Court File No.: 25192

IN THE SUPREME COURT OF CANADA
(On Appeal from the Court of Appeal of the Northwest Territories)

BETWEEN:

CANADIAN EGG MARKETING AGENCY

- and -

Appellant (Plaintiff)

PINEVIEW POULTRY PRODUCTS LTD.

- and -

Respondent (Defendant)

THE COMMISSIONER OF THE NORTHWEST TERRITORIES as represented by THE ATTORNEY GENERAL OF THE NORTHWEST TERRITORIES; COUNCIL OF CANADIANS; SIERRA LEGAL DEFENCE FUND SOCIETY; ATTORNEY GENERAL OF CANADA; ATTORNEY GENERAL OF ALBERTA; ATTORNEY GENERAL OF BRITISH COLUMBIA; ATTORNEY GENERAL OF QUEBEC; and ATTORNEY GENERAL OF ONTARIO

Interveners

AND BETWEEN:

CANADIAN EGG MARKETING AGENCY

- and -

Appellant (Plaintiff)

FRANK RICHARDSON operating as NORTHERN POULTRY

- and -

Respondent (Defendant)

THE COMMISSIONER OF THE NORTHWEST TERRITORIES as represented by THE ATTORNEY GENERAL OF THE NORTHWEST TERRITORIES; COUNCIL OF CANADIANS; SIERRA LEGAL DEFENCE FUND SOCIETY; ATTORNEY GENERAL OF CANADA; ATTORNEY GENERAL OF ALBERTA; ATTORNEY GENERAL OF BRITISH COLUMBIA; ATTORNEY GENERAL OF QUEBEC; and ATTORNEY GENERAL OF ONTARIO

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PART I - STATEMENT OF FACTS

1. The parties filed an Agreed Statement of Facts at trial, and for the purposes of this appeal, these facts do not appear to be in dispute.

Agreed Statement of Facts, Case on Appeal, Vol. III, Tab 15, pp. 534-556

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2. The Attorney General of Canada agrees substantially with the additional facts which are set out in the factum the Appellant, Canadian Egg Marketing Agency (the "Agency").

PART II - POINTS IN ISSUE

3. By order dated January 15, 1997, the Chief Justice of Canada stated the following constitutional questions:

1. Do the *Canadian Egg Marketing Proclamation*, C.R.C. 646, as amended, the *Canadian Egg Licensing Regulations*, 1987, SOR/87-242, as amended, ss. 3, 4(1), 7(1)(d), and 7(1) (e), and the *Canadian Egg Marketing Quota Regulations*, SOR/86-8, as amended, ss. 4(1)(a), 5(2), 6 and 7(1), in whole or in part, infringe the rights and freedoms guaranteed by s.2(d) and s.6 of the *Canadian Charter of Rights and Freedoms*.

2. If so can this infringement be justified under s.1 of the *Charter*?

1. *La Proclamation visant L'Office canadien* commercialisation des oeufs, C.R.C., ch. 646, et *ses modifications, le Règlement de 1987 sur l'octroi de permis visant les oeufs du Canada* DORS / 87-242, et ses modifications, art. 3, 4(1), 7(1)(d) et 7(1)(e), et le *Règlements de 1986 de l'Office canadien de commercialisation des oeufs sur le contingentement,* et ses modifications, DORS/86-8, art. 4(1)(a),5(2),6 et 7(1), en totalité ou en partie, violent-ils les droits et libertés garantis par l'al. 2d) et l'art.6 de la *Charte canadienne des droits et libertés*.

2. Dans l'affirmative, cette violation peut-elle être justifiée en vertu de l'article premier de la *Chartre*?

4. It is the position of the Attorney General of Canada:

a. that the Respondents should not have been granted public interest standing to invoke s.2(d) and s.6(2)(b) of the *Charter;*

b. that the impugned provisions do not violate s. 2(d) or s. 6(2)(b) of the *Charter*; and, in the alternative, if the impugned provisions do violate either provision, that the infringement is saved under s.1 of the *Charter*.

PART III - ARGUMENT

Question 1 Do the *Canadian Egg Marketing Proclamation*, C.R.C. 646, as amended, the *Canadian Egg Licensing Regulations*, 1987, SOR / 87-242, as amended, ss.3, 4(1), 7(1)(d), and 7(1)(e), and the *Canadian Egg Marketing Quota Regulations*, SOR/86-8, as amended, ss. 4(1)(a), 5(2), 6 and 7(1), in whole or in part, infringe the rights and freedoms guaranteed by s.2(d) and s.6 of the *Canadian Charter of Rights and Freedoms*.

A. Can Corporations Claim the Benefit of Sections 2(d) and 6(2)(b) of the *Charter*?

5. The Agency submitted in the Courts below that the Respondents could not invoke s. 2(d) and s. 6(2)(b) of the *Charter,* since both businesses, Pineview Poultry and Northern Poultry, are corporations incorporated under the laws of the Northwest Territories and Alberta.

6. The Northwest Territories Court of Appeal did, *"not find it necessary to explore the many and varied arguments raised by the parties concerning standing."* It simply granted public interest standing to the Respondents without determining whether or not their corporations were entitled to invoke s.2(d) and s.6(2)(b) of the *Charter.*

Reasons for Judgment, Case on Appeal, Vol. VI, Tab 40, p. 1401

7. Public interest standing has been the subject of six leading decisions of this Court.

Thorson v. Attorney General of Canada, [1975] 1 S.C.R. 138

Nova Scotia Board of Censors v. McNeil, [1976] 2 S.C.R. 265

Minister of Justice v. Borowski, [1981] 2 S.C.R. 575

Finlay v. Canada (Minister of Finance), [1986] 2 S.C.R. 607

Canadian Council of Churches v. The Queen, [1992] 1 S.C.R. 236

Hy and Zel's Inc. v. Ontario (Attorney General), [1993] 3 S.C.R. 675

8. Through these decisions, this Court has developed a three part test for determining whether public interest standing should be granted, namely:

i. is there a serious issue raised as to the invalidity of the legislation;

ii. has it been established that the applicant is directly affected by the legislation or if not does the applicant have a genuine interest in its validity; and,

iii. is there another reasonable and effective way to bring the issue before the court.

9. Before that test could be applied to the facts, the Court of Appeal was required to determine whether the Respondent corporations were entitled to invoke s. 2(d) and s.6(2)(b) of the *Charter*.

10. Such a determination was the first step. Until it was made, the Court of Appeal could not determine:

i. if there was a serious issue as to the invalidity of the legislation given that the Respondent corporations are the only parties who are directly effected by the impugned provisions; and,

ii. if there was another manner in which the issue might be brought before the Court.

1. Sections 2(d) and 6(2)(b) of the Charter

11. This Court has been reluctant to extend *Charter* protection to corporations who are pursuing pure economic interests. For example, sections 7 and 15 do not apply to corporations. Only in certain narrow circumstances can corporations invoke the *Charter*:

Irwin Toy Ltd. v. A.G. Quebec, [1989] 1 S.C.R. 927 at 1001-1004

R. v. Big M Drug Mart Ltd., [1985] 1 S.C.R. 295

Reference Re Public Service Employee Relations Act, [1987] 1 S.C.R. 313 at 395-397, 405

see also: R. v. Church of Scientology of Toronto, (April 18, 1997), Ontario Court of Appeal [1997] O.J. No. 1548. at paras. 113-121

Parkdale Hotel Limited v. A. G. Canada et al., [1986], 2 F.C. 514 (F.C.T.D.) at 534-535

12. Whether or not a corporate entity can invoke a *Charter* right will depend upon whether it can establish that it has an interest falling within the scope of the guarantee, and one which accords with the purpose of that provision.

R. v. C.I.P. Inc., [1992] 1 S.C.R. 843

i) Section 6(2)(b)

13. Just as corporations cannot avail themselves of s.15 of the *Charter* since that section applies to "individuals", corporations cannot avail themselves of the protection offered by s.6(2)(b) of the *Charter* since only a "citizen" or "person who has the status of a permanent resident" - human beings - can enjoy that right.

14. The wording of section 6(2)(b) leads inescapably to the conclusion that corporations cannot allege a violation of s. 6(2)(b) of the *Charter*.

ii) **Section 2(d)**

15. Following on the criteria set out in the *C.I.P.* decision, the Respondent corporations cannot invoke s.2(d) since the interest which they seek to protect is not within the scope of the guarantee. To hold otherwise would allow every business to claim that it was in "association" with numerous other businesses through the simple act of daily commerce. Similarly, the corporate interests at issue do not accord with the fundamental purpose of the s.2(d) guarantee. The Respondents are not proposing to act in concert with any other entity to achieve a common objective. Their sole purpose is to make profit.

16. Just as corporations cannot avail themselves of s.7 of the *Charter,* s.2(d) when read in purposive manner cannot have been intended to apply to corporations since these artificial entities cannot "associate".

B. Public Interest Standing

17. If the Respondent corporations are not entitled to invoke s.2(d) and s.6(2)(b) directly, then they should not be allowed to invoke those sections indirectly through the guise of public interest standing.

18. It is common ground that the Respondent corporations are the only egg producers in the Northwest Territories. The Court of Appeal reasoned against this factual backdrop that no one else was likely to bring a *Charter* challenge forward so the third branch of the public interest standing test had been satisfied.

Reasons for Judgment, Case on Appeal, Vol VI, Tab 40, p. 1404

19. This reasoning is contrary to the very core of public interest standing test enunciated by this Court which states that such status should only be granted where *"the party does not claim a breach of its own right under the Charter but those of others."*

Hy and Zel's Inc. v. Ontario (Attorney General), supra at 690

20. It is solely the Respondents corporate interests which were affected by the impugned provisions. It is not open to the Court of Appeal to ignore this reality and to grant public interest standing on the basis that other individuals *"might wish to engage in commercial egg production in the Northwest Territories".*

10 Reasons for Judgment, Case on Appeal, Vol. VI, Tab 40, p. 1404

21. This rationale is clearly contrary to the rulings of this Court to the effect that *Charter* challenges should not be mounted in a factual vacuum. One cannot invent an individual egg producer who is in the same situation as the Respondents in all respects for the purpose of convenient *Charter* analysis.

Hy and Zel's Inc. v. Ontario (Attorney General),supra at 693

22. Public interest standing should not be used to circumvent the inability of the Respondents to mount *Charter* challenges due to their corporate status.

20 *... the recognition of the need to grant public interest standing in some circumstances does not amount to a blanket approval to grant standing to all who wish to litigate an issue. It is essential that a balance be struck between ensuring access to the courts and preserving judicial resources.*

Canadian Council of Churches v. The Queen, supra at 252.

23. By granting public interest standing in this manner, the Northwest Territories Court of Appeal has effectively rewritten ss. 2(d) and 6(2)(b) of the *Charter* to allow corporations to take advantage of those sections.

30

24. As stated by the Chief Justice in *R. v. Wholesale Travel Group*, *"those who cloak themselves in the corporate veil, and who rely on the legal distinction between themselves and the corporate entity when it is to their benefit to do so, should not be allowed to deny this distinction in these circumstances (where the distinction is not to their benefit)."*

R. v. Wholesale Travel Group Inc., [1991] 3 S.C.R. 154 at 182-183

C. Section 2(d) of the *Charter*

1. Principles of Interpretation

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25. Freedom of association might protect associations with economic objectives in certain circumstances.

Reference Re Public Service Employee Relations Act, supra, at 390

26. However, the mere fact that an impugned legislative provision limits the possibility of commercial activities or agreements is not sufficient to show a *prima face* interference with the s.2(d) guarantee of freedom of association.

20 *R. v. Skinner,* [1990]1 S.C.R. 1235 at 1245

27. In the *Professional Institute* case, Mr Justice Sopinka (generally agreed with by La Forest and L'Hereux-Dubé) summarized the four principles of s. 2(d) interpretation which have been developed by the Supreme Court of Canada:

> *first, that s.2(d) protects the freedom to establish, belong to and maintain an association; second, that s.2(d) does not protect an activity solely on the ground that the activity is a foundational or essential purpose of an association; third, that s.2(d) protects the exercise in association of the constitutional rights and freedoms*
> 30 *of individuals; and fourth, that s.2(d) protects the exercise in associations of the lawful rights of individuals*

Professional Institute of the Public Service of Canada v. NWT (Commissioner), [1990] 2 S.C.R. 367

2. Application of these Principles

28. The Court of Appeal erred in applying these principles when it held:

i. that the Respondents were part of an "association" within the meaning of s. 2(d);

ii. that the "activity" of trade should attract protection under s.2(d) in the circumstances of this case; and,

10

iii. that the association was *"essentially the same as the activity"*.

29. In general terms, the Court of Appeal erred by doing the s.2(d) analysis in reverse. The Court begins with a consideration of trade as the "activity" and then concludes that the "association" is essentially the same as that activity. The effect of this logic is to constitutionalize the activity of trade.

i) The Nature of the "Association"

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30. The first question to be considered is the nature of the "association" for which s.2(d) protection is sought.

31. The Court of Appeal erred in this regard when it held that the marketing of eggs in interprovincial trade is an "associational activity" within the meaning of the guarantee secured by s.2(d) of the *Charter*.

Reasons for Judgment, Case on Appeal, Vol. VI, Tab 40, pp. 1417-1418.

32. Not every relationship is an "association". One prerequisite for an association is a common objective. For example, the use of the term "association" to encompass the parties who are negotiating a collective agreement is a contradiction in terms. An "association" implies a common purpose. One party to labour-management negotiations seeks as high a wage as possible, the other as low as possible. They are adversaries without any common purpose.

> *Reference Re Public Service Employee Relations Act, supra,* at 334, 399
>
> *Omni Health Care Ltd. et al. v. C.U.P.E.,* (January 29,1987), Ontario Divisional Court Nos. 391/86, 539/86, 166/86, and 966/86 at 3
>
> *Metropolitan Stores (MTS) Ltd. v. Manitoba Food and Commercial Workers*, [1988] 5 W.W.R. 544 (Man. Q.B.) at 555-556
>
> *Arlington Crane Service v. Ontario (Min. of Labour)* (1988), 56 D.L.R.(4th) 209 (Ont. S.C.) at 257

33. There is no "association" within the meaning of the s. 2(d) guarantee given that the Respondents are not pursuing any ongoing common objective with the individuals to whom they sell their product. Rather, the Respondents, and the graders to whom they sell their goods, intend to make a profit which is not an objective protected by the *Charter.*

34. The impugned provisions do not prevent the Respondents from establishing, belonging and maintaining an association in the manner that was suggested by Sopinka J in *Professional Institute.*

35. If the Court of Appeal is correct that the simple act of engaging in commerce leads to an "association" within the meaning of s.2(d) then a vast array of corporations will be "associated" and a host of corporate transactions will attract the protection of this provision. This would overshoot the purposes of the *Charter* and give the provision a meaning beyond that which was intended.

ii) **Definition of the Activity**

36. The above problem is compounded by the Court of Appeal's failure to adequately define the "activity" for which protection is sought. The Court of Appeal appears to define the "activity" with a variety of relatively general terms such as "marketing" and "trade"

> Reasons for Judgment, Case on Appeal, Vol. VI, Tab 40, pp. 1406, 1403, and 1413.

10 37. The Respondents argue that they are pursuing their "freedom to associate with other traders" and the common law "right of trade":

> *Richardson and Pineview do not seek protection for a right to participate in unrestricted trade. Instead, Richardson and Pineview seek to protect their freedom to associate with other traders, that is, the producers, graders, wholesalers and retailers who are the other participants in the egg industry, in the same way as those traders lawfully associate with each other.*
>
> Respondents factum, paras.67 and 80.

38. Courts should avoid constitutionalizing in general and abstract terms rights which the
20 Parliament has found it necessary to define and qualify in various ways in the context of a comprehensive regulatory scheme. Trade is just such an abstract term.

> *What is in issue here is not the importance of freedom of association in this sense, which is the one I ascribe to s.2(d) of the Charter, but whether particular activity of an association in pursuit of its objects is to be constitutionally protected or left to be regulated by legislative policy. The rights for which constitutional protection are sought - the modern rights to bargain collectively and to strike, involving correlative duties or obligations resting on an employer -- are not fundamental rights or freedoms. They are the creation of legislation involving correlative duties*
> 30 *or obligations resting on an employer-- are not fundamental rights or freedoms. They are the creation of legislation involving a balance of competing interests in a field which has been recognized by the courts as requiring a specialized expertise. It is surprising that in an area in which this Court has affirmed a principle of judicial restraint in the review of administrative action we should be considering the substitution of our judgment for that of the Legislature by*

constitutionalizing in general and abstract terms rights which the Legislature has found it necessary to define and qualify in various ways.

Reference Re Public Service Employee Relations Act, supra at 391

39. If one allows the general activity of trade between corporations to fall within the ambit of s.2(d) then the effect of the Court of Appeal's ruling is to constitutionalize a vast array of commercial transactions. This is clearly contrary to the wording of the *Charter* and the jurisprudence of this Court.

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40. There is no *Charter* protection for the ownership of property and general commercial activity, or for a host of other lawful activities.

Reference Re Public Service Employee Relations Act, supra at 405

41. If the Court of Appeal is correct that freedom of association extends to protect the Respondents pure economic interest, and grants them the remedy which they are seeking, then the effect of that guarantee is to give them a competitive advantage whereby they can:

- sell their goods interprovincially without reference to the quota restrictions which limit the
20 output of egg producers in all ten provinces;

- gain the advantage of the higher prices which the federal quota system creates; and,

- not pay any of the federal levies associated with that system which egg producers in other provinces are required to pay.

42. The Attorney General's position is that s.2(d) does not give the Respondents a constitutional right to be a "free rider" on the national egg marketing system.

iii) The Distinction between the "Association" and the "Activity"

43. The difficulties with the Court of Appeal's characterization of the "association" and "activity" are compounded by their departure from the second proposition articulated by Mr. Justice Sopinka in the *Professional Institute* case.

44. In it's decision the Court of Appeal stated that the association in question was *"essentially the same as the activity"*.

Reasons for Judgment, Case on Appeal, Vol. VI, Tab 40 p. 1413.

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45. The Court of Appeal failed to appreciate the distinction between these two concepts. In particular, it failed to appreciate that an association, once formed, is not guaranteed the right to engage in a particular activity, *"solely on the ground that the activity is a foundational or essential purpose of an organization."*

Professional Institute, supra at 402

46. It is not the activity itself which is protected by the *Charter* only the association. By folding the concepts together the effect of the Court of Appeal's reasoning is to constitutionalize the activity of trade. Again, such an approach is clearly contrary to the wording of the *Charter*

20 and the decisions of this Court.

D. Section 6(2)(b) of the *Charter*

1. History of Mobility Rights

47. The purpose of s. 6 is to protect the right of citizens and permanent residents to move about the country, to reside where they wish and to pursue their livelihood without regard to provincial boundaries

Black v. Law Society of Alberta, [1989] 1 S.C.R. 591

48. The history of section 6 can be traced to s.121 of *Constitution Act, 1867* and the objective of securing national economic union.

Black, supra at 609

2. Principles of Interpretation of Section 6(2)(b)

49. The drafters of the *Charter* used a variety of terms in defining the scope of each constitutional right; "everyone" (section 7), "person" (section 11), "individual" (section 15), "citizen" (section 3); and "every citizen and every person who has the status of a permanent resident" (section 6(2)).

50. The unique and highly restrictive language of subsection 6(2), and in particular usage of the words "citizen", "permanent resident", "residence", and "livelihood", makes it abundantly clear that this subsection does not apply to corporations, only to natural persons.

Parkdale Hotel Ltd., supra at 534-535

B.C. Milk Marketing Board v. Aquilini et al. (April 8, 1997) B.C. S.C. No. A905636 at 63

51. As the Respondents are organized and incorporated as corporations they should not be permitted to claim the benefits of s.6. Moreover, for the reasons given above, the Respondents should not be allowed to do indirectly what they cannot do directly, by asserting mobility rights through the guise of public interest standing.

52. The Respondents are the only entities in the Northwest Territories who are affected by the impugned provisions. Their corporate interests do not engage s.6 and they should not be allowed to effect a *Charter* challenge on behalf of non-existent, individuals who might produce eggs in the Northwest Territories in the future.

53. In the alternative, even if the Respondents came within the language of s. 6(2)(b), it is submitted that they would be prohibited from alleging an infringement of that section on the basis of the limit contained in s.6(3)(a).

54. The impugned provisions are clearly a law of general application and they cannot be said to discriminate among persons primarily on the basis of province of present residence since the scheme is not primarily aimed at provincial boundaries but rather the efficient management of the national egg market. Moreover, it is the refusal of the Northwest Territories to accept a quota which stands in the way of the Respondents engaging in interprovincial trade.

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E. Section 1 of the *Charter*

55. In the event that the impugned provisions are found to violate either s. 2(d) or s. 6 of the *Charter,* the Attorney General of Canada's position is that these infringements are justified under s. 1.

56. Application of the *Oakes* test should not be approached in a mechanistic fashion; rather, it should be applied flexibly, having regard to the factual and social context of each case.

20 *Ross v. New Brunswick School District No. 15,* [1996] 1 S.C.R. 825

RJR-MacDonald Inc. v. Canada (Attorney General), [1995] 3 S.C.R. 199

R. v. Butler, [1992] 1 S.C.R. 452

Stoffman v. Vancouver General Hospital, [1990] 3 S.C.R. 483.

57. The factual, social, and economic context of this case is central to the analysis under s. 1,

30 and in particular:

- that the focus of the impugned provisions is the creation and maintenance of an efficient national egg market system, not the exclusion of the Northwest Territories from this market;

- that the Northwest Territories had no egg production when the provisions were created;

- that market conditions were chaotic prior to the creation of this national system;

- that there have been ongoing negotiations between the Agency and the Northwest Territories concerning admitting the territory into the system, but the parties have been unable to agree on the appropriate quota for the Northwest Territories;

- that the Respondents are free to sell their eggs in the Northwest Territories; and,

- that the effect of constitutionally exempting the Respondents from the impugned provisions is to allow these corporations to:

    a) sell their goods interprovincially without limitation while egg producers in the rest of the country are subject to strict quotas;

    b) gain the advantage of the higher prices which the federal quota system creates; and,

    c) not pay any of the federal levies associated with that system which egg producers in other provinces are required to pay.

1. Importance of the Objective

58. The Court of Appeal accepted that the overall purpose of the egg marketing scheme was to bring order to a previously chaotic market, and moreover, that this objective was both laudable and legitimate.

> Reasons for Judgment, Case on Appeal, Vol. VI, Tab 40, pp. 1433-1434

59. This acknowledgement is sufficient to establish a pressing and substantial national concern within the pragmatic framework mandated by the Supreme Court of Canada for s. 1 analysis. Given the factual context described above, the pressing and substantial objective of bringing order and stability to the national egg market will be thwarted if the Respondents can use the *Charter* to become a "free rider" and participate in the interprovincial egg market on more advantageous terms than egg producers elsewhere in Canada.

2. Proportionality

i) Rational Connection

60. The quota system which is at the heart of the impugned provisions is a rational response to ensure an efficient integrated national egg market system. It is a complex solution which has been developed by the provincial and federal governments to address the chaotic market conditions which had previously existed. It is based on a reasonable apprehension of the harm which would result if no such system existed.

> *RJR-MacDonald Inc. v. Canada (Attorney General), supra.*
>
> *R. v. Butler, supra*

ii) **Minimal Impairment**

61. The limit must impair the right or freedom "as little as possible". However, where there are competing claims by different groups in society greater deference may be shown and the government only has to establish a reasonable basis for concluding that the limit impairs the right or freedom as little as possible.

RJR-MacDonald Inc. v. Canada (Attorney General), supra

R. v. Chaulk, [1990] 3 S.C.R. 1303

Irwin Toy, supra

McKinney v. University of Guelph, [1990] 3 S.C.R. 229

62. As the limit in question is part of a complex web of rules and agreements by various levels of governments, and a change in this limit may well cause significant ramifications over a broad spectrum of social and economic policy, it is submitted that some deference should be awarded to the negotiated federal provincial scheme as endorsed by Parliament when considering "minimal impairment".

McKinney, supra.

63. The provisions are a complex, balanced system which regulates the entire Canadian market and, in the circumstances, impair the Respondents rights as little as possible given:

i. that they have access to the Northwest Territories market;

ii. that they are seeking unlimited access to the regulated interprovincial market as a "free rider";

iii. that the Agency has offered a quota to the Northwest Territories which was refused; and,

iv. that the Northwest Territories is in the process of negotiating entry into the federal system.

iii) Proportionate Effect

64. The more serious the deleterious effects, the more important the objective must be. The objective of the federal provincial scheme has clearly been met. In the alternative, to the extent that the objective is not fully realized, the salutary effects of the limit outweigh the negative effects given the previous chaos in the egg market.

Dagenais v. Canadian Broadcasting Corporation, [1994] 3 S.C.R. 835

R. v. Laba, [1994] 3 S.C.R. 965

F. Remedy

65. The Respondents seek far greater relief than obtaining a quota for the Northwest Territories. Rather, the Respondents have asked this Court to use the *Charter* to position them as a "free rider" on the national egg marketing scheme whereby solely the Northwest Territories is constitutionally exempt from the scheme. The effect of such a ruling is to give the Respondents a competitive advantage over every other producer in the country. It is submitted that the *Charter* should not be used to grant such a commercial advantage to the Respondents.

PART IV - ORDER SOUGHT

66. The Attorney General of Canada submits that the appeal should be allowed and the constitutional questions should be answered as follows:

i. that the impugned provisions do not violate s. 2(d) or s.6(2)(b) of the *Charter;* and,

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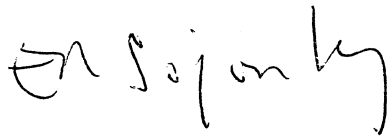
ii. in the alternative, if the impugned provisions do violate s. 2(d) or s. 6(2)(b), then this infringement is saved under s.1 of the *Charter;*

ALL OF WHICH is respectfully submitted this 15th day of May, 1997.



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Edward R. Sojonky, Q.C.
Ian McCowan

Counsel for the Attorney General of Canada

PART V - AUTHORITIES

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CASES REFERRED TO:

PART V - AUTHORITIES (cont'd)

Page

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May A.D. 1997

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May A.D. 1997

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Northwest Territories

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and the Interveners Council
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Fund, and the Attorney General
of Alberta

Bowker, Stratton & Henderson
(HBS).

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this 16th day of
May A.D. 1997

Solicitor for the Interveners
Attorney General of Ontario
and the Attorney General
of British Columbia

Service accepted for
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Jennifer Mackenzie