

21019

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, Ch. 224, as  
Amended;

AND IN THE MATTER OF The Health Disciplines  
Act, R.S.O. 1980, Ch. 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

Applicants

- and -

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

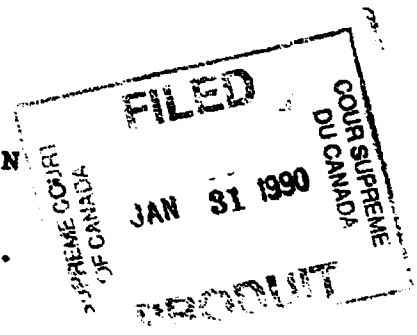
Respondents

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**Respondents**

**I N D E X**

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RESPONDENTS' FACTUM

PART 1 - STATEMENT OF FACTS

1. The respondents accept the facts as set forth in paragraphs 1 - 13 inclusive of the appellant's factum. The respondents rely on the following additional facts.

2. The respondents adduced evidence on the Section 1 issue in the form of two affidavits, the one by Professor Benjamin Freedman - Case on Appeal, Pg. 97, the other by Professor Trebilcock, Case on Appeal, Pg. 120. The appellants chose not to cross-examine on either affidavit.

In summary, both experts concluded that the restrictions on advertising were excessive and contrary to the public interest.

3. The appellants filed the affidavit of Wesley J. Dunn. Case on Appeal, pg. 33. He was cross-examined. Case on Appeal, pg. 56. He conceded in cross-examination that the Regulation was too restrictive in the following ways:

- (a) It prohibited advertising of office hours on announcement cards and in the telephone book.

Case on Appeal, pg. 69 - 73

- (b) It prohibited advertising the ability of a dentist to speak another language.

Case on Appeal, pg. 273

- (c) It prohibited advertising the fact that a dentist carried on practice in partnership.

He also admitted that there were inconsistencies between the restrictions in advertising for dentists as compared with doctors. He also agreed that the Regulation had internal inconsistencies in that matter not permitted in one form were permitted in another form. He also conceded that there would be nothing misleading or deceptive in advertising the fee guide used by a dentist and that such information was relevant to a patient or potential patient.

**Case on Appeal, pg. 78 - 79**

4. The evidence disclosed that the Law Society was able to draft a Regulation on advertising which protected both the public interest in reasonable access to information and professionalism

**Case on Appeal, pg. 137**

**PART 11 - STATEMENT OF POINTS IN ISSUE**

5. It is submitted that Section 39(39) of the Regulations violates the respondents' freedom of expression contrary to Section 2 of the Charter of Rights.

6. It is submitted that these restrictions are not protected by Section 1 of the Charter.

7. It is submitted that Section 37(39) as drafted is not severable. This Court cannot redraft the Regulation, This is a task for the legislature.

**PART 111 - STATEMENT OF ARGUMENT**

8. The Regulation restricts the right of the respondents and all other dentists to advertise. Two recent decisions of this Court have ended any useful debate on whether commercial speech is protected by Section 2(B).

Ford v. A. G. of Quebec, 1988 2 S.C.R. 712

Irwin Toy Limited v. A. G. of Quebec, 1989  
94 N.R. 137

Robert M. Griffin and The College of Dental Surgeons of B.C. - B.C.C.A. October 31, 1989  
(as yet unreported)

The Ontario Court of Appeal's decision was correct on this issue.

9. The admissions by the appellant's only witness that the Regulation was more restrictive than necessary even on his own view of what should be permitted prevents the appellant from satisfying the test in R. v. Oakes, 1986 1 S.C.R. 103

10. The Law Society of Upper Canada introduced a Regulation which recognizes the concerns both of the public to

reasonable access (information) and professionalism and is significantly less restrictive.

11. The Regulation affecting dentists which the Court of Appeal of British Columbia upheld was less restrictive than the Ontario Regulation. It permitted languages spoken and office hours to appear on professional cards. Further, no evidence was led in that case by any party. In this case the opinion of Professors Freedman and Trebilcock was unchallenged and, in fact, every expert including the appellant's, agreed that the Regulation was too restrictive.

12. The appellant's submission that at most this Court should declare the Regulation invalid to the extent its witness acknowledged it was too restrictive, cannot be accepted. Once the Regulation is found to be overbroad, it is for the Legislature to determine the extent of advertising it will permit a dentist to engage in.

**PART IV - ORDER SOUGHT**

The appeal be dismissed with costs.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

  
**MARTIN TEPLITSKY, Q.C.**  
**OF COUNSEL FOR THE RESPONDENTS**



PART V - TABLE OF AUTHORITIES

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