S.C.C. File No. 23861

SUPREME COURT OF CANADA
(Appeal from the Appeal Division of the
Supreme Court of Prince Edward Island)

BETWEEN:

THOMAS P. WALKER and
JOHN M. ROBERTSON

Appellants
(Plaintiffs)

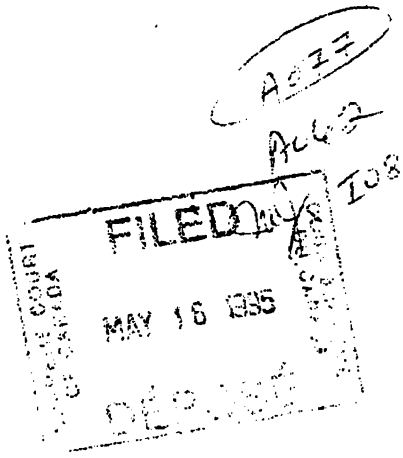
- and -

THE GOVERNMENT OF PRINCE EDWARD ISLAND

Respondent
(Defendant)

FACTUM OF THE INTERVENOR, THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PRINCE EDWARD ISLAND

AMENDED



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PART I: NATURE OF THE APPEAL

1. The Appellants' position is simply a denial of the sovereignty of different provincial Legislatures to adopt different solutions on a matter of public interest and concern, namely the qualifications considered appropriate *within that province* for an individual to perform audit and attest functions in relation to financial statements. Having failed to persuade the PEI legislature of the merits of their view in 1980-81 and again in 1988, the Appellants and the CGA Associations seek to persuade this Court to use the *Charter* to overturn PEI's legislative policy. This would be wrong because:

(a) Section 14(1) of the *Public Accounting and Auditing Act*, R.S. P.E.I. 1988 c.P-28 (the "*Act*") does not prohibit anyone from expressing an opinion on financial information. It does say who can offer the service *for reward*.

(b) The *Act* says whose opinion carries legal consequences, but does not preclude the Appellants or anyone else from putting their ideas, opinions or beliefs into the arena of public opinion.

(c) The *Act* applies to everyone regardless of provincial residence.

(d) The *Act* does not limit the physical, intellectual or fundamental liberty which the Appellants enjoy. It does provide an economic right. The Appellants are unwilling to attain the standard that the *Act* requires in order to exercise that economic right.

(e) The standard for who is competent to express an authoritative opinion on financial information to the public is not a legal question, but a policy question for the PEI legislature.

2. The Appellants' attack on the sovereignty of the PEI Legislature has several branches:

(a) because Certified General Accountants (CGAs) are licensed to do public audits in five provinces and two territories, the *Charter* precludes the PEI Legislature from regarding them as "unqualified" to do audits in Prince Edward Island [Appellants' Factum, paras. 2, 35, 77, 79, 80];

(b) the PEI Legislature did not perform studies of the alternatives to the scheme of the *Act* to the Appellants' satisfaction [Appellants' Factum, para. 32(i) and (ii)];

(c) the PEI Legislature did not adopt the Appellant CGAs proposals in 1982 and 1988 [Appellants' Factum, para. 30];

(d) the PEI Legislature does not supervise the exercise of self-government powers by the PEI Institute to the Appellants' satisfaction [Appellants' Factum, paras, 33, 82];

(e) the requirement of a university education is inimical to the values underlying a free and democratic society [Appellants' Factum, para. 116];

(f) adoption of the higher CA qualifications has left the Appellants feeling "humiliated and degraded" [Appellants' Factum, para. 11]

The PEI Court of Appeal correctly rejected these arguments and its decision should be affirmed.

PART II: STATEMENT OF FACTS

3. It is common ground among the parties that there is a need to regulate public accounting, i.e., to limit its practice to those proven competent. No issue is taken with the definition of public accounting in s.1(e) of the *Act*, i.e. the scope of the restricted field. The Appellants' argument is simply that the *Charter* requires that provincial Legislatures permit CGAs (though not just the "anyone" recognized as qualified in some jurisdictions) to perform public audit responsibilities for reward.

Audit Standard Adopted by the PEI Legislature

4. The Legislature of PEI holds the view that the appropriate standard for the practice of public accounting is the standard met by Chartered Accountants. The Certified General Accountants Associations of Prince Edward Island and Ontario, and the Appellants, disagree. The difference in the two standards is readily apparent. The evidence of Professor Boritz, who was called by the Respondent (but whose evidence on these points was not contested), can be summarized as follows:

DIFFERENCE IN THE STANDARDS	
CA	CGA
QUALIFICATION FOR ENTRANCE	
Four year university degree including specified accounting and auditing courses	Grade 12 or equivalent
ACCOUNTING & AUDITING EDUCATION REQUIREMENTS	
More comprehensive courses, longer, with more difficult exams*	
PRACTICAL EXPERIENCE	
Two years of prescribed practical experience: · In a public accounting office or government auditor's office · Supervised and related to the professional educational programme	Two years of appropriate practical experience: · Need not be in a public accounting office or government auditor's office · Not supervised and does not necessarily relate to the subject being studied
PROFESSIONAL SCHOOL & EXAMINATIONS	
The Uniform Final Examinations (the "UFE") - a four day, integrated, professional examination - written at the same time by CA candidates all across Canada - following a professional school or capstone programme	The uniform national examinations referred to by the Appellants are a series of examinations at a time after each course is taken There is no comprehensive integrated professional examination nor is there a professional school or capstone programme

Exhibit D-72, Report of Professor Boritz, Supplementary Case, Vol. 7, PPS. 1369-1526

*Exhibit J-42, Course Review for the Public Accountants Board of the Province of Nova Scotia, Supplementary Case, Vol. 7, P.1298, The report compares specific CGA courses to courses in the CA programme. Professor Boritz referred to the Report. The main authors of the Report Mr. Trainor and Mr. Trites gave evidence.

5. There is no dispute that the standards are different. Professor Simunic, who was called to give evidence by the Appellants, testified that the CA standard was "unnecessarily high":

> "Q. ...do I understand correctly also that you think that the CA standard is too high? That it requires too much of an investment?
>
> A. Unnecessarily high. That's correct."

Evidence of Simunic, Transcript, Vol. 3, P.1104, lls.23-25
Excerpts of Trial Record tendered by the Intervenor, the Institute, P.1

6. There is only one aspect of the "unnecessarily high" CA standard which Professor Simunic thought appropriate, namely, the requirement of practical experience in public accounting. This is not a requirement of the CGA designation, as Mr. Walker confirmed:

> "Q. Was there, when you got your CGA, and, to your knowledge, is there now, any requirement that, before qualifying for the designation of Certified General Accountant, a candidate must work under the supervision of another Certified General Accountant, or, for that matter, any accounting professional?
>
> A. No."

Evidence of Simunic, Transcript, Vol. 3, P.1138, lls.10-12; P.1138, l.31 to P.1139, l.7
Excerpts of Trial Record tendered by the Intervenor, the Institute, pp. 2-3

Evidence of Walker Transcript, Vol. 1, p.132, l.30 to p.133, l.8
Excerpts of Trial Record tendered by the Intervenor, the Institute, pp.4-5

7. Underlying the different standards are differences of policy and clientele. The CA programme is designed for university graduates and, as Professor Boritz testified, the view is gaining acceptance that an accounting education cannot be squeezed even into a four year undergraduate programme. Chartered accountant candidates must attend a

professional school of accountancy after university graduation. In the Maritimes this is called the Atlantic School of Chartered Accountancy ("ASCA").

Evidence of Boritz, Transcript, Vol. 3, P.1326, l.14 to P.1327, l.2; P.1336, l.12 to P.1337, l.12
Excerpts of Trial Record tendered by the Intervenor, the Institute, PPS.6-9

8. By way of contrast, Dr. Harrison, the Associate Director of Education for the Certified General Accountants of Canada, testified that the entrance requirements for CGAs is grade 12 or the equivalent, except in the Province of Quebec where the Government requires a university degree before the programme is entered. The CGAs do not think a university education, particularly one with a component of liberal arts courses, is necessary to practise public accounting. Adult learners and part-time adult students provide a major market for the CGA programme.

Evidence of Harrison, Transcript, Vol. 2, P.676, lls.10-14; P.680, lls.10-22
Excerpts of Trial Record tendered by the Intervenor, the Institute, PPS.10-11

9. Chartered accountants must write the Uniform Final Examination ("UFE") prior to qualification. The UFE comes after a candidate's passage through the professional school of accounting which requires prescribed practical experience and professional courses. There is no equivalent professional school of accounting or UFE for CGAs.

10. It will thus be seen that the period and conditions of qualifications for a chartered accountant have some similarities with the analogous procedure for lawyers in the several provinces.

11. In short, there are real and substantial differences between the qualifications of a CA and the qualifications of a CGA. The Court of Appeal correctly considered the choice between these standards to be a matter of legislative policy.

Public Accounting in Canada

12. The evidence discloses, as is acknowledged by the Appellants in their Factum at p.6, para.16, that different provincial Legislatures have adopted "a wide diversity of regulatory options" with respect to public accounting and the different qualifications of those who may practice it. The existence of "options" suggests that no single standard is mandated by the *Charter*.

(a) In **Prince Edward Island, Newfoundland, Nova Scotia and Ontario**[1], the definition of public accounting is the same in these jurisdictions and only Chartered Accountants are permitted to practise. In **Quebec**, the definition of public accountancy is very broad and only chartered accountants may practise subject to rights and privileges expressly granted to other professionals and CGAs do enjoy some limited audit rights;

(b) In **British Columbia** and **New Brunswick**, where the definition of public accounting is limited to audits required by statute (as in the case of a public company) only CAs and CGAs are permitted to perform such audits;

(c) Prior to the most recent legislative changes in **Alberta** and New **Brunswick**, anyone could practise public accounting in those provinces. In **Alberta**, where the scope of the restricted practice is the same as in Prince Edward Island, CAs, CGAs and CMAs (Certified Management Accountants), all subject to a joint practice board, are now permitted to practise in the reserved field;

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[1]The trial judge thought that PEI could afford a more relaxed standard of public accounting that the "sophisticated needs of the corporate elite in Canada" [Appellants' Factum, para. 35(i)]. This is a statement of policy, not law.

(d) In **Manitoba, Saskatchewan, the Northwest Territories** and the **Yukon**, *anyone*, regardless of whether they have designation or not, can practise as a public accountant.

13.

DELETED

Public Accounting in the United States

14. The Appellants, at para. 95 of their Factum, discuss in general terms the movement towards "economic integration" and cite the Free Trade Agreement with the United States in support of their position. Public Accountants in the United States, who are designated Certified Public Accountants [C.P.A.] are required to meet a standard substantially similar to the CA standard in Canada. The National Association of the State Board of Accountancy (NASBA - the regulatory jurisdiction in the state), the American

Institute of Certified Public Accountants (AICPA - the national governing body of CPAs) and the Canadian Institute of Chartered Accountants (CICA) entered into a Reciprocal Recognition Agreement pursuant to the Free Trade Agreement based on the equivalency of the dominant criteria of the two standards. The American dominant elements are:

- The entrance requirement is a four year university degree; and, the AICPA has recommended that it be a five year degree by the year 2000 and at the time of trial 18 of the 54 jurisdictions had accepted this.
- Practical experience, typically two years, in the office of a public accountant is required in all but 4 of the 54 jurisdictions.
- A four part uniform final professional examination written subsequent to and in addition to the university exams.

Exhibits D-109 and D-110, Principles of Reciprocity, Supplementary Case, Vol. 12, PPS.2724-2733

15. Professor Boritz' report and oral testimony, including the reference to AICPA publications and American accounting academics, made it clear that the CA standard and CPA standard were substantially similar and becoming *more* rather than *less* exacting.

Exhibit D-72, Report of Professor Boritz, Supplementary Case, Vol. 7
See particularly Objectives of Education for Accountants from the Accounting Education Change Commission, Supplementary Case, Vol. 7, p.1391
150 Hour Education Requirement from the AICPA, Supplementary Case, Vol. 7, p.1417
Prospectives on Education Capabilities, Supplementary Case, Vol. 7, p.1460
Future Accounting Education by the American Accounting Association, Supplementary Case, Vol. 7, p.1480

16. The scope of the defined field, i.e., what constitutes public accounting, is the same in the United States as it is in Prince Edward Island.

Exhibit J-7, Public Accounting in Ontario Modernization and Reform, Supplementary Case, Vol. 12, PPS.2785-2878 - see particularly PPS.2812-2816; P.2850

Evidence of David Wilson, Transcript, Vol. 5, P.2099, l.23 to P.2100, l.27
Excerpts of Trial Record tendered by the Intervenor, the Institute, P.12-13

17. The evidence at trial was that the CGA standard was not recognized as the basis for practising public accounting in the United States. In fact, the Appellant Robertson was notified during the trial by the New York State Society of Certified Public Accountants that his CGA was *not* the equivalent of a CPA in New York.

Exhibit D-114, Letter from the New York State Society of Certified Public Accountants, Supplementary Case, Vol. 12, P.2776-2777

Evidence of Robertson, Transcript, Vol. 5, P.2248, lls.27-32
Excerpts of Trial Record tendered by the Intervenor, the Institute, P.14

18. The Appellants cite Professor Richardson's evidence at paras. 116 and 117 of their Factum. He did not appear at the trial, but his Affidavit was filed and he was cross-examined on it. Professor Richardson did not purport to address the question of who was qualified to practise public accounting. His evidence was:

> "Q. And would it be fair to say, picking up from what you told me earlier on, that you don't purport to be an expert in weighing the issue at the present day as to who should be an auditor, what is involved with an audit, who has the right qualifications, is that correct?
>
> A. That's correct."

Exhibit J-29, Cross-examination of Richardson, P.15
Excerpts of Trial Record tendered by the Intervenor, the Institute, P.15

The PEI Legislature has twice been petitioned unsuccessfully by the CGAs

19. The issue of practice rights, substantially the same issues and contentions, and much of the same evidence as was before the trial court, was also placed before the government and Members of the PEI Legislature in 1980 and 1981 when the Select Standing Committee heard representations from both sides. The same requests, with similar contentions and evidence, was presented to the Members of the PEI Legislature in 1988. The Legislators knew that CA requirements were different with respect to

entrance, practical experience and the professional school including the Uniform Final Examination. They also knew the Professional Organizations Committee in Ontario had recommended that before someone was allowed to practise as a public accountant, they should pass the CAs UFE. Mr. Shea, the Executor Director of the Prince Edward Island Institute, testified that the Institute wanted to make bridging (access) available to the CGAs but that the Institute would require the UFE to be written.

Evidence of Shea, Transcript, Vol. 4, P.1724, lls.12-30; P.1728, l.25 to P.1729, l.22
Excerpts of Trial Record tendered by the Intervenor, the Institute, PPS.16-18

Voluminous submissions to the Government and Legislature, Supplementary Case, Vol.9, P.2001; Vol. 9, P.1830; Vol. 8, P.1782; Vol. 8, P.1770; Vol.8, P.1699; Vol.8, P.1586

20. Professor Trebilcock, testifying for the Appellants, acknowledged that a determination of who could practise public accounting and matters of education, entrance requirements and the willingness to write an examination to show competency to practise were all legitimate considerations for the members of the legislature. Further his evidence was that questions of who should practise and what constitutes public accounting were not simple, he called them "tricky"; and, he said that determining these questions and settling where to draw the line would not make everyone happy. Mr. Walker and Mr. Robertson both made it clear that they would refuse to write the UFE.

Evidence of Trebilcock, Transcript, Vol. 2, P.814, lls.22-27;P.815, lls.6-29; P.821, l.25 to P.822, l.9; P.825, lls.12-17
Excerpts of Trial Record tendered by the Intervenor, the Institute, P.19-23

Evidence of Walker, Transcript, Vol. 1, P.103, lls.22-26
Excerpts of Trial Record tendered by the Intervenor, the Institute, P.24

Evidence of Robertson, Transcript, Vol. 1, P.259, lls.12-15
Excerpts of Trial Record tendered by the Intervenor, the Institute, P.25

21. The Appellants complain that the PEI legislators did not go about their task with sufficient studies and diligence. The Court of Appeal correctly declined to set itself up as a supervisor of the legislative process.

22. The Appellants assert that Mr. Walker and Mr. Robertson find their exclusion from the practice of public accounting humiliating and degrading. Both, however, knew what the requirements were to practise public accounting when they started their careers, and both started in the CA programme and left it after a lack of success with examinations. The evidence was that 90% of the students from Prince Edward Island who entered the CA programme and had some initial success completed it. This standard is not dauntingly difficult to achieve.

Evidence of Trainor, Transcript, Vol. 4, P.1832, lls.21-28
Excerpts of Trial Record tendered by the Intervenor, the Institute, P.26

Appellants seek to exercise a purely economic right

23. Professor Smith, who was called by the Appellants, acknowledged that what the Appellants sought was an economic benefit:

> "Q. And did I understand you to say yesterday, in your evidence, that who could practise public accounting was a privilege? Later in the day, you were discussing the fact that it was a highly political process, but I understood you to say that it was a privilege to practice or be a public accountant, that it was a lucrative source of business, a kind of property?
>
> A. Yes, you did understand me. That's correct; I did say that."

Evidence of Smith, Transcript, Vol. 2, P.913, lls.12-21
Excerpts of Trial Record tendered by the Intervenor, the Institute, P.27

24. The Appellants seek comfort from the lack of precise auditor qualifications set out in such federal legislation as the *Bank Act*. Parliament, of course, has no jurisdiction in

respect of what individuals in a particular province are permitted to practise public accounting. The federal legislation is simply permissive of the regimes in place in the various provinces, including those provinces where there is no restriction at all, as is the case in 4 of the 7 jurisdictions that the Appellants point to as having "less intrusive regimes".

PART III: ISSUES

25. This Court has framed the constitutional questions in this case as follows:

1. Does Section 14(1) of the *Public Accounting and Auditing Act*, R.S.P.E.I. 1988, Cap. P-28 limit the Appellants' rights guaranteed by Sections 2(b), 6 or 7 of the *Canadian Charter of Rights and Freedoms*?

2. If the answer to question 1 is in the affirmative, is Section 14(1) nevertheless justified by Section 1 of the *Canadian Charter of Rights and Freedoms*?

PART IV: ARGUMENT

26. The Appellants seek to have this Court use the *Charter* to impose on Prince Edward Island a particular "regulatory option" because, amongst other things, "Unlike medicine and law ... the history of the accounting profession is characterized by rivalry between and among various accounting organizations". [Appellants' Factum, para. 15]. Creation of a "rival" organization can hardly create a *Charter* right where none otherwise exists. By way of analogy to the legal profession, in many provinces various organizations of lawyers (e.g. the Law Union) vigorously challenge the legitimacy of the provincial law society. This has never been considered a clog on the sovereignty of the provincial legislature to establish by legislation the system of self-government it believes to be in the best interest of the province.

> *Pearlman v. Manitoba Law Society*, [1991] 2 S.C.R. 869, per Iacobucci J. at p. 888-90

Rocket v. Royal College of Dental Surgeons, [1990] 2 S.C.R. 232

27. The Appellants rely upon *Wilson v. British Columbia (Medical Services Commission)* (1988), 53 D.L.R. (4th) 171 (B.C.C.A.) leave to appeal refused, [1988] 2 S.C.R. viii, which is perhaps at the outer edge of *Charter* intervention in the provincial regulation of matters pertaining to a profession. The issue in that case related to rights of persons whom the province had already recognized as qualified doctors, and did not relate (as here) to entry requirements into the restricted field. Nevertheless, the B.C.C.A. stated at p. 190:

> "We have no doubt that regulation of such matters as standards of admission, mandatory insurance for the protection of the public, and standards of practise and of behaviour will not constitute an infringement of s. 7."

28. Equally, the Appellants attack the PEI Institute as self-interested and anti-competitive [Appellants' Factum, para. 82-84]. These are complaints to be assessed by the Legislature (as indeed they have been, and the CGA demand for change rejected). The structure of the self-governing professions has been held to be within the legislative jurisdiction of the provinces, even where abuses are alleged: *Attorney General of Canada v. Law Society of British Columbia*, [1982] 2 S.C.R. 307.

SECTION 2(B) - FREEDOM OF EXPRESSION

29. It is difficult to think of *any* profession that does not involve some form of expression. Nevertheless, imposition of qualifications for professional status have never been considered an interference with freedom of expression.

College of Physicians and Surgeons (Ontario) v. Larsen (1987), 62 O.R. (2d) 545 (H.C.)

R. v. Baig (1992) 78 C.C.C. (3d) 260 (B.C.C.A.)

30. Similarly, the imposition of qualifications on the right to vote has been held not to infringe the democratic freedom of expression under s.2(b).

Haig v. Canada, [1993] 2 S.C.R. 995

Re Allman (1983), 8 D.L.R. (4th) 230 (N.W.T.C.A.)

31. It is an illogical leap of the imagination to suggest that regulation of a profession has as its purpose or effect the regulation of expression.

Lavigne v. *OPSEU*, [1991] 2 S.C.R. 211 at pp.267-277

> "Because the word "expression" in s.2(b) has been broadly construed, most laws will have some impact on expression, intended or otherwise. Given this, it makes very good sense to ensure that unintended effects do not receive constitutional protection unless they strike at the heart of s.2(b)."

Irwin Toy Limited v. *Quebec* (A.G. 1989) 1 S.C.R. 927 at 972

32. The Appellants can and do regularly express themselves in respect of financial records. The *Act* does not in any way inhibit the Appellants from voicing opinions on the financial statements of a public company or any other matter related to accounting or otherwise. Cases such as *Ramsden v. Peterborough*, [1993] 2 S.C.R. 1084, relied upon by the Appellants at para. 66 of their Factum, simply have no application to the facts of this case.

33. The issue is whether the *Charter* requires the PEI Legislature to attach to the expressions of opinion of the Appellants the same *legal consequences* as it has chosen to attach to the opinions on financial statements expressed by Chartered Accountants. In the submission of this Intervenor, the PEI Legislature is free to do so, or *not* to do so, as in its legislative judgment it thinks appropriate.

34. The law attaches different consequences to the opinions of a lawyer who has been appointed a Judge from those of a lawyer who hasn't. Freedom of expression is not an issue in such a case. Anyone is free to advocate a legal opinion irrespective of its treatment by the Courts, yet it would be absurd to suggest that the special position enjoyed by a Judge's opinion is a violation of the s.2(b) rights of other legal professionals that must be justified under s.1.

35. The Appellants rest their case on the proposition that they are as "qualified" as CAs to express an opinion in the restricted area. "Qualification" is necessarily a subjective evaluation. It is not wisdom revealed by the *Charter*. Nor is it a matter within the historic domain of the judiciary. In Manitoba, as stated, *anyone* is deemed to be qualified to do a public audit, whether or not they have a designation as a CA or CGA. Alberta does not accept just *anyone*, but does accept CAs and CGAs. Why is Alberta free to accept CGAs but Manitoba not free to accept *anyone*? On what basis is Alberta within its sovereign authority to insist on at least a CGA but PEI not equally within its sovereign authority to insist on a CA? There are no objective criteria on which the judiciary can base an answer to these questions. Acceptance of the Appellants' invitation to this Court to assess who *ought* to be "qualified" in any provincial jurisdiction is therefore not justiciable. As stated by the Appellants themselves at para. 17 of their Factum, there are "a wide diversity of regulatory options". The standard can and does vary with the expectations and requirements of each particular Legislature. It is not a *Charter* issue.

SECTION 6 - MOBILITY RIGHTS

36. The *Act* requires anyone practising public accounting in Prince Edward Island, whether resident or not, to be a member of the Institute of Chartered Accountants, just as all PEI lawyers are required to be members of the provincial law society. The condition

is the same for everyone regardless of residence and accordingly complies with the requirement of Section 6.

Black v. *Law Society of Alberta*, [1989] 1 S.C.R. 591 at 617

> "The permanent resident who goes to another province", he stated, "has a right to pursue the gaining of a livelihood there, whether that person is a lawyer or a Class "A" mechanic, but must comply with the local laws concerning the qualifications of all lawyers or all mechanics except laws discriminating on the basis of past or present province of residence)." I agree. Section 6(2)(b), in my view, guarantees not simply the right to pursue a livelihood, but more specifically, the right to pursue the livelihood of choice to the extent and subject to the same conditions as residents."

37. Professor Trebilcock, called as a witness for the Appellants, agreed that the *Act* does not discriminate on the basis of provincial residence:

> "Q. That's right. There's nothing, nothing restricts it to the residency here. There's nothing that purports to discriminate on the basis of province of residence.
>
> A. That's correct."

Evidence of Trebilcock, Transcript, Vol. 2, P.806, lls.13-18
Excerpts of Trial Record tendered by the Intervenor, the Institute, P.28

38. The provisions of Section 6 do not entitle Mr. Robertson to evade the legislation of the province where he wishes to practise. If the Appellants' argument were to succeed, then a resident of Manitoba, where *anyone* can practise public accounting, could insist on a *Charter* right to practise public accounting in Prince Edward Island or Ontario or any other province that has a more restrictive regime on the basis that Manitoba considers him "qualified". Clearly, that is not the intended purpose of s.6 of the *Charter*. The Appellants' argument fails precisely because they are subject to the *same* conditions as residents of Prince Edward Island.

SECTION 7 - LIFE, LIBERTY & SECURITY OF THE PERSON

39. The Appellants and the Intervenor Certified General Accountants Association of Ontario (CGAAO) invite the Court to read into s.7 a concept of "economic liberty" similar to that which led the Supreme Court of the United States into the disastrous and now discredited line of cases descending from *Lochner v. New York* 198 U.S. 45 (1905). The only difference is that in this case the doctrine is allegedly based on the emotional well-being of the Appellants rather than, as in *Lochner*, on the alleged necessary precondition of human freedom in the industrial state. In both instances, appeals to "liberty" simply camouflage a vehicle for the exercise by the judiciary of economic policy choices.

40. The present case is an even bigger stretch than was *Lochner* in the United States because of course the U.S. Constitution does include explicit protection for certain economic and property rights.

41. The CGAAO goes a step further in relying on British legal history leading up to enactment of the *Statute of Monopolies* in 1624 [CGAAO Factum, paras 40-45]. It is submitted that CGAAO's argument leads to precisely the opposite of its intended conclusion. The struggle in Britain was to curb the prerogative power of the King and the vindication of the sovereignty of the very elected representatives whose sovereignty in PEI the CGAAO now seeks to have curbed.

42. Whether or not the *Statute of Monopolies 1624* was received into provincial law is legally as well as conceptually irrelevant. It has the force of an ordinary statute and can be repealed or modified by the ordinary exercise of provincial legislative power.

43. The definition of "public accountant" in s.1(d) of the *Act* limits the restriction of a person who "offers his services *for reward* to the public", i.e., a purely pecuniary element of work. As such, there is no right that attracts s.7 protection.

Re Public Service Employer Relations Act, [1987] 1 S.C.R. 313
per McIntyre at p.412

Irwin Toy Ltd. v. A.G. Quebec, [1989] 1 S.C.R. 927
per Dickson CJC at p.1003

Richard B. v. Children's Aid Society of Metropolitan Toronto, unreported, January 27, 1995 (S.C.C.)

44. With respect to the Appellants' argument at paras. 74 and 75 of their Factum, an interpretation of s. 7 that sanctioned judicial intervention whenever an individual's subjective sense of "self-worth" was put in issue would have no principled boundaries or manageable standards.

SECTION 1 - REASONABLE LIMITS

45. The Appellants acknowledged at trial that the government's objective of protecting the public interest by means of ensuring a reasonable standard of public accounting is a pressing and substantial concern within the meaning of *R. v. Oakes*, [1986] 1 S.C.R. 103.

Reasons for Judgment (Trial), Supplementary Case, Vol.1, p.112

46. The imposition of a qualifying body such as the Institute of Chartered Accountants is a rational response to this concern. The complaint that the PEI Legislature did not do adequate homework before conferring the authority on the Institute invites the Court to supervise the legislative process, an invitation which the Courts have rightly rejected.

Penikett et al v. The Queen et al (1988), 45 D.L.R. (4th) 108 (Y.T.C.A.)
(S.C.C. leave to appeal dismissed)

47. The Appellants do not allege that the Institute operates abusively or arbitrarily in the enforcement of its known and precise professional standards. Their complaint simply relates to the *selection* of the Institute as the self-governing professional body. There is no constitutional bar to such a selection, and this Court has frequently emphasized the wide latitude given to Legislatures in matters of economic regulation.

Public Service Alliance of Canada v. Canada (Attorney General), [1987] 1 S.C.R. 424, per Dickson CJC at p.442

Reference re s.32 and s.34 of the Workers Compensation Act, 1983 (Nfld.), [1989] 1 S.C.R. 922

R. v. Edwards Books and Art Ltd., [1986] 2 S.C.R. 713, per Dickson CJC at p.772

R. v. Whyte, [1988] 2 S.C.R. 3, per Dickson CJC at p.26

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

W. Ian C. Binnie, Q.C.

Robert D. Peck

Of Counsel for the Intervenor

LIST OF AUTHORITIES