No. 17537

IN THE SUPREME COURT OF CANADA

(On Appeal from the Court of Appeal for the Province of Ontario)

IN THE MATTER OF an application by Joel Skapinker, under Sections 6, 24 and 52 of The Constitution Act 1982;

AND IN THE MATTER OF a constitutional challenge to Section 28(c) of The Law Society Act, R.S.O. 1980,

AND IN THE MATTER OF the Supreme Court of Ontario Rules of Practice, Rules 10, 11, 611 and 612 of The Interpretation Act, R. S. O. 1980, Chapter 219, Section 29;

RE: THE LAW SOCIETY OF UPPER CANADA

Appellant
(Respondent)

- and -

JOEL SKAPINKER

Respondent
(Applicant)

- and -

THE ATTORNEY GENERAL OF CANADA,
THE ATTORNEY GENERAL OF BRITISH COLUMBIA,
THE ATTORNEY GENERAL OF ONTARIO,
THE ATTORNEY GENERAL OF SASKATCHEWAN,
LE PROCUREUR GENERAL DU QUEBEC,
FEDERATION OF LAW SOCIETIES OF CANADA
- FEDERATION DES BARREAUX DU CANADA
JOHN CALVIN RICHARDSON

Intervenants

FACTUM SUBMITTED ON BEHALF OF
INTERVENANT JOHN CALVIN RICHARDSON

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I N D E X

		Page No.
PART I:	FACTS	1
PART II:	POINTS IN ISSUE	3
PART III:	ARGUMENT	4
PART IV:	ORDER REQUESTED	7

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PART I: FACTS

1. The Intervenant accepts as correct the facts set out in the factums of the Appellant and Respondent except insofar as paragraph 4 of the Appellant's factum suggests that the Respondent's

evidence discloses no element of mobility. In that respect the Intervenant adopts the position of the Respondent (set out in paragraph 2 of the Respondent's factum).

2. The Intervenant accepts as correct the facts set out in paragraph 9 of the Appellant's factum, which facts bear on the situation of the Intervenant, John Calvin Richardson.

PART II: POINTS IN ISSUE

3. (1) Whether the provision of s.28(c) of The Law Society Act denying to a permanent resident of Canada the right to practice law in Ontario is inconsistent with clause 6(2)(b) of the Charter.

(2) If so, whether the provision is saved by clause 6(3)(a) of the Charter upon the ground that it is «a law of general application in force in a province».

(3) If it is not so saved, whether s.28(c) is such a reasonable restraint «as can be demonstrably justified in a free and democratic society» as provided in s.1 of the Charter.

PART III: ARGUMENT

4. The Intervenant, John Calvin Richardson, adopts the argument set out in the Respondent's Factum.

5. In addition, the Intervenant submits that mobility from one province to another is not a necessary prerequisite for the rights set out in Section 6(2) of the Charter of Rights to apply. The section serves to also protect the rights of those moving from another country into a province of Canada, provided they become permanent residents of Canada. The Intervenant, John Calvin Richardson, has not moved from one province to another but has taken up residence in Ontario as a permanent resident of Canada. He has met all requirements for admission to the bar, except that he is not a Canadian citizen or other British subject.

6. It is submitted that the present requirement of the Law Society of Upper Canada that an applicant to the bar either be a Canadian citizen or submit an undertaking to become a Canadian citizen at the earliest opportunity is arbitrary and equally in conflict with the rights set out in Section 6 of the Charter of Rights. If a requirement of citizenship should be found to be unconstitutional then the requirement for an undertaking must equally be found to be contrary to The Charter of Rights.

7. It is submitted that Section 28(c) of The Law Society Act of Ontario is not a law of «general application» so as to exclude the applicability of Section 6(2) of The Charter of Rights. The expression, «law of general application», has been discussed in the courts in regards to two areas:

(a) The constitutional application of provincial laws to federal companies operating within federal areas of jurisdiction, the established rule bein· that federal entities are only subject

to provincial laws of general application.

John Deere Plow Company Limited v. Theodore F. Wharton (1915) A.C. 330

Great West Saddlery Company Limited v. The King (1921) 2 A.C. 91

(b) The application of provincial laws to Indians. The federal Indian Act provides that Indians are only subject to provincial laws of general application.

Kruger and Manuel v. The Queen (1977) 75 D.L.R. (3d) 434 (S.C.C.)

Regina v. Strongquil (1953) 8 W.W.R. (NS) 247 (Sask. C.A.)

8. It is submitted that only «provincial laws of general application» apply to Indians under The Indian Act and to federally incorporated companies operating within federal areas of jurisdiction because they are entities protected by federal jurisdiction from undue intrusion by provincial law. The balance that the the courts have established is to ensure that provincial laws apply to the federally protected entities, but only insofar as they do not expressly or by effect attempt to legislate directly in relation to these entities.

9. Similarly, citizens and permanent residents are protected entities under Section 6 of The Charter of Rights insofar as they are given the rights

«(a) to move to and take up residence in any province;

and

(b) to pursue the gaining of a livelihood in any province.»

It is submitted that in making these rights subject to provincial laws of general application, the provinces are still prohibited from infringing on the set out rights of these protected entities. As with Indians or federally incorporated companies, they are allowed to legislate provided that they do not expressly or by

effect legislate in relation to the rights of these entities. It is submitted that Section 28(c) of the Law Society Act of Ontario expressly excludes permanent residents from practising law and thereby is attempting to legislate in direct relation to and in direct conflict with rights granted to constitutionally protected entities. Insofar as it does so it is clearly not a law of general application. It is overriding the balance which the phrase «laws of general application» is meant to impose. It is parallel to a province legislating and delineating restrictions specifically in regards to Indians or federally incorporated companies.

10. It is further submitted that if the Law Society Act is allowed to restrict the rights of permanent residents to practise law then the rights granted in Section 6(2) of The Charter of Rights could be expressly negated by any other provincial law which chose to do so. The rights would become subject to any and all provincial laws. The phrase «laws of general application» would lose its limiting meaning and as a consequence the rights set out in Section 6(2) of the Charter of Rights would become hollow and without substance.

PART IV: ORDER REQUESTED

5. The Intervenant respectfully requests that this appeal be dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Harvey Berkal

Harvey Berkal

Of the Counsel for the Intervenant,
John Calvin Richardson

TABLE OF AUTHORITIES

1. Kruger and Manuel v. The Queen (1977), 75 D.L.R. (3d) 434 (S.C.C.)

2. Regina v. Strongquill (1953), 8 W.W.R. (NS) 247 (Sask. C.A.)

3. John Deere Plow Company Limited v. Theodore F. Wharton, (1915) A.C. 330

4. Great West Saddlery Company Limited v. The King, (1921) 2 A.C. 91