Court File No.: 30823

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF ALBERTA)

B E T W E E N:

CANADIAN WESTERN BANK, BANK OF MONTREAL, CANADIAN IMPERIAL BANK OF COMMERCE, HSBC BANK CANADA, NATIONAL BANK OF CANADA, ROYAL BANK OF CANADA, THE BANK OF NOVA SCOTIA and THE TORONTO-DOMINION BANK

Appellants (Appellants)

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA

Respondent (Respondent)

- and -

THE FINANCIAL ADVISORS ASSOCIATION OF CANADA, ATTORNEY GENERAL OF QUEBEC, ATTORNEY GENERAL FOR SASKATCHEWAN, ATTORNEY GENERAL OF CANADA, ATTORNEY GENERAL OF ONTARIO, ATTORNEY GENERAL OF NEW BRUNSWICK, ATTORNEY GENERAL OF BRITISH COLUMBIA, AIG LIFE INSURANCE COMPANY OF CANADA, CANADA LIFE ASSURANCE COMPANY, CAPITALE CIVIL SERVICE INSURER INC., CAPITALE INSURANCE AND FINANCIAL SERVICES INC., CUMIS LIFE INSURANCE COMPANY, DESJARDINS FINANCIAL SECURITY LIFE ASSURANCE COMPANY, EMPIRE LIFE INSURANCE COMPANY, EQUITABLE LIFE INSURANCE COMPANY OF CANADA, GREAT-WEST LIFE ASSURANCE COMPANY, INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL SERVICES INC., INDUSTRIAL ALLIANCE PACIFIC LIFE INSURANCE COMPANY, LONDON LIFE INSURANCE COMPANY, MANUFACTURERS LIFE INSURANCE COMPANY, STANDARD LIFE ASSURANCE COMPANY OF CANADA, SUN LIFE ASSURANCE COMPANY OF CANADA, TRANSAMERICA LIFE CANADA AND THE ALBERTA INSURANCE COUNCIL

Interveners

FACTUM OF THE INTERVENER, THE FINANCIAL ADVISORS ASSOCIATION OF CANADA

Counsel for the Intervener,
The Financial Advisors Association of Canada

Heenan Blaikie LLP
Barristers and Solicitors
Suite 2600 – 200 Bay Street
Toronto, ON M5J 2J4

L. David Roebuck / David Stratas / Brad Elberg
Tel: (416) 643-6887 / (416) 643-6846 / (416) 360-2618
Fax: (416) 360-8425
Email: droebuck@heenan.ca / dstratas@heenan.ca / belberg@heenan.ca

Agent for the Intervener,
The Financial Advisors Association of Canada

Heenan Blaikie LLP
Barristers and Solicitors
Suite 300 – 55 Metcalfe Street
Ottawa, ON K1P 6L5

Joy Noonan
Tel.: (613) 236-1668
Fax: (613) 236-9632
Email: jnoonan@heenan.ca

ORIGINAL: The Registrar
The Supreme Court of Canada
301 Wellington Street
Ottawa, ON K1A 0J1

Tel: (613) 995-4330
Fax: (613) 996-3063
Email: reception@scc-csc.gc.ca

COPY TO: Blake, Cassels & Graydon LLP
199 Bay Street
Suite 2800, Commerce Court West
Toronto ON M5L 1A9

Neil Finkelstein
Tel: (416) 863-2266
Email: neil.finkelstein@blakes.com

Jeff Galway
Tel: (416) 863-2269
Email: jeff.galway@blakes.com

Catherine Beagan Flood
Tel: (416) 863-2269
Email: cbe@blakes.com

Fax: (416) 863-2653

Counsel for the Appellants, Canadian Western Bank, Bank of Montreal, Canadian Imperial Bank of Commerce, HSBC Bank Canada, National Bank of Canada, Royal Bank of Canada, The Bank of Nova Scotia and The Toronto-Dominion Bank

Gowling Lafleur Henderson LLP
2600 – 160 Elgin Street
P.O. Box 466, Station D
Ottawa, ON K1P 1C3

Brian A. Crane, Q.C.
Tel: (613) 786-0107
Fax: (613) 563-9869
Email: brian.crane@gowlings.com

Agent for the Appellants, Canadian Western Bank, Bank of Montreal, Canadian Imperial Bank of Commerce, HSBC Bank Canada, National Bank of Canada, Royal Bank of Canada, The Bank of Nova Scotia and The Toronto-Dominion Bank

AND TO:

Attorney General of Alberta
4th Floor, Bowker Building
9833 – 109th Street
Edmonton, Alberta T5K 2E8

Robert J. Normey
Tel: (780) 422-9532
Fax: (780) 425-0310
Email: robert.normey@gov.ab.ca

Counsel for the Respondent, Her Majesty the Queen in Right of Alberta

Gowling Lafleur Henderson LLP
2600 – 160 Elgin Street
P.O. Box 466, Station D
Ottawa, ON K1P 1C3

Henry S. Brown, Q.C.
Tel: (613) 233-1781
Fax: (613) 563-9869
Email: henry.brown@gowlings.com

Agent for the Respondent, Her Majesty the Queen in Right of Alberta

AND TO:

Procureur général du Québec
1200, route de l'Église 2e étage
Ste-Foy, PQ G1V 4M1

Alain Gingras
Tel: (418) 643-1477
Fax: (418) 644-7030
Email: agingras@justice.gouv.qc.ca

Counsel for the Intervener, Attorney General of Quebec

Noel & Associes, S.E.N.C.
111 rue Champlain
Hull QC J8X 3R1

Sylvie Roussel
Tel: (819) 771-7393
Fax: (819) 771-5397
Email: s.roussel@noelassocies.com

Agent for the Intervener, Attorney General of Quebec

AND TO:

Attorney General of Saskatchewan
Saskatchewan Justice
Constitutional Law Branch
1874 Scarth Street, 8th Floor
Regina, SK S4P 3V7

Thomson Irvine
Tel: (306) 787-6307
Fax: (306) 787-9111
Email: tirvine@justice.gov.sk.ca

Counsel for the Intervener, Attorney General of Saskatchewan

Gowling Lafleur Henderson LLP
2600 – 160 Elgin Street
P.O. Box 466, Station D
Ottawa, ON K1P 1C3

Henry S. Brown, Q.C.
Tel: (613) 233-1781
Fax: (613) 563-9869
Email: henry.brown@gowlings.com

Agent for the Intervener Attorney General of Saskatchewan

AND TO:

Attorney General of Canada
The Exchange Tower, Box 36
Suite 3400, 130 King Street West
Toronto, ON M5X 1K6

Peter Southey
Tel: (416) 973-2240
Fax: (416) 973-0809
Email: peter.southey@justice.gc.ca

Counsel for the Intervener,
Attorney General of Canada

Gowling Lafleur Henderson LLP
2600 – 160 Elgin Street
P.O. Box 466, Station D
Ottawa, ON K1P 1C3

Henry S. Brown, Q.C.
Tel: (613) 233-1781
Fax: (613) 563-9869
Email: henry.brown@gowlings.com

Agent for the Intervener,
Attorney General of Canada

AND TO:

Attorney General of Ontario
Constitutional Law Branch
720 Bay Street, 4th Floor
Toronto, ON M5G 2K1

Robin K. Basu
Tel: (416) 326-4476
Email: robin.basu@jus.gov.on.ca

Bay Riley
Tel: (416) 326-6313
Email: bay.riley@jus.gov.on.ca

Fax: (416) 326-4015

Counsel for the Intervener,
Attorney General of Ontario

Burke-Robertson
70 Gloucester Street
Ottawa, ON K2P 0A2

Robert E. Houston, Q.C.
Tel: (613) 236-9665
Fax: (613) 235-4430
Email: rhouston@burkerobertson.com

Agent for the Intervener,
Attorney General of Ontario

AND TO:

Attorney General of New Brunswick
New Brunswick Justice
Legal Services Branch
670 King Street
Fredericton, NB E3B 5H1

John G. Furey
Tel: (506) 453-3606
Fax: (506) 453-3275
Email: john.furey@gnb.ca

Counsel for the Intervener,
Attorney General of New Brunswick

Gowling Lafleur Henderson LLP
2600 – 160 Elgin Street
P.O. Box 466, Station D
Ottawa, ON K1P 1C3

Henry S. Brown, Q.C.
Tel: (613) 233-1781
Fax: (613) 563-9869
Email: henry.brown@gowlings.com

Agent for the Intervener,
Attorney General of New Brunswick

AND TO:

Attorney General of British Columbia
Ministry of the Attorney General
P.O. Box 9280. Stn. Prov. Gov.
1001 Douglas Street, 6th Floor
Victoria, BC V8W 9J7

Sarah Macdonald
Tel: (250) 356-8499
Fax: (250) 356-9154
Email: sarah.macdonald@gems1.gov.bc.ca

Counsel for the Intervener,
Attorney General of British Columbia

Burke-Robertson
70 Gloucester Street
Ottawa, ON K2P 0A2

Robert E. Houston, Q.C.
Tel: (613) 236-9665
Fax: (613) 235-4430
Email: rhouston@burkerobertson.com

Agent for the Intervener,
Attorney General of British Columbia

AND TO:

Lax O'Sullivan Scott LLP
1920 – 145 King Street West
Toronto, ON M5H 1J8

M. Paul Michell
Tel: (416) 644-5359
Fax: (416) 598-3730
Email: pmichell@counsel-toronto.com

Counsel for the Interveners, AIG Life Insurance Company of Canada, Canada Life Assurance Company, Capital Civil Service Insurer Inc., Capitale Insurance and Financial Services Inc., CUMIS Life Insurance Company, Desjardins Financial Security Life Assurance Company, Empire Life Insurance Company, Equitable Life Insurance Company of Canada, Great-West Life Assurance Company, Industrial Alliance Insurance and Financial Services Inc., Industrial Alliance Pacific Life Insurance Company, London Life Insurance Company, Manufacturers Life Insurance Company, Standard Life Assurance Company of Canada, Sun Life Assurance Company of Canada, Transamerica Life Canada

Lang Michener LLP
300 – 50 O'Connor Street
Ottawa, ON K1P 6L2

Eugene Meehan, Q.C.
Tel: (613) 232-7171, x-132
Email: emeehan@langmichener.ca

Jeffrey W. Beedell
Tel: (613) 232-7171, x-122
Email: jbeedell@langmichener.ca

Fax: (613) 231-3191

Agent for the Interveners, AIG Life Insurance Company of Canada, Canada Life Assurance Company, Capital Civil Service Insurer Inc., Capitale Insurance and Financial Services Inc., CUMIS Life Insurance Company, Desjardins Financial Security Life Assurance Company, Empire Life Insurance Company, Equitable Life Insurance Company of Canada, Great-West Life Assurance Company, Industrial Alliance Insurance and Financial Services Inc., Industrial Alliance Pacific Life Insurance Company, London Life Insurance Company, Manufacturers Life Insurance Company, Standard Life Assurance Company of Canada, Sun Life Assurance Company of Canada, Transamerica Life Canada

AND TO:

Emery Jamieson LLP
1700 Oxford Tower
10235 101 Street North West
Edmonton, AB T5J 3G1

Katharine L. Hurlburt
Tel: (780) 970-6279
Fax: (780) 420-6277
Email: khurlburt@emeryjamieson.com

R. Dale Gibson
Barrister
11018 125 Street North West
Edmonton, AB T5M 0M1

Tel: (780) 452-9530
Fax: (780) 453-5872
Email: giblaw@telusplanet.net

Counsel for the Intervener,
Alberta Insurance Council

Noel & Associes, S.E.N.C.
111 rue Champlain
Hull QC J8X 3R1

Sylvie Roussel
Tel: (819) 771-7393
Fax: (819) 771-5397
Email: s.roussel@noelassocies.com

Agent for the Intervener,
Alberta Insurance Council

FACTUM OF THE INTERVENER,
THE FINANCIAL ADVISORS ASSOCIATION OF CANADA

PART I – STATEMENT OF FACTS

1. By order dated March 7, 2006, this Court granted The Financial Advisors Association of Canada leave to intervene. The Financial Advisors Association of Canada carries on its activities under the trade name "Advocis" and will refer to itself as Advocis in this factum.

2. Advocis is required to accept the factual record before this Court as the entire record for the purposes of the merits of the appeal. By way of background, however, Advocis wishes to describe itself to the Court and describe the unique and helpful perspective it brings to bear in this case, matters which it placed before the Court in its application to intervene.

3. Advocis is an association of professional financial advisors, including insurance advisors, who are direct competitors of the appellants when they offer insurance services. Advocis is Canada's largest such organization: it has more than 13,000 members in 49 chapters across the country. It is also Canada's oldest such organization: founded on June 25, 1906, it has nearly a century of experience and expertise. Advocis also has the imprimatur of Canada's Parliament: it is a legislatively established and legislatively sanctioned organization. First and foremost, Advocis is dedicated to the preservation, protection and enhancement of the interests of consumers, financial advisors and the general public in financial services industries, especially the insurance industry. Advocis' purposes include protecting the interests of consumers by promoting the professionalism of its members, promoting the highest standards of professionalism of its members in the practice of insurance and financial planning and improving public awareness and understanding of insurance and personal financial planning.

> *An Act to Incorporate the Life Underwriters Association of Canada*, 14-15 Geo. 5; Exhibit "E" to the *Affidavit of Steve Howard* filed on the intervention application.

The Financial Advisors Association of Canada Act, 51-52 Eliz. II, 2002-2003, s. 5; Exhibit "F" to the *Affidavit of Steve Howard* filed on the intervention application.

Affidavit of Steve Howard filed on the intervention application, paras. 2 and 10

PART II – STATEMENT OF THE QUESTIONS IN ISSUE

4. The Chief Justice stated the following constitutional questions:

> 1. Are Alberta's *Insurance Act*, R.S.A. 2000, c. I-3, and the regulations made thereunder constitutionally inapplicable to the promotion by banks of an "authorized type of insurance" or "personal accident insurance" as defined in the *Insurance Business (Banks and Bank Holding Companies) Regulations*, SOR/92-330, by reason of the doctrine of interjurisdictional immunity?
>
> 2. Are Alberta's *Insurance Act*, R.S.A. 2000, c. I-3, and the regulations made thereunder constitutionally inoperative in relation to the promotion by banks of an "authorized type of insurance" or "personal accident insurance" as defined in the *Insurance Business (Banks and Bank Holding Companies) Regulations*, SOR/92-330, by reason of the doctrine of federal legislative paramountcy?

5. Advocis submits that both questions should be answered in the negative.

PART III – STATEMENT OF ARGUMENT

6. Advocis' submissions will be in two parts:

A. Advocis' constitutional law submissions: it is essential to conduct an effects-based approach in light of the federalism principle; and

B. Advocis' submissions, drawing upon its unique perspective, on how the law should be applied to the facts of this case: the Alberta legislation is constitutionally applicable to and operative in relation to the banks' insurance activities.

Advocis will also make brief submissions on the issue of paramountcy.

A. Advocis' constitutional law submissions: it is essential to conduct an effects-based approach in light of the federalism principle

(1) The "pith and substance" approach

7. The central task in performing a division of powers analysis is to ascertain the "pith and substance" of the legislation in issue. This is done by characterizing the "matter" behind the law. This frequently entails an examination of the purpose and effects of the law.

P.W. Hogg, *Constitutional Law of Canada*, 4th ed., (Toronto: Carswell, 1997) at 382-392.

8. A provincial law affect matters within federal jurisdiction, but in an incidental way, and remain valid. In other words, it may have a double aspect. Just how far a matter may impact a matter within federal jurisdiction is ultimately a judgment call or discretionary issue for the court.

P.W. Hogg, *Constitutional Law of Canada*, 4th ed., (Toronto: Carswell, 1997) at 382-392.

(2) The emergence of the doctrine of "interjurisdictional immunity"

9. Occasionally the result of this judgment call has been articulated in terms of a certain sphere of federal jurisdiction that cannot be affected. For example, while the provincial law of contracts may govern a federally-incorporated company or a federal undertaking, a provincial law that purports to affect the essential status or powers of a federal corporation or a federal

undertaking is held to be inapplicable to that federal company or federal undertaking. The federal company or federal undertaking are said to enjoy "interjurisdictional immunity".

P.W. Hogg, *Constitutional Law of Canada*, 4th ed., (Toronto: Carswell, 1997) at 401-406.

(3) The movement away from "pith and substance": tests for "interjurisdictional immunity" develop

10. Over the years, the Supreme Court developed certain labels to describe when a provincial law goes too far in affecting a matter within federal jurisdiction. Originally, the language used was "sterilization, paralyzation or impairment" of the federal undertaking. In 1966, the Supreme Court applied the test whether the provincial law "affects a vital part of the management and operation of the undertaking". In 1980 and 1988, it reconfirmed the "vital part" test, stating that "it is sufficient that the provincial statute which purports to apply to the federal undertaking affects a vital or essential part of that undertaking, without necessarily going as far as impairing or paralyzing it".

Commission du Salaire Minimum v. Bell Telephone Co., [1966] S.C.R. 767.

Northern Telecom Ltd. v. Communications Workers of Canada, [1980] 1 S.C.R. 115.

Bell Canada v. Quebec, [1988] 1 S.C.R. 749 at 859-860.

11. In 1987, the Supreme Court upheld the constitutionality of a Quebec law that purported to affect a "vital part" of broadcasting, advertising. In doing so, it added a qualification to the "vital part" test. A law that only had an indirect effect on a federal undertaking would be invalid only if it impaired, paralyzed or sterilized the undertaking. An indirect effect falling short of impairment would be upheld. The Quebec legislation was "indirect" because it applied to advertisers, not to the media – the advertiser was prohibited from placing offending advertising with media.

Irwin Toy v. Quebec (Attorney General), [1989] 1 S.C.R. 927.

To similar effect, see also *Ontario v. Canadian Pacific*, [1995] 2 S.C.R. 1028.

12. The so-called "doctrine of interjurisdictional immunity" and the "vital part" / "direct effect" / "indirect effect" tests run counter to basic concepts in Canadian constitutional law such as the "pith and substance" doctrine and have been the subject of criticism:

- In 1987, Dickson C.J.C. criticized the "doctrine" as "not a particularly compelling doctrine" and an "undertow against the strong pull of pith and substance, the aspect doctrine and, in recent years, a very restrained approach to concurrency and paramountcy issues".

  > *OPSEU v. Ontario (Attorney General)*, [1987] 2 S.C.R. 2 *per* Dickson C.J.C., concurring, at 16-20.

- In 1989, this Court summarily rejected an 'enclave theory' based on the application of interjurisdictional immunity that would have placed airlines beyond provincial jurisdiction in many respects.

  > *Air Canada v. British Columbia*, [1989] 1 S.C.R. 1161 at 1191 ("…the airlines at times appeared to argue for a type of enclave theory making them immune from otherwise valid provincial legislation. This contention is wholly without merit. By and large federal undertakings, like other private enterprises functioning within the province, must operate in a provincial legislative environment.")

- In 1999, this Court affirmed that "the Constitution does not create 'enclaves' around federal or provincial actors". But this is precisely what a robust application of "interjurisdictional immunity" does.

  > *Westbank First Nation v. British Columbia Hydro and Power Authority*, [1999] 3 S.C.R. 134 at para. 18.

- In 2000, this Court affirmed that each level of government can "expect to have its jurisdiction affected by the other to a certain degree" and that the extent to which that happens is "a matter of balance and federalism: no one level of government is isolated from the other, nor can it usurp the functions of the other". Interjurisdictional immunity runs counter to that philosophy.

Reference re Firearms Act (Canada), [2000] 1 S.C.R. 783 at para. 26.

- In 2001, this Court rejected the application of the "interjurisdictional immunity" doctrine because, by creating a federal bubble of regulation into which provincial regulation could not intrude, it would lead to "bifurcation of the regulation and control of the legal profession in Canada".

  Law Society of British Columbia v. Mangat, [2001] 3 S.C.R. 113 at 144-145.

- Over time, the cases on "interjurisdictional immunity" have been regarded as a separate area of law, a doctrine that pops up somewhat unpredictably, like a jack-in-the-box, whenever certain federal undertakings and activities are involved. This Court's approach to provincial/municipal legislation restricting activities concerning federal elections is a good example. In *MacKay v. The Queen*, [1965] S.C.R. 798, a municipal sign by-law could not affect federal election signs because of "interjurisdictional immunity" but in *Oil, Chemical and Atomic Workers v. Imperial Oil*, [1963] S.C.R. 584, a provincial law could validly restrict union donations to federal political parties. Professor Hogg notes that "[t]he difficulty is to distinguish the occasions when the interjurisdictional immunity doctrine applies from the occasions when the pith and substance doctrine applies." Hogg criticizes the "vital part" test as "too broad", "too vague" and "now needlessly complicated by the direct-indirect distinction".

  P.W. Hogg, *Constitutional Law of Canada*, 4th ed., (Toronto: Carswell, 1997) at 408.

13. Advocis endorses these criticisms. It submits that the doctrine of interjurisdictional immunity has taken on a life of its own, moving us away from the traditional "pith and substance" approach. The doctrine applies based on vague terms such as "vital part", with different tests depending on whether the provincial legislation has a "direct" or "indirect" effect, whatever "direct" and "indirect" mean. The test today involves a labelling exercise, rather than a discussion of the key concepts that underlie the labels. The result of applying these labels is the

creation of federal enclaves or special zones. Those in the enclaves or zones as a result of the labelling exercise enjoy one set of rules. Those outside of the enclaves or zones – many of whom Advocis represents – are subject to entirely different rules.

(3) Interjurisdictional immunity properly understood

14. The criticisms of and problems caused by the doctrine of interjurisdictional immunity can be addressed by recognizing that both the interjurisdictional immunity doctrine and the pith and substance doctrine are not independent doctrines. They are both concerned with the correct characterization of the matter of a law and the assessment of its proper limits. "Interjurisdictional immunity" is a label that expresses an outcome of the characterization and limitation process – that in certain cases, for principled reasons, there are certain federal aspects that may not be affected by provincial laws. Labels such as "vital part" and the introduction of "direct" and "indirect" effects are an attempt to express principled reasons why provincial laws cannot touch certain federal aspects in certain cases. But these labels do not capture the entirety of the principled reasons that must be brought to bear in this assessment.

(4) The principled reasons that must be brought to bear in the assessment

15. In division of powers jurisprudence, two major developments have happened in the last decade, developments that shed light on the "principled reasons" that must be brought to bear.

16. First, there has been an increased emphasis on studying the effects of legislation in order to discover its true nature. This effects-based approach is done so that legislation can be assessed against some broader principle in its true light. The effects-based approach "sets the table" for a deeper study of what the broader principle is.

Ward v. Canada (Attorney General), [2002] 1 S.C.R. 569.

R. v. Morgentaler, [1993] 3 S.C.R. 463.

17. Second, in 1998, in the *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217, the Supreme Court of Canada recognized as part of the underlying fabric of our constitution a complex "federalism" principle. In the Court's discussion of the principle, several components were identified:

- *The principle exists and is shaped by Canadian realities.* "There can be little doubt that the principle of federalism remains a central organizational theme of our Constitution. Less obviously, perhaps, but certainly of equal importance, federalism is a political and legal response to underlying social and political realities" (at para. 57).

- *The principle governs the division of powers jurisprudence.* "Our political and constitutional practice has adhered to an underlying principle of federalism, and has interpreted the written provisions of the Constitution in this light" (at para. 55). In interpreting our Constitution, "the courts have always been concerned with the federalism principle, inherent in the structure of our constitutional arrangements, which has from the beginning been the lodestar by which the courts have been guided" (para. 56). The underlying principle of federalism "has exercised a role of considerable importance in the interpretation of the written provisions of our Constitution" (at para. 57).

- *The principle delineates the boundary between distinct provincial and federal spheres of jurisdiction.* "In a federal system of government such as ours, political power is shared by two orders of government: the federal government on the one hand, and the provinces on the other. Each is assigned respective spheres of jurisdiction by the *Constitution Act, 1867*". "It is up to the courts 'to control the limits of the respective sovereignties'" using the federalism principle (at para. 56).

- *The content of the principle -- realization of the benefits of unity and diversity:*

  - "The federal-provincial division of powers was a legal recognition of the diversity that existed among the initial members of Confederation, and manifested a concern to accommodate that diversity within a single nation by granting significant powers to provincial governments. The *Constitution Act, 1867* was an act of nation-building. It was the first step in the transition from colonies separately dependent on the Imperial Parliament for their governance to a unified and independent political state in which different peoples could resolve their disagreements and work together toward common goals and a common interest. Federalism was the political mechanism by which diversity could be reconciled with unity" (at para. 43).

  - "The principle of federalism recognizes the diversity of the component parts of Confederation, and the autonomy of provincial governments to develop their societies within their respective spheres of jurisdiction. The federal structure of our country also facilitates democratic participation by distributing power to the government thought to be most suited to achieving the particular societal objective having regard to this diversity" (at para. 58).

- *The principle is a bulwark against federal jurisdiction eclipsing local cultures and points of view.* "Federalism was also welcomed by Nova Scotia and New Brunswick, both of which also affirmed their will to protect their individual cultures and their autonomy over local matters. All new provinces joining the federation sought to achieve similar objectives, which are no less vigorously pursued by the provinces and territories as we approach the new millennium." (at para. 60).

- *Protection of federal works, undertakings and institutions so their national purposes can be achieved.* What was not explicitly said in the *Secession Reference*, but what is indisputably true, is that the federal Parliament was granted exclusive jurisdiction over certain institutions, works and undertakings, including banks, and that it was intended that those federally-regulated institutions, works and undertakings be permitted to fulful their national purpose. Whether provincial legislation impedes the ability of federally-regulated institutions to fulfil their national purpose depends on a careful examination of the effects of that legislation.

18. It is time for the Court to rationalize and systematize this area of law in light of the increasing acceptance of the effects-based approach and the recognition of a federalism principle that is directly applicable and actionable in Canadian constitutional law. The appropriate methodology is to engage in the "pith and substance" analysis of the legislation in issue. Then one must assess the proper boundary between the provincial law, properly characterized, and the federal sphere. To do this, one must assess the effects of the provincial legislation and whether the end-result is consistent with the federalism principle. Specifically, as applied in this case, the questions are:

(1) *Pith and substance analysis*. What is the pith and substance of the Alberta legislation in issue?

(2) *Comparison of effects.* With a true understanding of the pith and substance of the Alberta legislation,

- what are the effects of applying the provincial insurance law to federal banks?

- what are the effects of not applying the provincial insurance law to banks?

(3) *Application of the federalism principle.* Which result is more consistent with the federalism principle?

B. Advocis' submissions, drawing upon its unique perspective, on how the law should be applied to the facts of this case: the Alberta legislation is constitutionally applicable to and operative in relation to the banks' insurance activities.

(1) The pith and substance of the Alberta legislation

19. The provisions in issue in this case regulate the sale of "incidental insurance", which is insurance that is sold incidentally to another transaction such as the buying of a car or the lending of money. The banks propose to engage in such insurance in Alberta. As a result, they are required to obtain a licence, called a Restricted Certificate of Authority, and to obey the market conduct requirements in ss. 12-18 of the *Insurance Agents and Adjusters Regulation* and the *Market Conduct Regulation*, AR 128/2001.

20. Advocis agrees with the submissions of the Attorney General of Saskatchewan (at paras. 9-16) and the Alberta Insurance Council (at paras. 7-11) to the effect that the legislation, properly characterized, is legislation over insurance, a subject-matter protected under s. 92(13) of the *Constitution Act, 1867* ("property and civil rights in the province"). The function of provincial insurance laws is largely to protect consumers by regulating the market conduct of insurance industry participants.

21. The application of the legislation to banks does have an incidental effect on banks that wish to offer insurance products and services. If the Alberta legislation is applicable, federally-regulated banks must comply with Alberta's requirements.

(2) The comparison of effects

22. The effect of the Alberta legislation on federal jurisdiction and the core federal activity, banking, is minor at best:

- This is seen by the fact that the application of Alberta's legislation does not affect a bank's ability to exercise its powers under the *Bank Act* (such as enforcing security) or to offer loans and other traditional banking products and services.

> *Montcalm Construction Inc. v. Minimum Wage Commission*, [1979] 1 S.C.R. 754 (general principle that provincial laws remain valid when they do not affect the core of federal bodies; wages of workers constructing airport runways not at the core of the federal aviation activity).
>
> *Air Canada v. Ontario (Liquor Control Board)*, [1997] 2 S.C.R. 581 at para. 74 (provision of liquor is not essential to the operation of aircraft).
>
> *Ontario v. Canadian Pacific*, [1995] 2 S.C.R. 1028 (provincial environmental law not affecting the core of the federal railway activity).
>
> *Canadian Pacific Railway v. Notre Dame de Bonsecours*, [1899] A.C. 367 (P.C.) (federally regulated railway can be held liable under provincial law for flooding).
>
> *Canadian Pacific Railway v. British Columbia*, [1950] A.C. 122 (P.C.) (the *Empress Hotel* case) (hotels operated by a federal railway as part of its overall business operation are subject to provincial jurisdiction over their commercial activities).
>
> *Paul v. British Columbia (Forest Appeals Commission)*, [2003] 2 S.C.R. 585 (provincial forestry practices legislation not affecting the core of the federal power over aboriginal peoples under s. 91(24) of the *Constitution Act, 1867*).
>
> *Bell Canada v. Quebec (Commission de la santé et de la sécurité du travail)*, [1988] 1 S.C.R. 749 and *Commission du Salaire Minimum v. Bell Telephone Co.*, [1966] S.C.R. 767 (an example where provincial labour standards laws did affect the core).

> *Bank of Montreal v. Hall*, [1990] 1 S.C.R. 121 (an example where provincial legislation affected the core of the banking activity, by affecting the exact manner in which a bank may realize on security).
>
> *Kitkatla Band v. British Columbia (Minister of Small Business, Tourism and Culture)*, [2002] 2 S.C.R. 146 (an example where provincial legislation cannot affect the basic, unassailable core of the federal jurisdiction over aboriginal peoples).

- This minor effect is also seen by the fact that on the evidence, creditor insurance is offered independently from the loan and has little relation to it. In fact, the *Bank Act* regards them as independent products and services, does not make insurance mandatory and prohibits coercive tied selling of insurance with banking services.

> Cross-examination of Cooper, Appellants' Record, at 1579-1580, 1593; Cross-examination of Mauchan, Appellants' Record at 1664; Cross-examination of Noble, Appellants' Record, at 1698, 1734 and 1764; Cross-examination of Maher, 1804, 1810-1811; see also the Respondent's factum at paras. 11-31.
>
> *Bank Act*, ss. 409, 410, 416, 416(4)(a) and 459.1.

23. On the other hand, a finding in favour of the appellant banks would cause deleterious effects. If insurance services are found to be part of banking and thus entirely federal because they are connected to loans offered by banks:

- A two-tiered insurance regime would be created. Those who offer insurance and who are not banks are subject to rigorous provincial regulation of their conduct, regulation that is largely designed to protect consumers. Individuals who are licensed by the province to sell credit insurance are personally accountable both to the provincial licensing authority as well as to the consumer. That level of consumer protection is not present where banks seek to be exempt from provincial licensing regimes. The only level of protection at the federal level resides in the oversight of the bank employer over those employees selling insurance. This

does not serve the best interests of consumers. Further, the different levels of regulation creates an unlevel playing field for industry participants. Some of Advocis' members would be subject to provincial regulation and provincial standards while sellers of insurance in banks would be exempt from those standards. This would be a challenging environment for a body such as Advocis to represent its members and encourage uniformly high standards of professional conduct.

- Other types of provincial law might similarly be ruled inapplicable to banks. If banks are in a "federal bubble" that cannot be touched by provincial legislation that applies to services offered by banks, whole areas of provincial regulation may be ousted. Provincial consumer protection legislation and other special legislative provisions concerning contracts, just like insurance legislation, would be held inapplicable to banks. Provincial legislation that creates or affects torts involving banks may similarly be ousted.

- Consumers of insurance products and services would be in a complicated, unwelcome situation, with their legal rights as consumers determined by whether they are dealing with insurance providers who are banks or insurance providers who are not banks.

  > See reasons of Hunt J.A. in the Court of Appeal, para. 109: "…one of the background studies that led to the passage of the 1992 Amendments emphasized at 64 the importance of maintaining a level playing field among all insurance providers (the Standing Senate Committee on Banking, Trade and Commerce, *Sixteenth Report of the Committee*, Ottawa, 1985).

- The Alberta government's desire to create a level playing field would be frustrated. As is mentioned in para. 9 of the factum of the Attorney General of Alberta, "[a]ll financial institutions promoting creditors' group insurance were included to ensure a level playing field" and to "enhance consumer protection" in

order "to ensure that consumers are treated fairly and that all industry participants are regulated equally".

(3) The application of the federalism principle

24. The central element in the federalism principle, as mentioned and developed in paragraph 17 above, is that the benefits of both unity and diversity be realized. The effects-based analysis, above, shows that applying provincial legislation concerning insurance to banks does not undercut the federal objective of ensuring that national purposes relating to banking are achieved. On the other hand, applying provincial legislation concerning insurance (and other matters, such as consumer protection law and contract law) to banks allows provinces to ensure that local concerns in these areas are addressed. Applying provincial legislation to banks advances unity and diversity.

25. There is nothing contrary to the federalism principle in requiring a federal bank that engages in activities traditionally regulated by the provinces, such as contract, to abide by the laws of the provinces. Our historical practices in this area can inform the content of the federalism principle. We have a century of jurisprudence concerning federally regulated railroads and that jurisprudence shows that dismissing the banks' appeal in the case at bar would be consistent with the federal principle. Over the last century, railroads have done many things other than pulling freight-laden railroad cars along railroad tracks. They have engaged in provincially-regulated activities such as advertising their services, entering into contracts, engaging in activities on their lands that may cause environmental impacts, and running hotels. In each case, provincial legislation has been allowed to apply with no effect on the essential federal aspects of the railroad. The same can be said for airlines.

> *Ontario v. Canadian Pacific*, [1995] 2 S.C.R. 1028 (provincial environmental law not affecting the core of the federal railway activity).
>
> *Canadian Pacific Railway v. Notre Dame de Bonsecours*, [1899] A.C. 367 (P.C.) (federally regulated railway can be held liable under provincial law for flooding).

Canadian Pacific Railway v. British Columbia, [1950] A.C. 122 (P.C.) (the *Empress Hotel* case) (hotels operated by a federal railway as part of its overall business operation are subject to provincial jurisdiction over their commercial activities).

Air Canada v. British Columbia, [1989] 1 S.C.R. 1161.

Air Canada v. Ontario (Liquor Control Board), [1997] 2 S.C.R. 581.

26. The appellant banks submit that if the appeal is dismissed, a patchwork of federal and provincial law will arise (see para. 115) that will affect the business of banking (para. 121). However, it is a fact of federalism that federally-regulated entities are regularly subject to provincial laws of general application. For example, federally-regulated airlines and federally-regulated railroads are subject to the environmental laws, contract laws and business practices legislation as they exist in Canada's ten provinces. Federal entities thrive and prosper despite having to comply with provincial laws of general application, just like all other entities. On the other hand, the implications of allowing special "federal bubbles" to exist, free from any provincial legislation, are far-reaching.

Ontario v. Canadian Pacific, [1995] 2 S.C.R. 1028.

Multiple Access Ltd. v. McCutcheon et al., [1982] 2 S.C.R. 161 at 190-191 *per* Dickson J. as he then was ("The resulting 'untidiness' or 'diseconomy' of duplication is the price we pay for a federal system.").

27. A finding that provincial legislation concerning insurance and other matters does not apply to banks is contrary to the federalism principle. Banks would be in a special enclave or bubble and would be able to engage in activities in provinces free of provincial regulation -- regulation that does not even strike at their core banking activity. There would be two groups of insurance actors: banks that would be subject to one, currently much less stringent, regulatory regime and all others who would be subject to a different, more stringent, regulatory regime. Both would be doing the same thing, but they would be in two regulatory universes for no particular reason. Competition would take place on an uneven field and, if the field is

particularly uneven, some may be driven out of business. Consumers would have to contend with the fact that their rights and obligations may be entirely different depending only on who they are dealing with – something that would strike them as arbitrary and perhaps non-sensical. Two classes of enterprises doing the same thing would be created – a superclass in a protected federal bubble and a class of all others – and there would appear to industry participants and consumers to be no particular reason for the different treatment. Such effects, prompted by no particular reason and certainly no reason based on the federalism principle, would bring federalism into disrepute and potentially exacerbate historical and regional resentments.

C. Advocis' submissions on paramountcy: there is no conflict between the Alberta legislation and any federal legislation sufficient to trigger the paramountcy doctrine

28. Advocis submits that there is no conflict between provincial and federal legislation in this case sufficient to trigger the application of the doctrine of paramountcy. In this regard, it agrees with the submissions in the memoranda of the Attorney General of Alberta at paras. 89-127, the Alberta Insurance Council at paras. 33-51, the Attorney General of Saskatchewan at paras. 80-90, and the Attorney General of Ontario at paras. 36-59. Advocis notes in particular that, as mentioned above, there is no regulatory scheme in the *Bank Act* for the provision of insurance, and, thus, no operational conflict with provincial insurance regimes which is required for the doctrine of paramountcy to apply.

Rothmans, Benson & Hedges Inc. v. Saskatchewan, [2005] 1 S.C.R. 188.

PART IV – SUBMISSIONS CONCERNING COSTS

29. Advocis submits that no costs should be awarded to or against it.

PART V – ORDER SOUGHT

30. Advocis respectfully submits that the Appellants' appeal be dismissed.

DATED AT Toronto, Ontario, this 28th day of March, 2006.

"L. David Roebuck" per

L. David Roebuck

David Stratas

David Stratas

Brad Elberg

Counsel for the Intervener,
The Financial Advisors Association of Canada

Heenan Blaikie LLP
Barristers and Solicitors
Suite 2600 – 200 Bay Street
Toronto, ON M5J 2J4

L. David Roebuck / David Stratas / Brad Elberg
Tel: (416) 643-6887 / (416) 643-6846 / (416) 360-2618
Fax: (416) 360-8425
Email: droebuck@heenan.ca / dstratas@heenan.ca / belberg@heenan.ca

Agent for the Intervener,
The Financial Advisors Association of Canada

Heenan Blaikie LLP
Barristers and Solicitors
Suite 300 – 55 Metcalfe Street
Ottawa, ON K1P 6L5

Joy Noonan
Tel.: (613) 236-1668
Fax: (613) 236-9632
Email: jnoonan@heenan.ca

PART VI – TABLE OF AUTHORITIES

PART VII – LEGISLATIVE PROVISIONS

***Bank Act*, R.S. 1991, c. 46, s. 409, 410, 416, 459.1, 978 /**
***Loi sur les Banques*, 1991, ch. 46, art. 409, 410, 416, 459.1, 978:**

409. (1) Subject to this Act, a bank shall not engage in or carry on any business other than the business of banking and such business generally as appertains thereto.	**409.** (1) Sous réserve des autres dispositions de la présente loi, l'activité de la banque doit se rattacher aux opérations bancaires.
(2) For greater certainty, the business of banking includes	(2) Sont notamment considérés comme des opérations bancaires :
(*a*) providing any financial service;	*a*) la prestation de services financiers;
(*b*) acting as a financial agent;	*b*) les actes accomplis à titre d'agent financier;
(*c*) providing investment counselling services and portfolio management services; and	*c*) la prestation de services de conseil en placement et de gestion de portefeuille;
(*d*) issuing payment, credit or charge cards and, in cooperation with others including other financial institutions, operating a payment, credit or charge card plan.	*d*) l'émission de cartes de paiement, de crédit ou de débit et, conjointement avec d'autres établissements, y compris les institutions financières, l'utilisation d'un système de telles cartes.
410. (1) In addition, a bank may	**410.** (1) La banque peut en outre :
(*a*) hold, manage and otherwise deal with real property;	*a*) détenir ou gérer des biens immeubles ou effectuer toutes opérations à leur égard;
(*b*) provide prescribed bank-related data processing services;	*b*) fournir des services informatiques relatifs à des activités bancaires prévus par règlement;
(*c*) outside Canada or, with the prior written approval of the Minister, in Canada, engage in any of the following activities, namely,	*c*) à l'étranger ou, à la condition d'obtenir au préalable l'agrément écrit du ministre, au Canada, exercer les activités suivantes :
(i) collecting, manipulating and transmitting	(i) la collecte, la manipulation et la
(A) information that is primarily financial or economic in nature,	

(B) information that relates to the business of a permitted entity, as defined in subsection 464(1), or (C) any other information that the Minister may, by order, specify, (ii) providing advisory or other services in the design, development or implementation of information management systems, (iii) designing, developing or marketing computer software, and (iv) designing, developing, manufacturing or selling, as an ancillary activity to any activity referred to in any of subparagraphs (i) to (iii) that the bank is engaging in, computer equipment integral to the provision of information services related to the business of financial institutions or to the provision of financial services; (*c*.1) with the prior written approval of the Minister, develop, design, hold, manage, manufacture, sell or otherwise deal with data transmission systems, information sites, communication devices or information platforms or portals that are used (i) to provide information that is primarily financial or economic in nature, (ii) to provide information that relates to the business of a permitted entity, as defined in subsection 464(1), or (iii) for a prescribed purpose or in prescribed circumstances; (*c*.2) engage, under prescribed terms and conditions, if any are prescribed, in specialized business management or	transmission d'information principalement de nature financière ou économique ou relative à l'activité commerciale des entités admissibles, au sens du paragraphe 464(1), ou encore précisée par arrêté du ministre, (ii) la prestation de services consultatifs ou autres en matière de conception, de développement ou de mise sur pied de systèmes de gestion de l'information, (iii) la conception, le développement ou la commercialisation de logiciels, (iv) accessoirement à toute activité visée aux sous-alinéas (i) à (iii) qu'elle exerce, la conception, le développement, la fabrication ou la vente de matériel informatique indispensable à la prestation de services d'information liés à l'activité commerciale des institutions financières ou de services financiers; *c*.1) à la condition d'obtenir au préalable l'agrément écrit du ministre, s'occuper, notamment en les concevant, les développant, les détenant, les gérant, les fabriquant ou les vendant, de systèmes de transmission de données, de sites d'information, de moyens de communication ou de plateformes informatiques ou de portails d'information qui sont utilisés : (i) soit pour la fourniture d'information principalement de nature financière ou économique, (ii) soit pour la fourniture d'information relative à l'activité commerciale des entités admissibles, au sens du paragraphe 464(1),

advisory services; (*d*) promote merchandise and services to the holders of any payment, credit or charge card issued by the bank; (*e*) engage in the sale of (i) tickets, including lottery tickets, on a non-profit public service basis in connection with special, temporary and infrequent non-commercial celebrations or projects that are of local, municipal, provincial or national interest, (ii) urban transit tickets, and (iii) tickets in respect of a lottery sponsored by the federal government or a provincial or municipal government or an agency of any such government or governments; (*f*) act as a custodian of property; and (*g*) act as receiver, liquidator or sequestrator. (2) Except as authorized by or under this Act, a bank shall not deal in goods, wares or merchandise or engage in any trade or other business. (3) The Governor in Council may make regulations (*a*) respecting what a bank may or may not do with respect to the carrying on of the activities referred to in paragraphs (1)(*c*) to (*c*.2); (*b*) imposing terms and conditions in respect of (i) the provision of financial services referred to in paragraph 409(2)(*a*) that are financial planning services,	(iii) soit à une fin réglementaire ou dans des circonstances réglementaires; *c*.2) fournir, aux conditions éventuellement fixées par règlement, des services spéciaux de gestion commerciale ou des services de consultation; *d*) faire la promotion d'articles et de services auprès des titulaires de cartes de paiement, de crédit ou de débit délivrées par elle; *e*) vendre des billets : (i) y compris de loterie, à titre de service public non lucratif pour des fêtes ou activités spéciales, temporaires, à caractère non commercial et d'intérêt local, municipal, provincial ou national, (ii) de transport en commun urbain, (iii) d'une loterie parrainée par le gouvernement fédéral, un gouvernement provincial ou une administration municipale, ou encore par tout organisme de l'un ou l'autre; *f*) faire fonction de gardien de biens; *g*) faire fonction de séquestre ou de liquidateur. (2) Sauf autorisation prévue sous le régime de la présente loi, il est interdit à la banque d'exercer quelque activité commerciale que ce soit et notamment de faire le commerce d'articles ou de marchandises. (3) Le gouverneur en conseil peut, par

(ii) the provision of services referred to in paragraph 409(2)(*c*), and (iii) the carrying on of the activities referred to in any of paragraphs (1)(*c*) to (*c*.2); and (*c*) respecting the circumstances in which banks may be exempted from the requirement to obtain the approval of the Minister before carrying on a particular activity referred to in paragraph (1)(*c*) or (*c*.1). **416.** (1) A bank shall not undertake the business of insurance except to the extent permitted by this Act or the regulations. (2) A bank shall not act in Canada as agent for any person in the placing of insurance and shall not lease or provide space in any branch in Canada of the bank to any person engaged in the placing of insurance. (3) The Governor in Council may make regulations respecting the matters referred to in subsection (1) and regulations respecting relations between banks and (*a*) entities that undertake the business of insurance; or (*b*) insurance agents or insurance brokers. (4) Nothing in this section precludes a bank from (*a*) requiring insurance to be placed by a borrower for the security of the bank; or (*b*) obtaining group insurance for its employees or the employees of any bodies corporate in which it has a substantial investment pursuant to section 468.	règlement : *a*) prévoir ce que la banque peut ou ne peut pas faire dans le cadre de l'exercice des activités visées aux alinéas (1)*c*) à *c*.2); *b*) assortir de conditions cet exercice et la prestation des services financiers visés à l'alinéa 409(2)*a*) qui sont des services de planification financière ou des services visés à l'alinéa 409(2)*c*); *c*) prévoir les circonstances dans lesquelles la banque peut être exemptée de l'obligation d'obtenir au préalable l'agrément du ministre pour exercer une activité visée aux alinéas (1)*c*) ou *c*.1). **416.** (1) Il est interdit à la banque de se livrer au commerce de l'assurance, sauf dans la mesure permise par la présente loi ou les règlements. (2) Il est interdit à la banque d'agir au Canada à titre d'agent pour la souscription d'assurance et de louer ou fournir des locaux dans ses succursales au Canada à une personne se livrant au commerce de l'assurance. (3) Le gouverneur en conseil peut, par règlement, régir les interdictions visées au paragraphe (1) ainsi que les relations des banques avec les entités se livrant au commerce de l'assurance ou avec les agents ou courtiers d'assurances. (4) Le présent article n'empêche toutefois pas la banque de faire souscrire par un emprunteur une assurance à son profit, ni d'obtenir une assurance collective pour ses employés ou ceux des personnes morales dans lesquelles elle a un intérêt de groupe financier en vertu de l'article 468.

(5) [Repealed, 1997, c. 15, s. 45]	(5) [Abrogé, 1997, ch. 15, art. 45]
(6) For the purposes of this section, the business of insurance includes the issuance of any annuity where the liability thereon is contingent on the death of a person.	(6) Pour l'application du présent article, le versement d'une rente viagère est assimilé au commerce de l'assurance.
459.1 (1) A bank shall not impose undue pressure on, or coerce, a person to obtain a product or service from a particular person, including the bank and any of its affiliates, as a condition for obtaining another product or service from the bank.	**459.1** (1) Il est interdit à la banque d'exercer des pressions indues pour forcer une personne à se procurer un produit ou service auprès d'une personne donnée, y compris elle-même ou une entité de son groupe, pour obtenir un autre produit ou service de la banque.
(2) For greater certainty, a bank may offer a product or service to a person on more favourable terms or conditions than the bank would otherwise offer, where the more favourable terms and conditions are offered on the condition that the person obtain another product or service from any particular person.	(2) Il demeure entendu que la banque peut offrir à une personne de lui fournir un produit ou service à des conditions plus favorables que celles qu'elle offrirait par ailleurs, si la personne se procure un produit ou service auprès d'une personne donnée.
(3) For greater certainty, an affiliate of a bank may offer a product or service to a person on more favourable terms or conditions than the affiliate would otherwise offer, where the more favourable terms and conditions are offered on the condition that the person obtain another product or service from the bank.	(3) Il demeure entendu qu'une entité du même groupe que la banque peut offrir un produit ou service à des conditions plus favorables que celles qu'elle offrirait par ailleurs, si la personne se procure un autre produit ou service auprès de la banque.
(4) A bank may require that a product or service obtained by a borrower from a particular person as security for a loan from the bank meet with the bank's approval. That approval shall not be unreasonably withheld.	(4) La banque peut exiger qu'un produit ou service obtenu par un emprunteur auprès d'une personne donnée en garantie d'un prêt qu'elle lui consent soit approuvé par elle. L'approbation ne peut être refusée sans justification.
(4.1) A bank shall disclose the prohibition on coercive tied selling set out in subsection (1) in a statement in plain language that is clear and concise, displayed and available to customers and the public at all of its branches and at all prescribed points of service in Canada.	(4.1) La banque communique à ses clients et au public l'interdiction visée au paragraphe (1) par déclaration, rédigée en langage simple, clair et concis, qu'elle affiche et met à leur disposition dans toutes ses succursales et dans tous ses points de service réglementaires au Canada.
(4.2) The Governor in Council may make	(4.2) Le gouverneur en conseil peut

regulations for the purposes of subsection (4.1) defining “point of service” and prescribing points of service. (5) The Governor in Council may make regulations (*a*) specifying types of conduct or transactions that shall be considered undue pressure or coercion for the purpose of subsection (1); and (*b*) specifying types of conduct or transactions that shall be considered not to be undue pressure or coercion for the purpose of subsection (1).	prendre des règlements définissant « point de service » pour l’application du paragraphe (4.1) et prévoyant les points de service. (5) Le gouverneur en conseil peut, par règlement, préciser des comportements qui constituent ou non l’exercice de pressions indues.

Court File No.: 30823

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF ALBERTA)

B E T W E E N:

CANADIAN WESTERN BANK, *ET AL*.

Appellants
(Appellants)

– and –

HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA

Respondent
(Respondent)

– and –

THE FINANCIAL ADVISORS ASSOCIATION OF CANADA, *ET AL*.

Interveners

FACTUM OF THE INTERVENER, THE FINANCIAL ADVISORS ASSOCIATION OF CANADA

Heenan Blaikie LLP
Barristers and Solicitors
Suite 2600 – 200 Bay Street
South Tower, Royal Bank Plaza
Toronto, ON M5J 2J4

L. David Roebuck / David Stratas / Brad Elberg
Tel: (416) 643-6887 / (416) 643-6846 / (416) 360-2618
Fax: (416) 360-8425
Email: droebuck@heenan.ca / dstratas@heenan.ca / belberg@heenan.ca

Counsel for the Intervener,
The Financial Advisors Association of Canada