

S.C.C. Court No. 21019

IN THE SUPREME COURT OF CANADA
(Appeal from the Court of Appeal
for the Province of Ontario)

IN THE MATTER OF The Constitution Act, 1982
and The Canadian Charter of Rights and
Freedoms;

AND IN THE MATTER OF The Judicial Review
Procedure Act, R.S.O., 1980, c. 224, as
Amended;

AND IN THE MATTER OF The Health Disciplines
Act, R.S.O., c. 196, as Amended, and
Regulation 447 thereto;

AND IN THE MATTER OF a hearing by the
Discipline Committee of the Royal College of
Dental Surgeons of Ontario

B E T W E E N:

THE ROYAL COLLEGE OF DENTAL SURGEONS OF
ONTARIO and THE DISCIPLINE COMMITTEE OF
THE ROYAL COLLEGE OF DENTAL SURGEONS OF ONTARIO

Appellants
(Respondents)

- and -

HOWARD ROCKET, D.D.S.
and BRIAN PRICE, D.D.S.

Respondents
(Applicants)

APPELLANT'S FACTUM

SHIBLEY, RIGHTON & McCUTCHEON
Barristers and Solicitors
401 Bay Street
Toronto, Ontario
M5H 2Z1

Richard E. Shibley, Q.C.
V. Ross Morrison
(416) 363-9381

Solicitors for the Appellants

SERVED COPY
SIGNIFICATION

TO: **Teplitsky, Colson**
Barristers and Solicitors
Suite 200
70 Bond Street
Toronto, Ontario
M5B 1X3

Martin Teplitsky, Q.C.
(416) 365-9320

Solicitors for the Respondents

AND

TO: **Soloway, Wright**
Barristers and Solicitors
99 Metcalfe Street
Ottawa, Ontario
K1P 6L7

Robert E. Houston, Q.C.
(613) 236-0111

Ottawa Agents for the
Solicitors for Appellants

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APPELLANTS' FACTUM

PART I - STATEMENT OF FACTS

1. Leave to appeal to this Court from the Order of the Ontario Court of Appeal made the 19th day of April, 1988, was granted on Thursday, February 2, 1989.

2. The Respondents, Howard Rocket and Brian Price, are dental surgeons and members of the Appellant, The Royal College of Dental Surgeons of Ontario (the "College").

Case on Appeal, Vol. II, Page 238, Lines 28-30

3. As a result of the participation by Howard Rocket and Brian Price in an advertising campaign, charges of professional misconduct were brought against the Respondents, alleging that they had acted in contravention of Regulation 447 made pursuant to the Health Disciplines Act, R.S.O. 1980, c. 196, as amended.

Case on Appeal, Vol. II, Page 238, Lines 30-40

4. A hearing was scheduled to take place before the Appellant, the Discipline Committee of The Royal College of Dental Surgeons of Ontario. The Respondents moved before the Supreme Court of Ontario, Divisional Court, seeking by way of judicial review:

- (a) a declaration that s. 37(39) of Ontario Regulation 447 of R.R.O., 1980, as amended, to Ontario Regulation 720/83 is of no force and effect;
- (b) a declaration that s. 37(40) of Ontario Regulation 447 of R.R.O., 1980, as amended to Ontario Regulation 720/83 is of no force and effect insofar as it prohibits the Respondents' lending themselves and their reputations for consideration to the promotion of a business entity not related to dentistry or deems such to be professional misconduct.

Case on Appeal, Vol. II, Page 238, Line 40
to Page 239, Line 25

5. The Divisional Court dismissed the application by means of an endorsement which read:

"Dismissed.

This court is obliged under the principle of stare decisis to follow its decision in Klein et al v. The Law Society of Upper Canada (16 D.L.R. (4th) 489) on the main issue herein. Application is therefore dismissed with costs to the Respondents if demanded."

Case on Appeal, Vol. II, Page 205

6. The Ontario Court of Appeal granted the Respondents leave to appeal from the decision of the Ontario Divisional Court. The appeal was heard before the Ontario Court of Appeal on June 24 and 25, 1987. On April 19, 1988 the Ontario Court of Appeal released its decision. The majority of the Court, Dubin, A.C.J.O. dissenting, declared that s. 37(39) of Ontario Regulation 447 of R.R.O., 1980, as amended, to Ontario Regulation 729/83, was of no force and effect and ordered that the Appellant, the Discipline Committee of The Royal College of Dental Surgeons of Ontario, be prohibited from proceeding with respect to count one of the charges brought against the Respondents pursuant to the provisions of s. 37(39) of Ontario Regulation 447 of R.R.O., 1980.

Case on Appeal, Vol. I, Pages 8-11

7. The advertisement which gave rise to the charges was published under the heading "New Faces of the Canadian Establishment" and, during the period from September to November, 1985, appeared in numerous publications including Time Magazine, McLean's, Newsweek, Financial Post, Canadian Business, Financial Times, Report on Business and En Route.

Case on Appeal, Vol. I, Pages 31-32

8. The advertisement contained a photograph of the Respondents with the following passages:

"Drs. Howard Rocket and Brian Price, founders, Tridont Dental Centres, at the Holiday Inn, Toronto, downtown.

They work 12 hour days, including weekends and together log some 300,000 kilometres in business travel a year. In 1979, Dr. Rocket and Dr. Price foresaw the future of dentistry in the concept of delivering dental services from shopping malls to make it more convenient and accessible for the public. They formed Tridont Dental Centres and in 1980 opened their first outlet in a Toronto suburb. The response from the public was overwhelming. By 1985, Tridont had grown from a staff of three to a staff of fifteen hundred, becoming North America's largest storefront dentistry group. Today they have over 70 outlets in Canada and the United States, a figure expected to increase by more than 20 each year.

Success like this occurs when business people recognize a need for change and respond to it. Holiday Inn is recognizing and responding to their changing needs. That's why when Drs. Howard Rocket and Brian Price travel on business they stay at a Holiday Inn Hotel, - Holiday Inn - A Better Place to Be."

**Case on Appeal, Vol. I, Pages 31-32
Vol. II, Page 240, Line 30 to
Page 241, Line 10**

9. On January 20, 1986, the Executive Committee of the College met with the Respondents with respect to the aforesaid advertisements. Subsequently, the Executive Committee directed the Discipline Committee of the College to inquire into the following allegations of professional misconduct:

"(1) You have been guilty of professional misconduct

in that, during the year of 1985 , you did publish, display, distribute or use or permit, directly or indirectly, the publishing, display, distribution or use of an advertisement related to the practice of dentistry by you, which advertisement, entitled "New Faces of the Canadian Establishment" appeared, inter alia, in the following publications, namely: [the above mentioned publications were particularized];

- (2) You have been guilty of professional misconduct in that, during the year of 1985, you engaged in conduct or an act relevant to the practice of dentistry that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, in that you did lend yourselves and your reputations, for valuable consideration to the promotion of Holiday Inn through the publication, display or distribution of advertisements by Holiday Inn of its hotels and the promotion of Dewey, Secombe and Howe Lounge, Holiday Inn, Toronto Downtown, which advertisements appeared, inter alia, in the following publications, namely: [the above mentioned publications were again particularized]."

Case on Appeal, Vol. I, Pages 1-3

Vol. II, Page 213, Lines 1-40

10. The Regulations applicable to the charges are set out in full in the Appendices and include the following material provisions:

37. For the purposes of Part II of the Act, "professional misconduct" means:

39. publishing, displaying, distributing or using or permitting, directly or indirectly, the publishing, display, distribution or use of any advertisement related to the practice of dentistry by a member, or a member associating with or being employed by any person, other

than

(i) professional cards that contain only the name of the member, a vocational designation, the member's address, academic degrees, telephone number and office hours;

(ii) an announcement upon commencing practice or changing the geographical location of a member's practice that

- A. does not exceed two standard newspaper columns in width and five centimetres in depth including the margins,
- B. does not contain references to qualifications, procedures or equipment, and
- C. does not appear more than three times in a newspaper or periodical in respect of the commencement of the practice or of a change in the geographical location of the practice,

(iii) appointment cards that do not contain more than the information contained in a professional card and the time and date of the appointment or appointments;

(iv) reminder notices to patients;

(v) announcement cards that do not state more than the information contained in a professional card and an announcement of the commencement of the practice of the member, a change of location or a new association in practice,

...

(viii) a telephone directory listing,

- A. in the white pages that,
 - 1. is of dark or light type,
 - 2. where a member is a certified specialist, may indicate the specialty designation,
 - 3. does not list office hours, and

4. is only an alphabetical listing according to the member's surname, and
- B. in the yellow pages that,
 1. is only of light type,
 2. where a member is a certified specialist, may indicate the specialty designation,
 3. does not list office hours, and
 4. is listed only in the telephone listing for the geographical area in which the member is engaged in the practice of dentistry; and
40. conduct or an act relevant to the practice of dentistry that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

11. The College has been charged with the statutory responsibility to regulate the practice of dentistry and to govern dentists in the province of Ontario. The objects imposed upon the College under the Health Disciplines Act, R.S.O., 1980, c. 196 (the "Act") include the obligation to "...establish, maintain and develop standards of professional ethics among its members...in order that the public interest may be served and protected".

Case on Appeal, Vol. I, Page 34, Lines 30-43
Vol. II, Page 209, Lines 30-40

12. In order that the College may fulfill its duties and obligations in this regard, Regulations have been passed under the Act which, inter alia, define what constitutes professional misconduct.

Case on Appeal, Vol. I, Page 35, Lines 1-10

13. Dubin, A.C.J.O., in his dissenting opinion, described the Regulations as follows:

"The Regulation, although enacted pursuant to the statute, is one sought for and approved by the dental profession. Such provisions are matters of taste designed to protect the dignity of the dentist and are not to be monitored by the court as if each requirement raised a true freedom of expression issue."

Case on Appeal, Vol. II, Page 219, Lines 38-42

14. It is the College's view that promotional advertising by or on behalf of dentists in Ontario beyond those professional cards, announcements or notices countenanced by section 37(39) of the Regulations ought to be prohibited. At present, the advertisements which are permitted within the stipulated limits adequately satisfy the public's need to acquire sufficient information to permit knowledgeable access to and informed participation in the dental treatment process. At the same time, the Regulations recognize that the practice of dentistry is a profession, with aims and obligations, rules of ethics and a tradition of collegiality which are not consonant with the promotion of one's self and one's practice through the use of tactics typical of purely commercial businesses marketing themselves. The existing limitations on advertising by the dental profession serve as a safeguard for the public by excluding the advertisement of many matters which are not helpful or relevant to the choice of a dentist or which cannot be so standardized as to be accurately reflected in an advertisement.

Case on Appeal, Vol. I, Page 35, Line 20 to
Page 37, Line 10

15. The particular advertisements which give rise to this proceeding represent an exercise in pure self-aggrandizement without any redeeming qualities. The Respondents are, by their own admission, using their dental practice and their system of delivery of dental service to promote not only themselves and their dental practices but also the Holiday Inn and the bar of its downtown Toronto hotel, and they are doing so on grounds which are irrelevant to the provision of good dental care. Self-promotion such as this is inimical to the welfare of both the public and the dental profession.

Case on Appeal, Vol. I, Page 37, Lines 10-42

16. The nature of the advertising engaged in by the Respondents was described aptly by Dubin, A.C.J.O. as follows:

"The advertisements, upon which the complaints of professional misconduct sought to be brought against the appellants [respondents] are founded, are purely commercial and serve no public interest. They merely promote the commercial interests of the appellants [respondents] and of Holiday Inn. Inferentially, the advertisements promote the value of the dental services being performed by the appellants [respondents]. If unregulated, such advertisements would only encourage the least competent and most unscrupulous dentists to respond in kind to the confusion and detriment of the public and to the diminution of the professionalism of the dental profession.

...

The province has an interest in maintaining the professionalism, integrity and ethics of the dental profession and to that end can impose limits on advertising by dentists."

Case on Appeal, Vol. II, Page 235, Lines 1-40

17. It is noteworthy that the advertising in issue does not relate in any way to the office hours of the Respondents or to the language which they speak.

18. It is noteworthy that physicians practicing in Ontario are subject to very similar restrictions on advertising as are dentists.

Case on Appeal, Vol. I, Page 38, Lines 20-30;
Pages 53-55

PART II - STATEMENT OF POINTS IN ISSUE

19. It is respectfully submitted that the Regulations have been duly enacted pursuant to the legislative provisions of the Health Disciplines Act, R.S.O. 1980, c. 196, and are therefore "prescribed by law".

20. It is respectfully submitted that the guarantee of freedom of expression as set out in s. 2(b) of The Canadian Charter of Rights and Freedoms (the "Charter") does not extend to promotional advertising by dentists and other professionals and members of the health disciplines.

21. It is respectfully submitted that the limitations, if any, imposed by s. 37(39) of the Regulations on the Respondents' right to freedom of expression as guaranteed by s. 2(b) of the Charter are reasonable and demonstrably justified in a free and democratic society.

22. It is respectfully submitted that the existing limitations on the promotional advertising engaged in by the

Respondents constitute minimal impairment of the Respondents' freedom of expression as they are designed to:

- (a) provide the public with sufficient information to permit knowledgeable access to and informed participation in the dental treatment process, and
- (b) prohibit marketing tactics which are more typical of purely commercial businesses, are not helpful or relevant to the choice of a dentist and are not typical of a professional discipline such as dentistry with its aims and obligations, rules of ethics, tradition of collegiality and the specialized and personal nature of the services which it provides.

23. It is respectfully submitted that, if s. 37(39) of the Regulations limits the Respondents' right to freedom of expression and if those limitations are not justified under s. 1 of the Charter, then the appropriate remedy under s. 52 of the Constitution Act, 1982, is a declaration that s. 37(39) of the Regulations is of no force or effect only insofar as the Regulations do not permit the office hours of a dentist to be included in a telephone directory and do not provide for the language spoken by a dentist to be included in the dentist's advertising material.

PART III - STATEMENT OF ARGUMENT

A. Section 2(b) of the Charter: Freedom of Expression

Analysis Applicable to Freedom of Expression under s. 2(b) of the Charter

24. In Irwin Toy Ltd. v. A.G. of Quebec, [1989] 1 S.C.R. 927, this Court held that the following principles are to be applied in resolving an alleged violation of the guarantee of freedom of expression.

The First Step in the Analysis

(a) The first step in the analysis is to determine whether the activity in question falls within the sphere of conduct protected by the guarantee of freedom of expression.

Irwin Toy, supra, at pages 968-969 and page 978

The Scope of Freedom of Expression

(b) Human activity cannot be excluded from the scope of guaranteed free expression on the basis of the content or meaning being conveyed. "If the activity conveys or attempts to convey a meaning, it has expressive content and prima facie falls within the scope of the guarantee."

Irwin Toy, supra, at pages 969-970 and page 978

(c) "Activity which (1) does not convey or attempt to convey a meaning, and thus has no content of expression or (2) which conveys a meaning but through a violent form of expression, is not within the protected sphere of conduct."

Irwin Toy, supra, at page 978

The Second Step in the Analysis

(d) If the activity falls within the scope of guaranteed freedom of expression, the second step in the analysis is to determine whether the purpose or effect of the government action in issue (in this case, the Regulations) was to restrict freedom of expression (i.e. attempts to convey a meaning).

Irwin Toy, supra, at page 978

Purpose

(e) "The characterization of government purpose must proceed from the standpoint of the guarantee in issue. With regard to freedom of expression:

(i) if the government has aimed to control attempts to convey a meaning either by directly restricting the content of expression or by restricting a form of expression tied to content, its purpose trenches upon the guarantee. Where, on the other hand, it aims only to control the physical consequences of particular conduct, its purpose does not trench upon the guarantee.

(ii) In determining whether the government's purpose aims simply at harmful physical consequences, the question becomes: "does the mischief consist in the meaning of the

activity or the purported influence that meaning has on the behaviour of others or does it consist, rather, only in the direct physical result of the activity."

Irwin Toy, supra, at pages 975-976 and page 978

Effects

(f) Where the Court finds that the government's purpose was not to restrict free expression (i.e. not to control or restrict attempts to convey a meaning), the Court must still decide whether the effect of the government action has restricted the complainant's expression. The complainant bears the burden of demonstrating that such an effect has occurred. To do so, the complainant must identify the meaning being conveyed by the activity and "how it relates to the pursuit of truth, participation in the community, or individual self-fulfillment and human flourishing".

Irwin Toy, supra, at pages 976-977 and page 978-979

25. It is respectfully submitted that on the basis of the above analysis, freedom of expression does not extend to promotional advertising by dentists and other health care professionals in the context of Regulations which have been designed to preserve high standards of professionalism, integrity and ethics among members of the health disciplines.

B. The Charter, Section 1

26. It is respectfully submitted that the limitations imposed by Section 37(39) of the Regulations on the Respondents' rights to freedom of expression are reasonable and are demonstrably justified in a free and democratic society.

The Charter, Section 1

27. It is respectfully submitted that the Regulations have been duly enacted pursuant to the legislative provisions of the Health Disciplines Act, R.S.O. 1980, Chapter 196, as amended (the "Act") and are therefore "prescribed by law".

R v. Oakes, [1986] 1 S.C.R. 103 at p. 135 (S.C.C.)

28. It is respectfully submitted that the Regulations are reasonable and demonstrably justified in a free and democratic society because:

- (a) The objectives which the Regulations are designed to serve are of sufficient importance to warrant overriding a constitutionally protected right or freedom; and
- (b) The means chosen to achieve those objectives are reasonable and demonstrably justified. More specifically:
 - (i) the measures adopted are rationally connected to the objectives;
 - (ii) they impair "as little as possible" the freedom of expression of members of the College; and
 - (iii) the effects of the measures taken are proportionate to the objectives sought to be achieved.

R v. Oakes, supra, at pp. 135-142

29. It is respectfully submitted that the objects of the College, as established by the Act, are to serve and protect the public interest by inter alia, establishing, maintaining and developing standards of professional ethics among its members.

30. It is respectfully submitted that the existing limitations on advertising are designed to provide the public with sufficient information to permit knowledgeable access to and informed participation in the dental treatment process. At the same time the Regulations prohibit marketing tactics which are more typical of purely commercial businesses, are not helpful or relevant to the choice of a dentist and are not typical of a professional discipline such as dentistry with its aims and obligations, rules of ethics, tradition of collegiality and the specialized and personal nature of the services which it provides.

31. It is respectfully submitted that the subject advertisements are purely promotional tools, not only for the Respondents and their dental practices but also for the Holiday Inn and one of its bars. As such they cannot assist the public in any useful way in making an informed choice as to dental treatment and are inimical to the welfare of both the public and the profession of dentistry.

32. In his Affidavit sworn on September 12th, 1986, Wesley Dunn, former Registrar of the College and currently Professor of Dentistry at the University of Western Ontario, states:

"The existing limitations on advertising by the dental profession serve as a safeguard for the public by excluding the advertisement of many matters which are not

helpful or relevant to the choice of a dentist or which cannot be so standardized as to be accurately reflected in an advertisement. Unlike a business the profession of dentistry does not involve the routine provisions or sale of a series of standardized products or services regardless of the patient's needs. Rather, as in the practice of medicine, the dentist must diagnose the patient's condition and then select a method of treatment appropriate to both the physical and psychological needs of that particular patient, subject always to obtaining the patient's informed consent thereto."

And:

"These advertisements cannot assist the public in any useful way in making an intelligent choice of a dentist, and may mislead some into choosing a dental facility on an inappropriate basis, i.e. the business success of its founders, who are unlikely to be the treating dentist in any event. The advertisements not only seek to promote the Applicants [Respondents] over their fellow dentists, but also do so on irrelevant grounds, and as such are destructive of professional relations and standards."

Case on Appeal, Vol. I, Page 36, Line 28 to
Page 37, Lines 32-40

33. It is respectfully submitted that this case also falls within the class of cases in which the governmental objective is to protect a particular vulnerable group or members thereof, that is to say, those members of the public who might be misled by the type of promotional advertising as appears in this case:

"In interpreting and applying the Charter, I believe that the Courts must be cautious to ensure that it does not simply become an instrument of better situated individuals to roll back legislation which has as its object the improvement of the condition of less advantaged persons..."

Regina v. Edwards Books and Art Ltd.,
[1986] 2 S.C.R. 713 at 779

Slaight Communications Inc. v. Davidson,
[1989] 1 S.C.R. 1038 at 1051

Irwin Toy, supra, at page 72

34. As Dubin, A.C.J.O. stated in his dissenting opinion:

"... Nor do I think it appropriate to equate the statutory regulation relating to the professionalism and ethics of the dental profession with what may or may not be appropriate for those who are engaged in the promotion of their products in the free marketplace. Furthermore, it is of particular importance that the advertising in issue does not relate in any way to the office hours of the appellants [respondents] or to the language which they speak."

And further:

"Assuming as I do that freedom of expression extends beyond matters which relate to governmental policies or matters of public concern essential to the democratic process and may protect what has been defined as commercial speech, I think it is in error, with respect, to equate regulations enacted to preserve high standards of professionalism, integrity and ethics for one of our learned professions with product advertising by manufacturers and the like engaged in pure commercial enterprises. It is conceded that the State has an interest in maintaining the high standards of professionalism, integrity and ethics of those who carry on the dental profession in this province and, in doing so, can place a limit on advertising by dentists with the view of maintaining such high standards. There is no comparable interest in the State with respect to commercial advertising by those who seek to sell their products, save for protecting the public from fraud, false pretences, false or deceptive advertising and matters of health and morals."

And finally:

"The advertisements, upon which the complaints of professional misconduct sought to be brought against the appellants [respondents] are founded, are purely commercial and serve no public interest. They merely promote the commercial interests of the appellants

[respondents] and of Holiday Inn. Inferentially, the advertisements promote the value of the dental services being performed by the appellants. If unregulated, such advertisements would only encourage the least competent and most unscrupulous dentist to respond in kind to the confusion and detriment of the public and to the diminution of the professionalism of the dental profession. [Emphasis added] In that respect, I repeat what was stated by Chief Justice Hughes in Semler v. Oregon State Board of Dental Examiners et al, supra, when he stated:

'The community is concerned in providing safeguards not only against deception, but against practices which would tend to demoralize the profession by forcing its members into an unseemly rivalry which would enlarge the opportunities of the least scrupulous. What is generally called the 'ethics' of the profession is but the consensus of expert opinion as to the necessity of such standards.'

The province has an interest in maintaining the professionalism, integrity and ethics of the dental profession and to that end can impose limits on advertising by dentists." (Emphasis added)

Case on Appeal, Vol. II, Page 208, Lines 18-28,
Page 218, Lines 10-35,
Page 235, Lines 40-41

C. The Constitution Act, 1982, Section 52

35. It is respectfully submitted that, if s. 37(39) of the Regulations limits the Respondents' rights to freedom of expression and if those limitations are not justified under s. 1 of the Charter, then the appropriate remedy under s. 52 of the Constitution Act, 1982, is a declaration that s. 37(39) of the Regulations is of no force or effect only insofar as the Regulations do not permit the office hours of a dentist to be included in a telephone directory and do not provide for the

language spoken by a dentist to be included in the dentist's advertising material. Neither of these limitations impacts the Respondents in the advertisements which are before the Court.

Constitution Act, 1982, s. 52(1)

R v. Edwards Books and Art Ltd., [1986] 2
S.C.R. 713, per Dickson, C.J. at pp. 784-785;
per Wilson, J., dissenting, at pp. 810-811

36. It is respectfully submitted that, pursuant to s. 52 of the Constitution Act, 1982, the Courts should not declare as inoperative any law which infringes, only minimally or hypothetically, upon the rights or freedoms of an individual. This issue was addressed by Dubin, A.C.J.O. in his dissenting opinion as follows:

"My learned colleague assumes that any limitation on advertising by dentists is prima facie an infringement of the right of freedom of expression and unconstitutional unless it can be proved by those seeking to uphold the limitation that the limitation impairs as little as possible freedom of expression. Thus, as I have noted, my colleague holds the entire regulation relating to advertising by members of The Royal College of Dental Surgeons of Ontario to be unconstitutional because it does not permit the office hours of a dentist to be included in a telephone directory and does not provide for the language spoken by the dentist to be included in the dentist's advertising material. In his opinion, there being no reasonable basis for excluding the dissemination of such information the entire regulation falls.

To subject each of the provisions of Regulation 39 to such a test would invariably render the regulation unconstitutional. [Emphasis added] For example, the regulation limiting an announcement by a dentist of the commencement of practice, or changing the geographical location of the practice, to an advertisement that does not exceed two standard newspaper columns in width and five centimetres in depth could not be said to impair as little as possible freedom of expression since such an

advertisement six centimetres in depth could not be said to be unreasonable. The regulation also limits such advertisements to be only published three times. Four time may not be said to be unreasonable.

The regulation, although enacted pursuant to the statute, is one sought for and approved by the dental profession. [Emphasis added] Such provisions are matters of taste designed to protect the dignity of the dentist and are not to be monitored by the court as if each requirement raised a true freedom of expression issue. If a case were to arise in the future where the complaint of professional misconduct was premised on an allegation that the dentist had included office hours in a telephone directory contrary to the regulations, the issue would then be whether that particular limitation is an unreasonable limit of freedom of expression. For my part, I would not think that would be so, but if it were, the remedy would not be to strike down the entire regulation but to hold that particular provision to be inoperative as is contemplated by s. 52 of the Constitution Act, reproduced above. [Emphasis added]

Similarly, if a dentist included in advertising material the language which he or she speaks, the issue would be whether the application of the regulation would violate his or her constitutional rights and, if so, the regulation would be held to be inoperative with respect to that particular advertisement. It would form no basis for striking down the regulation in its entirety." [Emphasis added]

Case on Appeal, Vol. II, Page 218, Line 40 -
Page 220, Line 28

PART IV - NATURE OF ORDER REQUESTED

37. It is respectfully submitted that this appeal be allowed with costs, that the Order of the Ontario Court of Appeal dated April 19, 1988, be set aside and that in its stead an Order do issue dismissing the Respondents' application for judicial review with costs to the Appellants.

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ALL OF WHICH IS RESPECTFULLY SUBMITTED.

R. E. Shibley
Richard E. Shibley, Q.C.

V. Ross Morrison
V. Ross Morrison

OF COUNSEL FOR THE APPELLANTS

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