

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA)**

B E T W E E N :

SIDNEY GREEN

Appellant (Appellant)

- and -

THE LAW SOCIETY OF MANITOBA

Respondent (Respondent)

- and -

THE FEDERATION OF LAW SOCIETIES OF CANADA

Intervener

**FACTUM OF THE INTERVENER,
THE FEDERATION OF LAW SOCIETIES OF CANADA**
(Pursuant to Rules 37 and 59 of the *Rules of the Supreme Court of Canada*, S.O.R./2002-156)

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PART I—OVERVIEW

1. Introduction

1. The Federation of Law Societies of Canada (the “**Federation**”) is intervening in this appeal to make submissions on whether law society rules, in this case those of the Law Society of Manitoba promulgated pursuant to the *Legal Profession Act* (the “**Manitoba Act**”), can be enforced by administrative suspension.

2. This issue is raised by law society statutes across Canada. The Federation submits that the Court’s decision will have a national impact, and that statutes like the Manitoba Act at issue in this appeal should be given a broad interpretation to authorize administrative suspensions as a necessary incident of law society regulatory jurisdiction.

3. Law societies are expert regulatory bodies, and as such provincial and territorial legislatures have entrusted oversight of the legal profession to them. Law society rules should be accorded considerable deference, and should not be struck down unless the Court finds the law society’s decision that it possessed the power to make the particular rule, in this case the enforcement of mandatory continuing professional development (“**CPD**”), to be *unreasonable*.

4. The Federation of Law Societies of Canada represents all of the Canadian provincial and territorial law societies, and requests that it be granted leave to present 10 minutes of oral argument at the hearing of this appeal. Despite the national reach of law society regulation in Canada, there are currently no submissions before this Court other than in relation to the Manitoba and Ontario regimes. The Court will benefit from oral submissions by the Federation about the potential effects of its decision across the country.

2. Statement of Facts

5. The Appellant was suspended by the Law Society of Manitoba when he failed to complete the required 12 hours of annual CPD activities required by the Law Society’s rules in 2014. He applied for a declaration that the rules were *ultra vires* on the ground that, *inter alia*, the Law Society had no jurisdiction to administratively suspend him pursuant to the general rule-making powers in the

Manitoba Act.¹ He was unsuccessful before both the Manitoba Court of Queen's Bench and the Manitoba Court of Appeal, and this Court granted leave to appeal on December 10, 2015.

6. On May 13, 2016, Justice Brown granted the Federation leave to intervene in this appeal.

PART II—POSITION RESPECTING THE QUESTION IN THE APPEAL

7. The Federation submits that the rules of the Law Society of Manitoba can be enforced by administrative suspension, on the basis that law society statutes should be given a broad interpretation which recognizes the need for administrative suspensions as an enforcement tool, such that they are implicitly statutorily authorized as necessarily incidental to law society regulatory jurisdiction.

PART III—STATEMENT OF ARGUMENT

8. This Court has repeatedly emphasized that an independent Bar is fundamental to the rule of law in Canada.²

9. In order to ensure such independence, each province and territory has enacted legislation pursuant to which the legal profession is self-regulating and free from government interference:

An independent bar composed of lawyers who are free of influence by public authorities *is an important component of the fundamental legal framework of Canadian society*. In Canada, our tradition of *allowing the legal profession to regulate itself can largely be attributed to a concern for protecting that independence* and to lawyers' own staunch defence of their autonomy. ...³

10. In exchange for this self-regulation, the legislation requires that law societies be established for the protection of the public:

Clearly, *a major objective of the Act is to create a self-regulating professional body* with the authority to set and maintain professional standards of practice. *This, in turn, requires that the Law Society perform its paramount role of protecting the interests of the public...* "The

¹ *Green v. Law Society of Manitoba*, 2014 MBQB 249, ¶3 and 5, Appellant's Record ("AR"), Vol. I, Tab 1A; *Green v. Law Society of Manitoba*, 2015 MBCA 67, ¶5-8, AR, Vol. I, Tab 1C.

² See *Canada (A.G.) v. Federation of Law Societies of Canada*, [2015] 1 S.C.R. 401, ¶97 (and ¶98-101), BA, Tab 3 (noting the many "general and broadly expressed pronouncements about the *central importance to the legal system of lawyers being free from government interference in discharging their duties to their clients*").

³ *Finney v. Barreau du Québec*, [2004] 2 S.C.R. 17, ¶1, BA, Tab 10, *emphasis added*. See also *Canada (A.G.) v. Law Society of British Columbia*, [1982] 2 S.C.R. 307 at 335-336 BA, Tab 4 ("The independence of the Bar from the state in all its pervasive manifestations is one of the hallmarks of a free society... The uniqueness of position of the barrister and solicitor in the community may well have led the province to select self-administration as the mode for administrative control over the supply of legal services throughout the community").

privilege of self-government is granted to professional organizations only in exchange for, and to assist in, protecting the public interest with respect to the services concerned" ...⁴

11. Thus, as stated by this Court in *Mangat*:

Provincial law societies or bars are entrusted with the mandate of governing the legal profession with a view towards protecting the public when professional services are rendered. ***In exchange for a monopoly on the exercise of the profession and in accordance with the primary purpose of protecting the public in its dealings with lawyers, the bar must establish criteria for jurists to qualify as members, rules of discipline and mechanisms to enforce them, the contours of professional liability, a system of professional insurance, and guidelines and rules on the handling of trust funds.*** In this context, the bar is entrusted with policing the illegal practice of law both to enforce its monopoly and to protect the public from imposters. ...⁵

12. The public protection mandate of law societies, coupled with their expertise in regulating the profession,⁶ has led this Court to conclude that law societies are entitled to deference:

Taken as a whole, the legislative purpose of the Act suggests a ***higher degree of deference*** to decisions of the Discipline Committee. ***This deference gives effect to the legislature's intention to protect the public interest by allowing the legal profession to be self-regulating. The Law Society is clearly intended to be the primary body that articulates and enforces professional standards among its members.***⁷

13. This Court emphasized the expertise of law societies and the corresponding need for judicial deference in *Pearlman*:

...[C]ourts have recognized that ***Benchers are in the best position to determine*** issues of misconduct and incompetence. ...

...

In the case at bar, the Manitoba Legislature has spoken, and spoken clearly. The Law Society Act manifestly intends to leave the governance of the legal profession to lawyers and, ***unless judicial intervention is clearly warranted***, this expression of the legislative will ought to be respected.

...

⁴ *Law Society of New Brunswick v. Ryan*, [2003] 1 S.C.R. 247, ¶36, BA, Tab 16, *emphasis added*. The public interest component of law society legislation has been repeatedly recognized by the courts: *Canada (A.G.) v. Law Society of British Columbia*, [1982] 2 S.C.R. 307 at 334-336, 355 and 359, BA, Tab 4; *Edwards v. Law Society of Upper Canada*, [2001] 3 S.C.R. 562, ¶14, BA, Tab 9; *Finney v. Barreau du Québec*, [2004] 2 S.C.R. 17, ¶16 (and ¶1), BA, Tab 10; *Trinity Western University v. The Law Society of Upper Canada*, 2016 ONCA 518, ¶34, 69, 103-108, 112, 138 and 142-143, BA, Tab 22.

⁵ *Law Society of British Columbia v. Mangat*, [2001] 3 S.C.R. 113, ¶41, BA, Tab 15, *emphasis added*. Law society legislation throughout Canada follows a similar pattern: *Canada (A.G.) v. Law Society of British Columbia*, [1982] 2 S.C.R. 307 at 315-318, BA, Tab 4; *MacDonald Estate v. Martin*, [1990] 3 S.C.R. 1235 at 1244, BA, Tab 17; *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 S.C.R. 869 at 886 and 888-889, BA, Tab 18; *Edwards v. Law Society of Upper Canada*, [2001] 3 S.C.R. 562, ¶14, BA, Tab 9; *Fortin v. Chrétien*, [2001] 2 S.C.R. 500, ¶13-16, BA, Tab 11. **See also** *Canada (A.G.) v. Law Society of British Columbia*, [1982] 2 S.C.R. 307 at 318, BA, Tab 4 ("***Law societies in other provinces are similarly established by statute and have the same general self-governing authority and characteristics as the Law Society here***").

⁶ *Canada (A.G.) v. Law Society of British Columbia*, [1982] 2 S.C.R. 307 at 334-335, BA, Tab 4; *Law Society of New Brunswick v. Ryan*, [2003] 1 S.C.R. 247, ¶30-34, BA, Tab 16.

⁷ *Law Society of New Brunswick v. Ryan*, [2003] 1 S.C.R. 247, ¶40, BA, Tab 16, *emphasis added*. **See also** *Trinity Western University v. The Law Society of Upper Canada*, 2016 ONCA 518, ¶60-71, BA, Tab 22.

It is entirely appropriate that an individual whose conduct is to be judged should be assessed by a group of his or her peers who are themselves subject to the rules and standards that are being enforced. As Monnin C.J.M. recognized in *Re Law Society of Manitoba and Savino*...:

Our Legislature has given the benchers the right to pass rules and regulations as well as the right to enforce them. ***It would be ridiculous and lacking in common sense to call upon another body of men and women to hear and dispose of complaints of professional misconduct.*** ...

No one is better qualified to say what constitutes professional misconduct than a group of practicing barristers who are themselves subject to the rules established by their governing body.⁸

14. Indeed, law societies are given deference even where *Charter* issues are at stake:

This Court elaborated on the applicable standard of review to legal disciplinary panels in... *Law Society of New Brunswick v. Ryan*... where Iacobucci J. adopted a reasonableness standard in reviewing a sanction imposed for professional misconduct:

Although there is a statutory appeal from decisions of the Discipline Committee, the expertise of the Committee, the purpose of its enabling statute, and the nature of the question in dispute all suggest a more deferential standard of review than correctness. ***These factors suggest that the legislator intended that the Discipline Committee of the self-regulating Law Society should be a specialized body with the primary responsibility to promote the objectives of the Act by overseeing professional discipline and, where necessary, selecting appropriate sanctions.*** In looking at all the factors as discussed in the foregoing analysis, I conclude that ***the appropriate standard is reasonableness simpliciter.*** ...

It seems to me that applying the *Dunsmuir* principles results in reasonableness remaining the applicable review standard for disciplinary panels. The issue then is whether this standard should be different when what is assessed is the disciplinary body's application of *Charter* protections in the exercise of its discretion. In my view, ***the fact that Charter interests are implicated does not argue for a different standard.***⁹

15. The common theme among all the law society statutes is to ensure that the society is able to fulfil its mandate of protecting the public:

Legislatures have granted law societies broad powers in order to monitor access to the profession and its exercise. The overriding purpose of these powers is to maintain the competence of lawyers and to make sure that their conduct reflects the high ethical standards expected of them. ...¹⁰

⁸ *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 S.C.R. 869 at 880, 888 and 890, BA, Tab 18, *underlining in original, bolding and italics added*.

⁹ *Doré v. Barreau du Québec*, [2012] 1 S.C.R. 395, ¶44-45, BA, Tab 8, *underlining in original, bolding and italics added*.

¹⁰ *Lavallee, Rackel & Heintz v. Canada (A.G.)*, [2002] 3 S.C.R. 209, ¶67, BA, Tab 14, per LeBel J. (dissenting on other grounds), *emphasis added*. See also *Canadian National Railway Co. v. McKercher LLP*, [2013] 2 S.C.R. 649, ¶15, BA, Tab 6 (“[T]he legislatures confer on law societies [powers] to establish regulations for their members, who form a self-governing profession... ***The purpose of law society regulation is to establish general rules applicable to all members to ensure ethical conduct, protect the public and discipline lawyers who breach the rules -- in short, the good governance of the profession***”).

16. Accordingly, law society rules should be reviewed with deference on a standard of reasonableness.¹¹ Put another way, law society rules such as the one at issue in this appeal should only be set aside where the law society’s decision that it possessed a CPD-related administrative suspension power was *unreasonable* pursuant to its grant of power under its legislation.

17. Different law society statutes across Canada take a variety of approaches to enabling law societies to impose administrative suspensions where lawyers do not comply with CPD requirements. These different legislative provisions are set out in full in the Appendix hereto.

18. While only Ontario expressly authorizes its law society to impose administrative suspensions for non-compliance with CPD requirements,¹² other provincial and territorial law society statutes achieve the same result through different wording. In descending order of specificity:¹³

- (a) New Brunswick (i) authorizes binding rules for “compulsory” and “mandatory” CPD, and (ii) makes compliance with the CPD requirements “a condition of the right to practice law”.¹⁴
- (b) Quebec authorizes regulations and by-laws for (i) “mandatory” CPD, and (ii) penalties for failure to comply with CPD requirements.¹⁵
- (c) Nova Scotia authorizes rules for (i) “mandatory” CPD, and (ii) sanctions or restrictions that apply where a member fails to successfully complete the CPD requirements.¹⁶
- (d) Newfoundland and Labrador authorizes rules for (i) “compulsory” CPD, and (ii) prescribing the consequences of non-compliance with the rules.¹⁷

¹¹ It is true that the *Dunsmuir* standard of review framework does not apply where a court is reviewing the *vires* of a regulation made by Cabinet: *Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)*, [2013] 3 SCR 810, ¶24-28, BA, Tab 13; *Canadian National Railway Co. v. Canada (A.G.)*, [2014] 2 S.C.R. 135, ¶51, BA, Tab 5. However, the rules of the Law Society of Manitoba at issue in this appeal are not Cabinet regulations, such as the regulations authorized under s. 42 of the Manitoba Act. Instead, they are akin to municipal by-laws, to which the *Dunsmuir* standard of review framework applies: *Catalyst Paper Corp. v. North Cowichan (District)*, [2012] 1 S.C.R. 5, ¶12-25, BA, Tab 7; *Syncrude Canada Ltd. v. Canada*, 2016 FCA 160, ¶28, BA, Tab 21.

¹² *Law Society Act*, R.S.O. 1990, c. L.8, ss. 49(1) and 49(3).

¹³ This legislative review does not include provisions that authorize suspensions and other enforcement measures which are disciplinary (i.e., issued after a hearing), or that, while administrative, involve non-CPD related infractions.

¹⁴ *Law Society Act*, S.N.B. 1996, c. 89, ss. 16(2)(n)(iv), 17(2)(hh), 17(5) and 31(1).

¹⁵ *An Act Respecting the Barreau du Québec*, C.Q.L.R. c. B-1, s. 15(1.2)(b); *Professional Code*, C.Q.L.R. c. C-26, s. 94(o).

¹⁶ *Legal Profession Act*, S.N.S. 2004, c. 28, s. 28(2)(d).

¹⁷ *Law Society Act, 1999*, S.N.L. 1999, c. L-9.1, ss. 18(2)(i)(iii) and 18(2)(s).

- (e) Alberta authorizes rules (i) imposing suspensions without notice or hearing where a lawyer fails to do any act within the time specific by the rule, and (ii) generally to carry out the powers and duties conferred on it under the Act.¹⁸
- (f) Manitoba authorizes binding rules for (i) CPD, (ii) establishing the consequences for contravening the rules, and (iii) generally, in addition to any specific rule-making power, to pursue the society's purpose and carry out its duties.¹⁹
- (g) Yukon authorizes rules for (i) CPD and anything incidental or necessary to it, and (ii) generally, without being limited by any specific-rule making power, to regulate member conduct and the practice of law and to carry out the Act.²⁰
- (h) British Columbia authorizes binding rules for (i) CPD, and (ii) generally, without being limited by any specific rule-making power, to govern lawyers and carry out the Act.²¹
- (i) The Northwest Territories and Nunavut authorize rules for (i) CPD and anything incidental or necessary to it, and (ii) generally to exercise the powers and perform the duties conferred on the society under the Act.²²
- (j) Saskatchewan authorizes rules to regulate lawyers and carry out the Act for the purposes of, *inter alia*, (i) CPD, and (ii) any matter necessarily incidental to this relating to the governance of the society and the legal profession.²³
- (k) Prince Edward Island authorizes regulations to (i) carry out the Act, including to manage the society and its affairs and for all purposes connected therewith, and (ii) prescribe educational qualifications for lawyers to practise, and includes establishing education standards for members within the society's objects.²⁴

19. These law society statutes are also supplemented by provisions such as that found in s. 32(1) of the Manitoba *Interpretation Act*:

¹⁸ *Legal Profession Act*, R.S.A. 2000, c. L-8, ss. 7(1) and 7(2)(g).

¹⁹ *Legal Profession Act*, C.C.S.M. c. L107, ss. 3(2)(a), 4(5), 4(6), 43(c)(ii) and 65(a).

²⁰ *Legal Profession Act*, R.S.Y. 2002, c. 134, ss. 5(1)(l), 5(1)(r), 6(1) and 6(2).

²¹ *Legal Profession Act*, S.B.C. 1998, c. 9, ss. 11(1), 11(2), 11(3) and 28(a)(ii).

²² *Legal Profession Act*, R.S.N.W.T. 1988, c. L-2, ss. 7(m), 7(s) and 8(1); *Legal Profession Act*, R.S.N.W.T. (Nu) 1988, c. L-2, ss. 7(m), 7(s) and 8(1).

²³ *The Legal Profession Act*, 1990, S.S. 1990-91, c. L-10.1, s. 10, 10(w) and 10(cc).

²⁴ *Legal Profession Act*, R.S.P.E.I. 1988, c. L-6.1, ss. 4(b), 55(1), 55(1)(c) and 55(1)(z).

32(1) ***The power to do a thing or to require or enforce the doing of a thing includes all necessary incidental powers.*** [emphasis added]

20. Thus, provincial and territorial law societies have concluded that mandatory CPD is required for the protection of the public. While only Ontario ***expressly*** authorizes a CPD-related administrative suspension power, it is submitted that such a power is necessarily incidental to an effective CPD program.²⁵ As this Court held in *Bell*:

... The powers of any administrative tribunal must of course be stated in its enabling statute but they may also exist by necessary implication from the wording of the act, its structure and its purpose. Although courts must refrain from unduly broadening the powers of such regulatory authorities through judicial law-making, they must also ***avoid sterilizing these powers through overly technical interpretations of enabling statutes.*** I have found that, within the statutory scheme established by the *Railway Act* and the *National Transportation Act*, ***the power to make interim orders necessarily implies the power to revisit*** the period during which interim rates were in force. ***The fact that this power is provided explicitly in other statutes cannot modify this conclusion*** based as it is on the interpretation of these two statutes as a whole.²⁶

21. The Court should apply a broad approach when construing law society enabling provisions. As this Court said in *Berg*:

As is clear from this brief survey, ***the legislatures of the various provinces have chosen a number of different limiting formulae, but it is also clear that they have done so to achieve the same end.*** ... "***The essential aim*** of the wording is to forbid discrimination by enterprises which purport to ***serve the public.***" ... If human rights legislation is ***to be interpreted in a purposive manner, differences in wording between provinces should not obscure the essentially similar purposes of such provisions, unless the wording clearly evinces a different purpose on behalf of a particular provincial legislature.*** ...²⁷

22. The need for a broad approach to such public interest legislation is apparent from *Pharmascience*. This Court, ***relying on law society cases***, held that a pharmaceutical regulator could request documents from non-pharmacists even though no such power was expressly granted:

That conclusion ***fails to take sufficient account of the public protection objective of the Professional Code***, which cannot be attained unless certain provisions of the *Professional Code* apply to or affect third parties. ...

...

This Court has on many occasions noted the crucial role that professional orders play in

²⁵ *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 S.C.R. 869 at 890, BA, Tab 18 ("***If an autonomous Law Society is to enforce a code of conduct among its members... a power to discipline its members is essential.***").

²⁶ *Bell Canada v. Canada (C.R.T.C.)*, [1989] 1 S.C.R. 1722 at 1756, BA, Tab 2, *emphasis added*. See also *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, [2006] 1 S.C.R. 140, ¶51, BA, Tab 1 ("***[T]he powers conferred by an enabling statute are construed to include*** not only those expressly granted but also, by implication, ***all powers which are practically necessary for the accomplishment of the object intended to be secured by the statutory regime created by the legislature***").

²⁷ *University of British Columbia v. Berg*, [1993] 2 S.C.R. 353 at 372-373 BA, Tab 23, *emphasis added*. See also *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Montréal (City)*, [2000] 1 S.C.R. 665, ¶46, BA, Tab 20.

protecting the public interest. ... The Court has already had occasion to address this point in respect of litigants who entrust their rights to lawyers (Fortin v. Chrétien, [2001] 2 S.C.R. 500...)... The privilege of professional *self-regulation* therefore places the individuals responsible for enforcing professional discipline under an onerous obligation.

*In this context, it should be expected that individuals with not only the power, but also the duty, to inquire into a professional's conduct will have sufficiently effective means at their disposal to gather all information relevant...*²⁸

23. The Court also allowed the regulator to rely on a *general* right to injunctive relief in the *Code of Civil Procedure*, even though its enabling legislation had *specific* provisions for other sanctions, thus refuting the *expressio unius* argument made by the Appellant here:

Morgan created an exception to the general principle that the general law is inapplicable where a specific statute provides for an obligation and related penalties...:

... The general rule of construction that *where a law creates a new obligation and enforces its performance in a specific manner, that performance cannot be enforced in any other manner...* is of course well established. *But that rule is more uniformly applicable to statutes creating private rights than to those imposing public obligations.* ...

...
The words used by Anglin J. in Morgan to qualify the strict application of the principle of the exclusivity of specific sanctions support this result. Anglin J. mentions first of all that *this principle applies more to statutes that create private rights than to those that impose public obligations.* ...²⁹

24. The *Pharmascience* decision reflects this Court's broad approach to interpreting law society statutes.

25. In *Jabour*, for instance, Estey J. rejected the argument that a law society had no jurisdiction to pass a rule prohibiting informational advertising under its general power to prevent "other conduct unbecoming a member of the Society":

*... The statute directs the Law Society acting through the Benchers to determine in the public interest what "matter, conduct or thing" is "conduct unbecoming a member of the Society," ... The statute does not limit the Benchers in the regulation of advertising nor does it confine them to matters of standards of "competence and integrity" ... [T]he mandate was broadly styled by the Legislature when it saw fit to define "conduct unbecoming" as including "any matter, conduct or thing that is deemed in the judgment of the Benchers to be contrary to the best interest of the public or of the legal profession".*³⁰

²⁸ *Pharmascience Inc. v. Binet*, [2006] 2 S.C.R. 513, ¶34 and 36-37, BA, Tab 19, *emphasis added*.

²⁹ *Pharmascience Inc. v. Binet*, [2006] 2 S.C.R. 513, ¶54 and 58, BA, Tab 19, *underlining in original, bolding and italics added*.

³⁰ *Canada (A.G.) v. Law Society of British Columbia*, [1982] 2 S.C.R. 307 at 341, BA, Tab 4, *emphasis added*.

26. In the end, these cases recognize the “social importance of the role of the lawyer in a democratic society founded on the rule of law”.³¹ As this Court held in *Fortin*:

*The special rules governing the practice of the legal profession are justified by the importance of the acts that advocates engage in, the vulnerability of the litigants who entrust their rights to them, and the need to preserve the relationship of trust between advocates and their clients. ... It is the vocation of the Barreau... to preserve this relationship of trust.*³²

27. If the Court were to adopt a narrow construction of general enabling provisions in law society statutes, and require specific wording before a power to impose administrative suspensions is found, it would undermine these principles in a way that is contrary to the self-regulation of the legal profession:

It is appropriate... to mention the legislative *rationale behind making a profession self-governing*... *The Report of the Professional Organizations Committee* (1980)... is apposite:

...

...[W]here the legislature sees fit to delegate some of its authority in these matters of public policy to professional bodies themselves, it must respect the self-governing status of those bodies. *Government ought not to prescribe in detail the structures, processes, and policies of professional bodies. The initiative in such matters must rest with the professions themselves, recognizing their particular expertise and sensitivity to the conditions of practice.* In brief, professional self-governing bodies must be ultimately accountable to the legislature; but they must have the authority to make, in the first place, the decisions for which they are to be accountable. ...³³

PART IV—SUBMISSIONS CONCERNING COSTS

28. Pursuant to the May 13, 2015 order of Brown J., the Federation undertakes to pay to the Appellant and Respondent any additional disbursements occasioned to them by its intervention, but requests that no costs otherwise be awarded for or against it.

PART V—REQUEST FOR PERMISSION TO PRESENT ORAL ARGUMENT

29. The Federation requests that it be permitted to present *10 minutes of oral argument* at the

³¹ *Finney v. Barreau du Québec*, [2004] 2 S.C.R. 17, ¶17, BA, Tab 10.

³² *Fortin v. Chrétien*, [2001] 2 S.C.R. 500, ¶17, BA, Tab 11, *emphasis added*.

³³ *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 S.C.R. 869 at 888, BA, Tab 18, *underlining in original, bolding and italics added*. See also *Hodgkinson v. Simms*, [1994] 3 S.C.R. 377 at 420, BA, Tab 12 (“[T]here is a wider reason to support fiduciary relationships in the case of financial advisors. These are occupations where advisors to whom a person gives trust has power over a vast sum of money, yet *the nature of their position is such that specific regulation might frustrate the very function they have to perform*. By enforcing a duty of honesty and good faith, the courts are able to regulate an activity that is of great value to commerce and society generally”).

hearing of the appeal.

30. The Federation brings a unique perspective to this case. Its submissions concern the effect that the Court's judgment will have upon law societies throughout Canada. This is an important matter that is not addressed by either the Appellant or the Respondent. Their facts collectively refer to only the Manitoba and Ontario statutes.³⁴ Without the Federation, a national perspective will be missing on the appeal.

31. Further, the Federation's submissions focus upon why a broad approach to law society statutes is necessary given their common purpose of protecting both the public and the rule of law, and the deference owed to law societies as expert regulatory bodies. These broader themes are not a significant element of the parties' arguments, the majority of which address the text of the Manitoba Act, the implied exclusion rule and the duty of procedural fairness.

32. It is important that the Court hear oral arguments upon these issues so that it will have the opportunity to fully examine them before rendering its judgment.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 6th day of July, 2016

Neil Finkelstein
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³⁴ Factum of the Appellant, ¶55.

Appendix

Table of Statutory Provisions Conferring CPD-Related Administrative Suspension Power in Descending Order of Specificity

Jurisdiction	Legislation	Text of Statutory Provisions
Ontario	<i>Law Society Act</i> , R.S.O. 1990, c. L.8, ss. 49(1) and 49(3)	<p>49. (1) A person appointed for the purpose by Convocation may make an order suspending a licensee's licence if the licensee has failed to comply with the requirements of the by-laws with respect to continuing professional development.</p> <p>...</p> <p>(3) A suspension under this section remains in effect until the licensee complies with the requirements of the by-laws with respect to continuing professional development to the satisfaction of the Society.</p>
New Brunswick	<i>Law Society Act</i> , S.N.B. 1996, c. 89, ss. 16(2)(n)(iv), 17(2)(hh), 17(5) and 31(1)	<p>16. (2) Without limiting the generality of the foregoing, Council may</p> <p>...</p> <p>(n) establish, administer, maintain and operate a system of legal education, including</p> <p>...</p> <p>(iv) the operation of a system of compulsory continuing legal education and require that every member, unless exempted in writing by the Executive Director in accordance with the rules, attend and successfully complete a course of study approved by Council as a condition of the right to practise law,</p> <p>...</p> <p>17(2) Without limiting the generality of the foregoing, the rules may</p> <p>...</p> <p>(hh) provide for compulsory education programs, and</p> <p>...</p> <p>17(5) The rules are binding on the Society, its members and former members, Council, students-at-law, applicants, professional corporations,</p>

		<p>inter-jurisdictional law firms and persons referred to in subsections 33(4) and (5).</p> <p>...</p> <p>31. (1) Practising and non-practising members shall complete such mandatory continuing legal education programs as prescribed by the rules as a condition of maintaining membership in the Society.</p>
<p>Quebec</p>	<p><i>An Act Respecting the Barreau du Québec</i>, C.Q.L.R. c. B-1, s. 15(1.2)(b)</p> <p>-----</p> <p><i>Professional Code</i>, C.Q.L.R. c. C-26, s. 94(o)</p>	<p>[15.] (1.2) The board of directors shall take the recommendations of the sections council into consideration. The board of directors must consult the council before making a decision on the following subjects:</p> <p>...</p> <p>(b) by-laws concerning mandatory continuing education, in particular with regard to mandatory training activities;</p> <p>-----</p> <p>94. The board of directors may, by regulation:</p> <p>...</p> <p>(o) determine the continuing education requirements, or the framework for those requirements, with which the members or a class of members of the order must comply, in accordance with the conditions set by resolution of the board of directors; the regulation must include the methods for monitoring, supervising or evaluating compliance with the requirements, penalties for a failure to comply with them and, if applicable, possible exemptions from the requirements;</p>
<p>Nova Scotia</p>	<p><i>Legal Profession Act</i>, S.N.S. 2004, c. 28, s. 28(2)(d)</p>	<p>[28.] (2) The Council may make regulations</p> <p>...</p> <p>(d) respecting the promotion of standards for the practice of law, including regulations setting mandatory requirements for some or all members of the Society for attendance and successful completion of programs of continuing legal education and professional development and prescribing the sanctions or</p>

		restrictions that apply where a member fails to successfully complete the requirements.
Newfoundland & Labrador	<i>Law Society Act, 1999</i> , S.N.L. 1999, c. L-9.1, ss. 18(2)(i)(iii) and 18(2)(s)	[18.] (2) The benchers may ... (i) establish and maintain a system of legal education including, ... (iii) the operation of voluntary and compulsory programs of continuing and remedial legal education for members, ... (s) prescribe the consequences of non-compliance with the Act or rules and enforce penalties and orders;
Alberta	<i>Legal Profession Act, R.S.A. 2000</i> , c. L-8, ss. 7(1) and 7(2)(g)	7. (1) The Benchers may make rules for the government of the Society, for the management and conduct of its business and affairs and for the exercise or carrying out of the powers and duties conferred or imposed on the Society or the Benchers under this or any other Act. (2) Without restricting the generality of subsection (1), the Benchers may make rules ... (g) respecting the imposition of a pecuniary penalty on a member or student-at-law or the suspension of the membership of a member or the registration of a student-at-law, without notice or hearing, if the member or student-at-law does not pay a fee or assessment, file a document or do any other act by the time specified by or determined in accordance with the rules;
Manitoba	<i>Legal Profession Act, C.C.S.M. c. L107</i> , ss. 3(2)(a), 4(5), 4(6), 43(c)(ii) and 65(a)	3. (2) In pursuing its purpose, the society must (a) establish standards for the education, professional responsibility and competence of persons practising or seeking the right to practise law in Manitoba ...

		<p>4. (5) In addition to any specific power or requirement to make rules under this Act, the benchers may make rules to manage the society's affairs, pursue its purpose and carry out its duties.</p> <p>4. (6) The rules are binding on the society, the benchers, the members and everyone who practises or seeks the right to practise law under the authority of this Act, other than Part 5 (representation in highway traffic matters).</p> <p>...</p> <p>43. The benchers may</p> <p>...</p> <p>(c) establish and maintain, or otherwise support, a system of legal education, including the following:</p> <p>...</p> <p>(ii) a continuing legal education program,</p> <p>...</p> <p>65. The benchers may make rules</p> <p>(a) to establish consequences for contravening this Act or the rules;</p>
<p>Yukon</p>	<p><i>Legal Profession Act</i>, R.S.Y. 2002, c. 134, ss. 5(1)(l), 5(1)(r), 6(1) and 6(2)</p>	<p>5. (1) The executive, for and on behalf of the society and subject to this Act and the rules, has the power to</p> <p>...</p> <p>(l) establish a program of continuing legal education;</p> <p>...</p> <p>(r) do any things that are incidental or necessary to the exercise of the powers set out in paragraphs (a) to (q).</p> <p>...</p> <p>6. (1) The executive may make rules not inconsistent with this Act for the governing of the society, for the regulation of the conduct of members, articulated students, applicants, or other persons with respect to the practice of law, and generally for the carrying out of this Act and, without restricting the generality of the foregoing, may make rules...</p>

		(2) The general authority given to the executive by subsection (1) is not limited by any specific power or requirement to make rules otherwise given to the executive by this Act.
British Columbia	<i>Legal Profession Act</i> , S.B.C. 1998, c. 9, ss. 11(1), 11(2), 11(3) and 28(a)(ii)	<p>11. (1) The benchers may make rules for the governing of the society, lawyers, law firms, articulated students and applicants, and for the carrying out of this Act.</p> <p>(2) Subsection (1) is not limited by any specific power or requirement to make rules given to the benchers by this Act.</p> <p>(3) The rules are binding on the society, lawyers, law firms, the benchers, articulated students, applicants and persons referred to in section 16 (2) (a) or 17 (1) (a).</p> <p>...</p> <p>28. The benchers may take any steps they consider advisable to promote and improve the standard of practice by lawyers, including but not limited to the following:</p> <p style="padding-left: 40px;">(a) establishing and maintaining or otherwise supporting a system of legal education, including but not limited to the following programs:</p> <p style="padding-left: 80px;">...</p> <p style="padding-left: 80px;">(ii) continuing legal education;</p>
Northwest Territories & Nunavut	<p><i>Legal Profession Act</i>, R.S.N.W.T. 1988, c. L-2, ss. 7(m), 7(s) and 8(1)</p> <p><i>Legal Profession Act</i>, R.S.N.W.T. (Nu) 1988, c. L-2, ss. ss. 7(m), 7(s) and 8(1)</p>	<p>7. The Executive, for and on behalf of the Society may</p> <p style="padding-left: 40px;">...</p> <p style="padding-left: 40px;">(m) establish and prescribe a program of continuing legal education;</p> <p style="padding-left: 40px;">...</p> <p style="padding-left: 40px;">(s) do such things as are incidental or necessary to the exercise of the powers set out in paragraphs (a) to (r).</p> <p>...</p> <p>8. (1) The Executive shall make rules for the regulation of the Society, the management and conduct of its business affairs and for the exercise of the</p>

		powers conferred or the performance of the duties imposed on the Society or the Executive by or under this Act and, without restricting the generality of these powers to make rules, may make rules...
Saskatchewan	<i>The Legal Profession Act</i> , 1990, S.S. 1990-91, c. L-10.1, ss. 10, 10(w) and 10(cc)	<p>10. The benchers may make rules for the governing of the society, for the regulating of lawyers, firms, articulated students-at-law and applicants, and for the carrying out of this Act, for the following purposes...</p> <p>...</p> <p>(w) respecting the establishment and maintenance of a system of continuing legal education and the monitoring of legal education provided otherwise;</p> <p>...</p> <p>(cc) respecting any matter that is necessarily incidental to the matters set out in this section relating to the governance of the society and the legal profession.</p>
Prince Edward Island	<i>Legal Profession Act</i> , R.S.P.E.I. 1988, c. L-6.1, ss. 4(b), 55(1), 55(1)(c) and 55(1)(z)	<p>4. The objects of the society are</p> <p>...</p> <p>(b) to establish standards for the education, professional responsibility and competence of its members and applicants for membership;</p> <p>...</p> <p>55. (1) The society may make regulations for the better carrying out of the intent and purpose of this Act and, in particular, respecting...</p> <p>...</p> <p>(c) the call and admission of barristers, solicitors and attorneys to practise and prescribing the educational qualifications, training requirements and other qualifications;</p> <p>...</p> <p>(z) generally, the management of the society and its affairs and all purposes connected therewith.</p>

PART VI—TABLE OF AUTHORITIES

Tab	Authority	Paragraph(s) Referenced in Memorandum of Argument
1.	<i>ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)</i> , [2006] 1 S.C.R. 140	20
2.	<i>Bell Canada v. Canada (C.R.T.C.)</i> , [1989] 1 S.C.R. 1722	20
3.	<i>Canada (A.G.) v. Federation of Law Societies of Canada</i> , [2015] 1 S.C.R. 401	8
4.	<i>Canada (A.G.) v. Law Society of British Columbia</i> , [1982] 2 S.C.R. 307	9, 10, 11, 12, 25
5.	<i>Canadian National Railway Co. v. Canada (A.G.)</i> , [2014] 2 S.C.R. 135	16
6.	<i>Canadian National Railway Co. v. McKercher LLP</i> , [2013] 2 S.C.R. 649	15
7.	<i>Catalyst Paper Corp. v. North Cowichan (District)</i> , [2012] 1 S.C.R. 5	16
8.	<i>Doré v. Barreau du Québec</i> , [2012] 1 S.C.R. 395	14
9.	<i>Edwards v. Law Society of Upper Canada</i> , [2001] 3 S.C.R. 562	10, 11
10.	<i>Finney v. Barreau du Québec</i> , [2004] 2 S.C.R. 17	9, 10, 26
11.	<i>Fortin v. Chrétien</i> , [2001] 2 S.C.R. 500	11, 26
12.	<i>Green v. Law Society of Manitoba</i> , 2014 MBQB 249	5
13.	<i>Green v. Law Society of Manitoba</i> , 2015 MBCA 67	5
14.	<i>Hodgkinson v. Simms</i> , [1994] 3 S.C.R. 377	27
15.	<i>Katz Group Canada Inc. v. Ontario (Health and Long -Term Care)</i> , [2013] 3 SCR 810	16
16.	<i>Lavallee, Rackel & Heintz v. Canada (A.G.)</i> , [2002] 3 S.C.R. 209	15

Tab	Authority	Paragraph(s) Referenced in Memorandum of Argument
17.	<i>Law Society of British Columbia v. Mangat</i> , [2001] 3 S.C.R.113	11
18.	<i>Law Society of New Brunswick v. Ryan</i> , [2003] 1 S.C.R. 247	10, 12,
19.	<i>MacDonald Estate v. Martin</i> , [1990] 3 S.C.R. 1235	11
20.	<i>Pearlman v. Manitoba Law Society Judicial Committee</i> , [1991] 2 S.C.R. 869	11,13, 20, 27
21.	<i>Pharmascience Inc. v. Binet</i> , [2006] 2 S.C.R. 513	22, 23
22.	<i>Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Montréal (City)</i> , [2000] 1 S.C.R. 665	21
23.	<i>Syncrude Canada Ltd. v. Canada</i> , 2016 FCA 160	16
24.	<i>Trinity Western University v. The Law Society of Upper Canada</i> , 2016 ONCA 518	10, 12
25.	<i>University of British Columbia v. Berg</i> , [1993] 2 S.C.R. 353	21

PART VII—LEGISLATION RELIED UPON

1. *An Act Respecting the Barreau du Québec*, C.Q.L.R. c. B-1, s. 15(1.2)(b)
2. *Law Society Act*, R.S.O. 1990, c. L.8, ss. 49(1) and 49(3)
3. *Law Society Act*, S.N.B. 1996, c. 89, ss. 16(2)(n)(iv), 17(2)(hh), 17(5) and 31(1)
4. *Law Society Act, 1999*, S.N.L. 1999, c. L-9.1, ss. 18(2)(i)(iii) and 18(2)(s)
5. *Legal Profession Act*, C.C.S.M., c. L107, ss. 3(2)(a), 4(5), 4(6), 43(c)(ii) and 65(a)
6. *Legal Profession Act*, R.S.A. 2000, c. L-8, ss. 7(1) and 7(2)(g)
7. *Legal Profession Act*, R.S.N.W.T. 1988, c. L-2, ss. 7(m), 7(s) and 8(1)
8. *Legal Profession Act*, R.S.N.W.T. (Nu) 1988, c. L-2, ss. 7(m), 7(s) and 8(1)
9. *Legal Profession Act*, R.S.P.E.I. 1988, c. L-6.1, ss. 4(b), 55(1), 55(1)(c) and 55(1)(z)
10. *Legal Profession Act*, R.S.Y. 2002, c. 134, ss. 5(1)(l), 5(1)(r), 6(1) and 6(2)
11. *Legal Profession Act*, S.B.C. 1998, c. 9, ss. 11(1), 11(2), 11(3) and 28(a)(ii)
12. *Legal Profession Act*, S.N.S. 2004, c. 28, s. 28(2)(d)
13. *Professional Code*, C.Q.L.R. c. C-26, s. 94(o)
14. *The Legal Profession Act*, 1990, S.S. 1990-91, c. L-10.1, ss. 10, 10(w) and 10(cc)

SIDNEY GREEN
Appellant

and

THE LAW SOCIETY OF
MANITOBA
Respondent

S.C.C. Court File No. 36583

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF
APPEAL FOR MANITOBA)**

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