. Finnie, J. Usher & H. Wilberg eds. 1983).

86. There are other ways to ensure that Albertans have access to competent legal services. The Law Society may make continuing legal education compulsory or set demanding standards for those who wish to hold themselves out as specialists. It is hard to believe that a lawyer's residence has anything to do with how competent he or she is.

(c) Assurance Fund

87. Since all members of the Law Society, whether resident in Alberta or not, make full payment of assurance fund premiums (3 C.A. 366:15-20), the public is as well protected with regard to defalcations by nonresident members as by resident members. Members of the public who suffer loss because of the conduct of a Law Society member are not prejudiced by the wrongdoers' place of residence. "The assurance fund ... is available to clients of all Alberta practitioners, including those who make only occasional appearances" in Alberta. Allen v. Alberta, 78 A.R. 120, 123-24 (Q.B. 1987).

88. The confusion the Law Society alleges may arise exists with respect to all nonresident members, whether or not they belong to an interprovincial law firm. As Justice Kerans observed, the Law Society "cannot justify the rules by reference to problems of the profession which exist whether or not these partnerships exist." 3 C.A. 482:25-28.

(d) Trust Accounts

89. Rules already in place respecting trust accounts, as to the way in which they are to be kept, and requiring them to be kept in Alberta, apply to all members whether or not they live within Alberta. 2 C.A. 217:27-32. If deemed desirable, the Law Society could require that only members resident within the province have signing authority on the trust account. 2 C.A. 296:6-12. See American Bar Association, Model Code of Professional Responsibility DR 9-102 (A); American Bar Association, Model Rules of Professional Conduct Rule 1.15(a).

(e) Insurance

90. It is fully within the power of the Law Society to make rules concerning the insurance coverage which members must have, whether resident within Alberta or not. In fact, Rules 129 through 136 (5 C.A. 920-24), which were in place prior to the trial, expressly require nonresident members to have either the Law Society compulsory coverage (professional liability claims fund) or equivalent coverage which McCarthy & McCarthy had in place. 1 C.A. 52:45-46 & 138:46-47. Province of residence is an irrelevant consideration.

(f) Economic Interests

91. It appears from some of the evidence that the concern respecting the impact of national law firms on the local bars has to do with the economic effect of competition. Mr. Andrekson was of the view that it was part of the duties of the Benchers to give Alberta lawyers the opportunity to provide their services to the public and to do financially well in the course of doing so. 2 C.A. 261:34-35. See also 2 C.A. 261:12-14 & 261:25-29. It would appear that views like this had been held by the Law Society at earlier times. P. Sibenik, The Doorkeepers: The Governance of Territorial and Alberta Lawyers, 1885-1928, at 180 (1984) (M.A. thesis available at University of Calgary Law School Library).

92. It goes without saying that it is not the function of the Law Society to attempt to protect lawyers' incomes by restricting competition. 3 J. McRuer, Inquiry into Civil Rights 1166 (1968); Hunter, Are There Too Many Lawyers? The Governments' View, 6 Can.-U.S. L.J. 199, 200 (1983). A distinguished American lawyer dealt with the point this way:

> [O]ne can scarcely imagine a speaker at a meeting of a county medical society discussing the possible elimination of some disease by public health measures, and then qualifying his observations by the statement that many practitioners make a living out of treating the disease in question; and that unless the physicians are vigilant to prevent the adoption of such measures, this source of business will be taken from them. Yet speakers at bar association meetings are frequently heard to make similar observations about the effect of proposed reform.

Sutherland, A New Society and an Old Calling, 23 Cornell L.Q. 545, 551-52 (1938) quoted in J. Hurst, The Growth of American Law: The Law Makers 329 (1950). See also Anderson, The Legal Profession and the Public Interest in The Law Society of Manitoba, 1877-1977, at 21 (C. Harvey ed. 1977).

93. Perhaps if the Law Society could show that a sufficiently grave threat to the whole fabric of the legal profession in Alberta existed and that the public interest would be harmed by a serious interference with the

availability of legal services, some restriction on competition might be justified. See, e.g., Recent Development, Japan's New Foreign Lawyer Law, 19 Law & Pol'y Int'l Bus. 361, 376-80 (1987) (Japanese reluctant to approve practice of foreign lawyers because of their impact on Japanese culture). No such evidence was produced in this case. The only evidence is that of Mr. Freedman, the reports of his committee and that of Mr. Anderson respecting the accounting profession. This evidence shows that experience in the United States in the legal profession (6 C.A. 1094), and in Canada in the accounting profession (1 C.A. 141-56), does not give any basis for such fears.

(g) Discipline

95. The Law Society has full jurisdiction to stipulate the appropriate ethical requirements for members of the Law Society and to discipline all members of the Law Society, wherever resident, for any conduct which the Law Society considers deserving of sanction. Legal Profession Act, R.S.A. 1980, c. L-9, Part 3; 2 C.A. 217:15-24, 3 C.A. 363:48-364:6 (admissions of Mr. Kelly); 2 C.A. 329:2-4 (admissions of Mr. Virtue). See Multistate Practice at 692-98 & 701; R. Rotunda, Professional Responsibility 20-21 (1984); American Bar Association, Model Rules of Professional Conduct Rule 8.5. The Law Society's jurisdiction extends inside and outside the province of Alberta. "[T]he jurisdiction of the Law Society over its member is a personal one, which extends to the member's conduct without territorial limitation." Legault v. Law Society of Upper Canada, 58 D.L.R. 3d 641, 643 (Ont. C.A. 1975), leave to appeal to the S.C.C. denied June 17, 1975. See also Underwood McLellan & Associates Ltd. v. Association of Professional Engineers of Saskatchewan, 103 D.L.R. 3d 268, 275-6 (Sask. C.A. 1979), leave to appeal to the S.C.C. denied, 1 Sask. R. 179 (1979); Supreme Court of New Hampshire v. Piper, 470 U.S. 274, 285 (1985).

96. Where a member resides, whether outside the province or not, does not sterilize the discipline powers of the Law Society. All members are personally subject to the provisions of Part 3 of the Legal Profession Act, R.S.A. 1980, c. L-9. A member can be charged wherever he resides, and he is a compellable witness before a preliminary investigator, an investigating committee and the Benchers. Legal Profession Act, R.S.A. 1980, c. L-9, ss. 62(1) & 67.1 (c) &

(d). The court can issue a commission for the taking of the member's evidence outside Alberta, or a subpoena can be served and enforced both in Alberta or elsewhere by the court of the other province. Interprovincial Subpoena Act, R.S.A. 1980, c. I-8.1. Production of ledgers, books, files, records and other documents can be compelled and sanctions, including suspension or disbarment, imposed for failing to attend or produce documents. Legal Profession Act, R.S.A. 1980, c. L-9, ss. 62(5), 63(1) & (2) & 68. Nonattendance by the member will not prevent imposition of any appropriate sanction. Legal Profession Act, R.S.A. 1980, c. L-9, ss. 63(3), 65, 66 & 67.1. For the purpose of protecting the public, the discipline is equally effective in all cases - the suspended or disbarred lawyer, for example, regardless of where he lives, cannot then practice as a member of The Law Society of Alberta.

97. In cross-examination, Mr. Andrekson referred to a case where a member who was considered by the Law Society to have committed an offence and was living in Ontario was not prosecuted by the Law Society in Ontario. 2 C.A. 288:45-289:11. This is no justification for Rule 154. The Law Society of Alberta could have taken appropriate disciplinary steps. If the member is suspended or disbarred, the public in Alberta is protected. If the Law Society of Upper Canada, or some other provincial law society, allows a lawyer to practice in its jurisdiction instead of taking appropriate disciplinary steps which are open to it, the unwise failure to punish the lawyer does not preclude The Law Society of Alberta from doing so. See Multistate Practice at 696-98; Annot., 81 A.L.R. 3d 1281 (1977) (consequences of imposition of discipline in one state on status of lawyer in other state where bar member).

98. It was argued by the Law Society that if a member living outside Alberta were disbarred, there might be some difficulty in obtaining access to the assets of the practice. This is not so. The Law Society has full power under the Legal Profession Act to require resident and nonresident active members, who are in partnership or association, to bring the records or assets of the practice into Alberta when required or to maintain the records and assets within the Province. Failure to do so can be punished - including suspension or disbarment as is necessary to protect the public in Alberta.

99. Justice Dea intimated that clients served by nonresidents would not report misconduct. 3 C.A. 405:44-406:9. There was no evidence to support his fear. If any was available the Law Society should have produced it. A study of the Law Society in its earlier periods disclosed that "by the 1920s almost ten percent [of complaints] came from outside the province." P. Sibenik, The Doorkeepers: The Governance of Territorial and Alberta Lawyers, 1885-1928, at 158 (1984) (M.A. thesis available in University of Calgary Law School Library). This would suggest that nonresidents will complain about their lawyer.

100. In any event, Rule 154 does not effectively address these suggested problems. The evidence is that there were up to 350 active members of the Law Society living outside Alberta at the time Rule 154 was passed. 3 C.A. 338:22-26. Although the Law Society made no attempt whatever to determine what partnership affiliations those persons had, Rule 154 would only affect such of those nonresident members as had partnership affiliations with resident members. With regard to all of the others, Rule 154 would provide no protection of the sort which the Law Society argues it requires in the case of nonresidents.

(h) Competence Support Programs

101. The Law Society suggests that nonresident members "cannot practically [avail themselves of the benefits associated with loss prevention seminars, the office of the practice advisor and voluntary mentors]." Factum of the Appellant at 22. This is a groundless fear. It is common knowledge that lawyers travel to attend conferences and seminars. The Law Society did not present any evidence which would support this allegation - what proportion of its resident and nonresident members attend loss prevention or other continuing education seminars? If this on examination proves to be a problem, minimum attendance rules can be passed. See 3 C.A. 490:25 & 39-40. Why the Law Society believes that the assistance the practice advisor and voluntary mentors provide cannot be tapped by telephone is inexplicable. Justice Kerans agreed with the European Court of Justice in Ordre des Avocats au Barreau de Paris v. Klopp, [1985] 1 C.M.L.R. 99, 114 (E.C.J. 1984) that: "In this connection it should be observed that modern means of transport and telecommunications make it possible to maintian the appropriate contact with judicial authorities and

clients." Justice Brennan said much the same in Frazier v. Heebe, 96 L. Ed. 2d 557, 567 (1987): "[M]odern communciation systems, including conference telephone arrangements, make it possible to minimize the problem of unavailability."

102. It also is obvious that this concern "bear[s] the taint of being applicable to all non-resident members, not just those who are in partnership with residents," as noted by Justice Kerans. 3 C.A. 483:4-6. See also 3 C.A. 483:22.

(i) Respect for the Government of the Profession

103. The Appellant suggests that national law firms promote disrespect. There is no evidence of this and if there was, no doubt the Appellant would feel the same way about all its members who belong to more than one law society, regardless of where they reside. See also Re Griffith, 413 U.S. 717, 724 (1973) (no merit in the argument that noncitizen would ignore his lawful duties); Andrews v. Law Society of British Columbia, [1986] 4 W.W.R. 242, 256 (B.C.C.A.) (oath of allegiance lawyers take evidence of commitment to Canada).

(j) Ethics: Touting, Steering and Fee-splitting

104. Justice Dea opined that "[t]he problems inherent in multiple partnerships on issues of conflict of interest, confidentiality, fee splitting, and steering are patent." 3 C.A. 410:8-10. See also 3 C.A. 426:34-36. It would also appear that Justice Dea considered touting in the same category (3 C.A. 426:41 & 405:18-25) and that the likelihood ethical considerations of this nature will be violated increases if lawyers form multiple partnerships (3 C.A. 405:26-34, 408:15-23 & 410:18-20). Justice Dea was not troubled "that the Law Society had no hard facts before it to justify its conclusion that the risk of breaches in multi-partner firms is greater than in other situations." 3 C.A. 410:23-28. Contra Supreme Court of New Hampshire v. Piper, 470 U.S. 274, 285 (1985). Regardless of the advisability of acting on such undocumented fears, one must not overlook the following facts in assessing these concerns.

105. The Law Society of Alberta, prior to June, 1979, rescinded the rules previously contained in its Professional Conduct Handbook concerning touting

when it amended its rules to permit advertising. 3 C.A. 381:6-17; 5 C.A. 849, para. 7. The Professional Conduct Handbook does not appear to have any provisions respecting "steering".

106. The Law Society's own rule on fee-splitting having been rescinded (3 C.A. 363:7-46; 5 C.A. 777), the only remaining provision is Chapter 10, Commentary 6 of the Code of Professional Conduct 40 (1974) (5 C.A. 837), which provides that a fee is not a fair one if it is divided with a lawyer who is not a partner or associate, unless the client consents, expressly or impliedly, to the employment of the other lawyer and the fees are divided in proportion to the work done and responsibilities assumed.

107. Under Part 3 of the Legal Profession Act the Benchers have the right to determine that particular conduct of a lawyer is conduct deserving of sanction. Thus, to the extent that Justice Dea considered touting, steering and fee-splitting with a partner or associate or another lawyer without the client's consent to be offences, they would only be such if the Benchers of the Law Society or the Court of Appeal of Alberta were to find them to be offences in a particular case. Re Lazarenko, 29 Alta. L.R. 2d 28, 47 (Q.B. 1983) (C.A. determines whether conduct deserved sanction); Re German, [1974] 5 W.W.R. 217 (Alta. S.C. App. Div.) (Appeal Division substituted its opinion for that of the Benchers).

108. Indeed, traditional views on fee-splitting may require updating to take into account modern realities. The American Bar Association Committee on Professional Ethics issued an opinion in 1967 which read as follows:

> 5. Subject to the requirement of Canon 34 that any division of fees be based upon a division of service or responsibility, the Canons of Ethics do not purport to control the financial arrangements for the practice of law across state lines. Such persons could be partners, associates or employees. They could share in fees based on a division of responsibility or work, or they could be paid a salary, or a per diem. The key as to whether it is ethical in no way turns on whether the lawyer in State I is in partnership with the lawyer in State II, or whether he is an employer of the lawyer in State II, or an associate of the lawyer in State II, or an employee of the lawyer in

> State II. The local lawyer is the one who is practicing law, whether he obtains assistance from a partner in another state, or from an employer in another state, or from an associate in another state or from an employee in another state. How they are being paid (all being lawyers), or how the clients' fee is dispersed through the practice arrangements (among the lawyers in association with one another - partnership, association or employment), is of no consequence to the Canons of Ethics as they relate to the practice across state lines. The important requirement in this respect is simply that the local man must be admitted in the state and must have the ability to make, and be responsible for making, decisions for the lawyer group.

Opinion No. 316, 53 A.B.A.J. 353-54 (1967). See also American Bar Association, Model Code of Professional Responsibility EC 2-22 & DR 2-107; American Bar Association, Model Rules of Professional Conduct Rule 1.5(e)(2).

109. However, it is dangerous to assume, simply because a member of the Law Society of Alberta, resident in Alberta, forms a partnership with a member of the Law Society resident outside Alberta, that both of them will then be more prone to engage in touting, steering or fee-splitting than other members of the Law Society of Alberta. There was no evidence to that effect. The evidence of the Respondents is, in fact, that they will not be engaging in fee-splitting. 1 C.A. 140:23-25. But if they do engage in these practices, and if the Benchers find this to be conduct deserving of sanction in such a case, the full powers of the Law Society are available against both the member resident in Alberta and the member resident elsewhere. Both can be punished to the same extent as all other members of the Law Society. To do so it is not necessary to ban partnerships which have as members residents and nonresidents.

(k) Confidentiality and Conflicts

110. The Respondents are aware, of course, that lawyers must avoid conflicts of interest, and to this end, have in place a system to detect them (2 C.A. 168:24-30 & 171:13-22), which system was favorably commented on by Justices Kerans and Stevenson. 3 C.A. 492:38-42 and 3 C.A. 495:13-17. The latter said as follows:

> Those potential conflict problems, largely created by distance and numbers, apply to large firms operating in different centres within the province. Yet, the rule prevents association by a member of a firm, regardless of size, with another firm, regardless of location. Moreover, the Law Society has not demonstrated any deficiency in the scheme the solicitors propose to ensure elimination of the risks. The Law Society could no doubt impose requirements designed to reduce or eliminate the risks, but the outright prohibition of economic association simply has not been justified. 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, recoginzing that the impairment of the right or freedoms to be kept to a minimum. The need for such a test is emphasized by Dickson, C.J. in Big M Drug Mart, [1985] 3 W.W.R. 481 at 531, and more recently in R. v. Oakes, unreported as yet, published February 28, 1986. In both cases he said that the means chosen must interfere with the right "as little as possible". The Law Society has not established that its sweeping response is justified by that test. To the contrary, the solicitors have established that less drastic means are effective.

3 C.A. 495:13-37. See also Gibson, Inter-Provincial Law Firms and the Merger of Shrum, Liddle & Hebenton and McCarthy & McCarthy, 43 Advocate 15, 22 (1985); 1 W. Clary, History of the Law Firm of O'Melveny & Myers 1885-1965, at 357-58 (1966) (system to detect conflicts).

111. It is interesting to note that in England as long ago as the 19th century it was not unusual for solicitors to belong to more than one firm. Re Borough Commercial and Building Society, [1894] 1 Ch. 289 (C.A. 1893). Neither is it unheard of in the United States. See Cinema 5, Ltd. v. Cinerama, Inc., 528 F. 2d 1384 (2d Cir. 1976). The arrangement is certainly not unknown in Canada. See Canadian Lawyer, Feb. 1986, at 43.

5. Assessment of Law Society Concerns Under Section 1 of the Charter

112. Having examined the evidence in considerable detail, it is now possible to answer the section 1 queries set out above.

113. What is the objective of Rules 154 and 75B? If the Law Society acted "to assure the public competent, ethical and financially responsible lawyers" (3 C.A. 423:37-38), a point about which Justice Kerans had "serious reservations" (3 C.A. 435:13) and about which Justice Stevenson did not comment, one must concede that the objective is valid and that this goal is a pressing and substantial concern. 3 C.A. 482:8-14. If the Law Society's purpose was, instead, to preclude nonresident lawyers from coming into the province to earn a living, the inquiry would be at an end. The objective would conflict with the very harm section 6 was designed to avoid. See Shapiro v. Thompson, 394 U.S. 618, 629 (1969) (state welfare rules could not be justified on the basis that they deterred movement of indigents); National Association for the Advancement of Colored People v. Button, 371 U.S. 415, 439 (1963) (state cannot infringe constitutional rights under the guise of enforcing professional standards); Brakel & Loh, Regulating the Multistate Practice of Law, 50 Wash. L. Rev. 699, 701-02 & 734-35 (1975); Note, Attorneys: Interstate and Federal Practice, 80 Harv. L. Rev. 1711, 1712 (1967).

114. Do Rules 154 and 75B rationally promote the attainment of their objective? The Court of Appeal of Alberta did not think so. Justice Stevenson labelled Rule 154 "irrational" (3 C.A. 495:3) and, with respect to Rule 75B, characterized the Law Society's response as "sweeping" and "[un]justified." 3 C.A. 495:23 & 34. Justice Kerans approved some of the purposes the Law Society had, but of others, wrote: "The Law Society cannot justify the Rules by reference to problems of the legal profession which exist whether or not these partnerships exist." 3 C.A. 482:24-26.

115. Do the means impair the infringed right or freedom as little as possible? This is easy to answer. Justice Kerans set out the less invasive means he believed were feasible. 3 C.A. 490:33-491:38. Why not prohibit partnerships with persons who are not members of another law society? Or, as we argued above, why not prosecute unauthorized law practitioners, or discipline those who contravene the rules, wherever they reside? Why not oblige members to attend continuing legal education programs? See Swan, Regulating Continuing Competence in Lawyers and the Consumer Interest 370 (R.

Evans & M. Trebilcock eds. 1982). Why not compel nonresidents to have local association? See Annot. 20 A.L.R. 4th 855, 877-81 (1983); Brakel & Loh, Regulating the Multistate Practice of Law, 50 Wash. L. Rev. 699, 704-05 (1975); Note, Attorneys: Interstate and Federal Practice, 80 Har. L. Rev. 1711, 1727. Why not compel members to keep clients' materials and monies in Alberta? Why not require nonresident members to absorb additional costs associated with out of province investigation? See also Multistate Firms at 1232 n.110 for the California rule on mulitstate partnerships.

116. Is the deleterious impact of Rules 154 and 75B greater than the ameliorative values associated with the objective the law was designed to achieve? The harm these rules represent is significant. The Respondents would be unable to practice law with persons they consider desirable partners to their own detriment and that of their clients. See Greer, The EEC and the Trend Toward Internationalization of Legal Services: Some Observations, 15 Int'l Bus. Law. 383, 387 (1987) [hereinafter cited as Internationalization of Legal Services]. Their clients lose access to a national law firm with all the benefits such firms represent. Report of the Quebec Bar's Special Committee on Interprovincial Law Firms 9, 11 & 14 (1986); Clarry, Inter-Provincial Law Firms, 16 Gazette 267-68 (1982); Brandel & Murphy, Lawyering Process, 51 Calif. St. B.J. 287, 290 (1976); Brown, Emerging Changes in the Practice of Law, [1978] Utah L. Rev. 599, 609; Underhill, Why Not National Law Firms, 25 Advocate 159 (1967). This harm is not offset by the benefit these rules represent. They do very little to provide the public with continued access to "competent, ethical and financially responsible lawyers." 3 C.A. 423:37-38.

117. By way of summary, it is not sufficient for the Law Society to say that "we have certain fears respecting the impact of national law firms and therefore propose to ban them completely." To satisfy the section 1 onus, it must demonstrate to the Court that such fears have a basis in fact (Service Employees International Union, Local 204 v. Broadway Manor Nursing Home, 44 O.R. 2d 392, 448 (Div. Ct. 1983); The Queen v. Ladouceur, 20 O.A.C. 1, 15 (C.A. 1987)) and that there are no means within the power of the Law Society short of the infringement of the rights guaranteed by the Charter to deal with these concerns. The Law Society has not produced any evidence to satisfy the onus of

showing objectively that its fears are justified and that measures short of an absolute prohibition of dual partnerships and partnerships and associations between resident members and nonresident members of the Law Society would be inadequate to address the perceived problems.

118. Not only does an examination of the concerns of the Law Society show that they do not require a prohibition of partnerships between resident and nonresident members, but the evidence of Mr. Freedman, and the report and supplementary report of his Committee, show that a group of eminent practitioners from across Canada, who considered the question, concluded that the concept of national law firms should be accepted by law societies and that they could and should pass any rules required to deal with any specific problems arising. See Macdougall v. Law Society of Upper Canada, 18 S.C.R. 203, 214 (1890) (court took notice of opinion of eminent members of the profession). As well, The Assemblee du Conseil General du Barreau du Quebec and The Law Society of Upper Canada have both approved the national law firm concept. The former, on November 25, 1986, accepted the Report of the Quebec Bar's Special Committee on Interprovincial Law Firms which favorably reviewed national law firms and proposed a few changes to existing rules in order to implement their decision. The Law Society of Upper Canada had earlier given its imprimatur to national law firms when it passed Rule 22 of its Rules of Professional Conduct. The Law Societies of Manitoba (6 C.A. 1107-08) and British Columbia (6 C.A. 1229) have withheld their support. Economic self-interest seems to have played a significant role in the decision of the former to withhold support. 6 C.A. 1108. See also Attorney General Statutes Amendment Act (No.2), 1985, S.B.C. 1985, c.65, s.4; Regulation 47G of The Nova Scotia Barrister's Society.

6. History of the Provision of Legal Services

119. In order to demonstrate that national law firms are an inevitable response to the changing needs of clients in an increasingly national and international economy, and that the appropriate approach is to have a thorough understanding of how they work and what novel problems they present so that regulations which are passed ensure that national firms offer a high level of

legal service and are accountable to the regulatory authority in each jurisdiction in which they operate, we have set out in the Respondents' Authorities a review of the way in which law firms, and national and international law firms have developed and evolved in the United States and Canada. Redmond & Wakeling, History of the Provision of Legal Services (1987) (unpublished paper).

120. That review, which includes material indicating the existence of Canadian law firms with offices in more than one jurisdiction, shows that the question is not whether there will be national law firms, but how many and what form their structure will take.

D. Rules 154 and 75B Are Unreasonable and an Unreasonable Restraint of Trade and Beyond the Jurisdiction of The Law Society of Alberta

121. Professor Jones and Ms. deVillars state that:

> [C]ourts have continuously asserted their right to review a delegate's exercise of discretion for a wide range of abuses ... including unreasonable administrative actions ....
>
> ....
>
> ... The underlying theme ... is that they make the delegate's action so outrageous, unreasonable or unacceptable that the legislative branch could never have intended to grant the statutory delegate the power to act in such a manner.

Principles of Administrative Law 118-19 (1985). Thus, even though Rules 154 and 75B deal with subject matter the Benchers may properly regulate, the Benchers are without jurisdiction to pass them if they are unreasonable rules. Pharmaceutical Society of Great Britain v. Dickson, [1968] 2 All E.R. 686, 706 (H.L.) (irrational rule ultra vires); Ebert Howe & Associates v. British Columbia Optometric Association, [1985] 6 W.W.R. 395, 402 (B.C.C.A.) (unreasonable exercise of delegated power ultra vires); Yick Wo v. Hopkins, 118 U.S. 356 (1885) (broad rules requiring exemptions may be unreasonable); Re Hamilton, [1976] 3 W.W.R. 7, 24 (B.C.S.C. 1975) (restraint of trade by-law

would be struck down).

122. Rules 154 and 75B are patently unreasonable, or as Justice Stevenson said, they "are not a rational response" (3 C.A. 494:47). The discussion of the justification of the rules under section 1 of the Charter above demonstrates this. That this description is accurate is further buttressed by this example. While a partnership consisting of active members of the Law Society is prohibited if some of the partners reside within Alberta and some outside, the rules would not prohibit a partnership made up entirely of nonresident members of the Law Society. Thus, if all the members of Black & Company resided in Toronto and Vancouver, they would not be in breach of the rules. Given the reasons the Law Society has advanced in defence of its rules, this shows how unreasonable the rules are or that the rules were passed for reasons other than those advanced.

PART IV

123. The Respondents desire that this appeal be dismissed and that the Court award the Respondents their costs.

Respectfully submitted
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PART V

AUTHORITIES

1. Allen v. Alberta, 78 A.R. 120 (Q.B. 1987).
Pages: 15, 26.

2. Anderson, The Legal Profession and the Public Interest in The Law Society of Manitoba, 1877-1977, at 1, 20-21 (C. Harvey ed. 1977).
Page: 27.

3. Andrews v. Law Society of British Columbia, [1986] 4 W.W.R 242 (B.C.C.A.).
Page: 31.

4. Annot., 53 A.L.R. 3d 1163 (1973)
Page: 9.

5. Annot., 81 A.L.R. 3d 1281 (1977)
Page: 29.

6. Annot., 20 A.L.R. 4th 855 (1983)
Page: 36.

7. Basile v. Nova Scotia, 11 D.L.R. 4th 219 (N.S.S.C. App. Div. 1984).
Pages: 7, 8.

8. Brakel & Loh, Regulating the Multistate Practice of Law, 50 Wash. L. Rev. 699 (1975).
Pages: 35, 36.

9. Brandel & Murphy, Lawyering Process, 51 Calif. St. B.J. 287 (1976)
Page: 36.

10. Bronkhorst, Lawyers' Freedom Under the New Directive, [1977] 2. Eur. L. Rev. 224.
Page: 10.

11. Brown, Emerging Changes in the Practice of Law, [1978] Utah L. Rev. 599.
Page: 36.

12. Bryden v. British Columbia, [1899] A.C. 580 (P.C.) (B.C.).

13. Canadian Lawyer, Feb. 1986, at 43 & 44
Page: 34.

14. Canadian Pacific Ltd. v. Canadian Telecommunication Union Division No. 1, 8 C.L.R.B.R. (NS) 378 (Can. 1984).
Page: 13.

15. Central Hudson Gas & Electric Corp. v. Public Service Commission of New York, 447 U.S. 557 (1980).
Page: 18.

16. Jean Chretien, Securing the Canadian Economic Union in the Constitution (1980).
Page: 8.

17. 1 A. Chroust, The Rise of the Legal Profession in America x-xi (1965).
Page: 17.

18. Cinema 5, Ltd. v. Cinerama, Inc., 528 F. 2d 1384 (2d Cir. 1976).
Page: 34.

19. Clarry, Inter-Provincial Law Firms, 16 Gazette 267 (1982).
Page: 36

20. 1 W. Clary, History of the Law Firm of O'Melveny & Myers 1885-1965, at 357-58 (1966).
Page: 34.

21. Collymore v. Attorney-General, [1970] A.C. 538 (P.C. 1969) (Trin. & Tob.).
Page: 13.

22. Demaere v. Canada, 11 D.L.R. 4th 193 (Fed. C.A. 1984).
Page: 8.

23. 2 A. De Tocqueville, Democracy in America 115-119 (rev. P. Bradley 1953).
Page: 18.

24. DeVries, The International Legal Profession - The Fundamental Right of Association, 21 Int'l Law. 845 (1987).
Page: 18.

25. Dickson, The Public Responsibilities of Lawyers, 13 Man. L. J. 175 (1983).
Page: 18.

26. Ebert Howe & Associates v. British Columbia Optometric Association, [1985] 6 W.W.R. 395 (B.C.C.A.).
Page: 38.

27. Edward, The Legal Profession in the Community in In Memoriam J.D.B. Mitchell 227 (S. Bates, W. Finnie, J. Usher & H. Wilberg eds. 1983).
Page: 25.

28. Edward, The Provision of Services by Lawyers, 22 J. L. Soc'y Scot. 188 (1977).
Page: 10.

29. Frazier v. Heebe, 95 L. Ed. 2d 557 (1987).
Pages: 9, 31.

30. Gibson, Inter-Provincial Law Firms and the Merger of Shrum, Liddle & Hebenton and McCarthy & McCarthy, 43 Advocate 15 (1985).
Page: 34.

31. Green v. Law Society of Northwest Territories, [1981] 1 W.W.R. 662 (N.W.T.S.C. 1980).
Page: 25.

32. Greer, The FEC and the Trend Toward Internationalization of Legal Services: Some Observations, 15 Int'l Bus. Law. 383 (1987).
Page: 36.

33. Grier v. Alberta Optometric Association, [1987] 5 W.W.R. 539 (Alta. C.A.).
Page: 13.

34. Hicklin v. Orbeck, 437 U.S. 518 (1978).
Page: 9.

35. Hunter v. Southam Inc., [1984] 2 S.C.R. 145.
Page: 8.

36. Hunter, Are There Too Many Lawyers? The Governments' View, 6 Can.-U.S. L.J. 199 (1983).
Page: 27.

37. J. Hurst, The Growth of American Law: The Law Makers 329 (1950).
Page: 27.

38. Irwin Toy Ltd. v. Quebec, 32 D.L.R. 4th 641 (Que. C.A. 1986).
Page: 18.

39. Jones & deVillars, Principles of Administrative Law 118-19 (1985).
Page: 38.

40. Laskin, Personal Mobility in the United States and the E.E.C. in Federalism and the Canadian Economic Union (Trebilcock, Prichard, Courchene & Whalley eds. 1983).
Pages: 9, 10.

41. Law Society of Upper Canada v. Skapinker, [1984] 1 S.C.R. 357.
Page: 6.

42. Legault v. Law Society of Upper Canada, 58 D.L.R. 3d 641 (Ont. C.A. 1975).
Page: 28.

43. Linmarks Associates, Inc. v. Township of Willingboro, 431 U.S. 85 (1977).
Page: 18.

44. J. Lyon & R. Atkey, Canadian Constitutional Law in a Modern Perspective 6-13 (1970).
Page: 15.

45. Macdougall v. Law Society of Upper Canada, 18 S.C.R. 203 (1890).
Page: 37.

46. Malartic Hygrade Gold Mines Ltd. v. Quebec, 142 D.L.R. 3d 512 (Que. S.C. 1982).
Page: 8.

47. W. McConnell, Commentary on the British North American Act 359 (1977).
Page: 8.

48. 3 J. McRuer, Inquiry into Civil Rights 1166 (1968).
Page: 27.

49. Mia v. Medical Services Commission of British Columbia, 17 D.L.R. 4th 385 (B.C.S.C. 1985).
Page: 8.

50. National Association for the Advancement of Colored People v. Button, 371 U.S. 415 (1963).
Page: 35.

51. Norman, Freedom of Association (October 1987) (paper given at Canadian Bar Association Charter Program held in Montreal on October 23 & 24, 1987).
Page: 14.

52. Note, Attorneys: Interstate and Federal Practice, 80 Harv. L. Rev. 1711 (1967).
Pages: 35, 36.

53. Note, Regulating Multistate Law Firms, 32 Stan. L. Rev. 1211 (1980).
Pages: 24, 25, 36.

54. O'Brien, Multistate Practice and Conflicting Ethical Obligations, 16 Seton Hall L. Rev. 678 (1986).
Pages: 25, 28, 29.

55. Opinion No. 316, 53 A.B.A.J. 353 (1967).
Pages: 24, 33.

56. Ordre des Avocats au Barreau de Paris v. Klopp, [1985] 1 C.M.L.R. 99 (E.C.J. 1984).
Pages: 10, 30.

57. Pharmaceutical Society of Great Britain v. Dickson, [1968] 2 All E.R. 686 (H.L.).
Page: 38.

58. Public Service Alliance of Canada v. Canada, [1987] 1 S.C.R. 424.
Pages: 10, 11.

59. Quebec v. La Chaussure Brown's Inc., 36 D.L.R. 4th 374 (Que. C.A. 1986).
Page: 18.

60. The Queen v. Big M Drug Mart Ltd., [1985] 1 S.C.R. 295.
Page: 8.

61. The Queen v. Ladouceur, 20 O.A.C. 1 (C.A. 1987).
Page: 36.

62. The Queen v. Oakes, [1986] 1 S.C.R. 103.
Pages: 19, 20.

63. Re Borough Commercial and Building Society, [1894] 1 Ch. 289 (C.A. 1893).
Page: 34.

64. Re German, [1974] 5 W.W.R. 217 (Alta. S.C. App. Div.).
Page: 32.

65. Re Hamilton, [1976] 3 W.W.R. 7 (B.C.S.C. 1975).
Pages: 38, 39.

66. Re Lazarenko, 29 Alta. L.R. 2d 28 (Q.B. 1983).
Page: 32.

67. Re Griffiths, 413 U.S. 717 (1973).
Pages: 17, 31.

68. Recent Development, Japan's New Foreign Lawyer Law, 19 Law & Pol'y Int'l Bus. 361 (1987).
Page: 28.

69. Redmond & Wakeling, History of the Provision of Legal Services (1987) (unpublished paper).
Page: 38.

70. Reference re Public Service Employee Relations Act, [1987] 1 S.C.R. 313.
Pages: 7, 10, 11, 12, 13, 14, 16, 17, 19, 20.

71. Report of the Quebec Bar's Special Committee on Interprovincial Law Firms (1986).
Pages: 36, 37.

72. R. Rotunda, Professional Responsibility 20-21 (1984).
Page: 28.

73. Saskatchewan v. Retail, Wholesale and Department Store Union, [1987] 1 S.C.R. 460.
Pages: 10, 11.

74. Schware v. Board of Bar Examiners of New Mexico, 352 U.S. 232 (1957).
Page: 17.

75. Service Employees International Union, Local 204 v. Broadway Manor Nursing Home, 44 O.R. 392 (Div. Ct. 1983).
Page: 36.

76. Shapiro v. Thompson, 394 U.S. 618 (1969).
Page: 35.

77. P. Sibenik, The Doorkeepers: The Governance of Territorial and Alberta Lawyers, 1885-1928, at 158 & 180 (1984) (M.A. thesis available at University of Calgary Law School Library).
Pages: 27, 30.

78. Singer Hutner Levince Seeman & Stuart v. Louisiana State Bar Association, 378 So. 2d 423 (La. 1979).
Page: 25.

79. Skinner v. The Queen, 196 A.P.R. 8 (N.S.S.C. 1987).
Page: 18.

80. Smith Kline & French Laboratories Ltd. v. Canada, 12 C.P.R. 3d 386 (Fed. C.A. 1986).
Page: 20.

81. Spedding, Freedom of Movement in the Legal Profession: European Perspectives, 11 Int'l Legal Persp. 54 (1986).
Page: 10.

82. Supreme Court of New Hampshire v. Piper, 470 U.S. 274 (1985).
Pages: 9, 18, 28, 31.

83. Swan, Regulating Continuing Competence in Lawyers and the Consumer Interest 370-72 (R. Evans & M. Trebilcock eds. 1982).
Pages: 35, 36.

84. L. Tribe, American Constitutional Law 409 (1978).
Page: 9.

85. Underhill, Why Not National Law Firms, 25 Advocate 159 (1967).
Page: 36.

86. Underwood McLellan & Associates Ltd. v. Association of Professional Engineers of Saskatchewan, 103 D.L.R. 3d 268 (Sask. C.A. 1979).
Page: 28.

87. United Nurses of Alberta Local 147 v. Board of Governors of the Northern Alberta Institute of Technology (Alta. P.S.E.R.B. April 11, 1985).
Page: 13.

88. Watts, History of the Law Society, 29 Advocate 110 (1971).
Page: ..

89. Wilson v. Medical Services of British Columbia, 36 D.L.R. 4th 31 (B.C.S.C. Chambers 1987).
Page: 8.

90. Winner v. S.M.T. (Eastern) Ltd., [1951] S.C.R. 887.
Page: 8.

91. Wright, What Is A Profession?, 29 Can. B. Rev. 748 (1951).
Pages: 17, 18.

92. Wyatt & Dashwood, The Right of Establishment and the Freedom to Provide Services in The Substantive Law of the EEC 182 (1980).
Page: 10.

93. Yick Wo v. Hopkins, 118 U.S. 356 (1885).
Page: 38.