IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***British Columbia Veterinary Medical Association v. Bishop et al,*** 2006 BCSC 556

Date: 20060406
Docket: L022956
Registry: Vancouver

Between:

British Columbia Veterinary Medical Association

Petitioner

And

Bill Bishop (doing business as The Horse's Mouth Equine Dentistry)

Respondent

Before: The Honourable Mr. Justice Cohen

Reasons for Judgment

Counsel for the petitioner	T.L. Hunter D. Spratley A. Wade
Counsel for the respondent	G.F. Gregory
Date and Place of Trial/Hearing:	June 10, 11, 16 and 30, 2004; January 31, 2006 Vancouver, B.C.

INTRODUCTION

[1] The British Columbia Veterinary Medical Association ("BCVMA") is a self-governing professional association which, pursuant to the ***Veterinarians Act***, R.S.B.C. 1996, c. 476 (the "***Act***"), regulates the practice of veterinary medicine in British Columbia.

[2] This is an application by the BCVMA made pursuant to the ***Act*** for orders prohibiting and enjoining the respondent, Bill Bishop ("Bishop") (doing business as "The Horse's Mouth Equine Dentistry") from practising veterinary medicine, in the form of equine dentistry, within the meaning of the ***Act***.

[3] Bishop has described himself in his promotional material as an "equine dentist." Bishop is not registered under the ***Act*** as a member of the BCVMA. He admits that he has engaged in cutting or otherwise removing hooks from horses' teeth; floating horses' teeth (removing sharp enamel points on the teeth by way of filing) using power tools and manual tools; and, advising, diagnosing, charging a fee, or holding himself out as a qualified and willing person to provide treatment with respect to these activities (the "Disputed Activities").

[4] Specifically, the BCVMA seeks orders that:

> 1. Bishop, until such time as he becomes a registered member in good standing of the BCVMA or falls within an exemption set out in s. 28 of the ***Act***, be prohibited and enjoined from doing the following, in his personal capacity or under any business name, including The Horse's Mouth Equine Dentistry, whether or not for or in expectation of a fee, compensation or reward:

(a) applying medicine, dentistry or surgery (including dental surgery) to any animal and without limiting the generality of the foregoing;

(i) floating or filing an animal's teeth using power tools or manual tools;

(ii) extracting or removing teeth from an animal;

(iii) administering sedation to an animal for the purpose of performing any procedure on or providing any treatment for the teeth of an animal; or

(iv) cutting or otherwise removing hooks from the teeth of an animal;

(b) diagnosing or offering to diagnose an animal disease, ailment, deformity, defect or injury;

(c) advising on or offering to advise on the physical condition (including the dental condition) of an animal;

(d) prescribing or administering a drug, serum, medicine or any substance or remedy for the cure, treatment or prevention of an animal disease, ailment, deformity, defect or injury;

(e) prescribing or administering a treatment or performing an operation or manipulation or supplying or applying any apparatus or appliance for the cure, treatment or prevention of any animal disease, ailment, deformity, defect or injury; and

(f) alleging or implying in any manner that he is qualified, able or willing to do any of items (a) to (e) above; and

2. Bishop, until such time as he becomes registered member in good standing of the BCVMA, be prohibited and enjoined from taking or using any name, title, addition or description which states, implies or is calculated to lead people to infer that he is a veterinarian or veterinary practitioner or that he is a member of the BCVMA and, particularly, that he be prohibited and enjoined in his personal capacity or under any business name, including The Horse's Mouth Equine Dentistry, from taking or using the title "Doctor" and the title "practitioner".

[5] Bishop's position is that the BCVMA is entitled to all of the orders it seeks with the exception of (1)(a)(i) and (iv) (floating teeth and cutting or otherwise removing hooks from teeth) and that if he is successful in his position, then items (1)(b) through (f) should be modified.

APPLICABLE LEGISLATION

[6] Section 1 of the ***Act*** defines "veterinary medicine":

> **"veterinary medicine"** means the art and science of veterinary medicine, dentistry and surgery, and includes
>
> (a) the application of medicine, dentistry or surgery to any animal,
>
> (b) diagnosing, prescribing, treating, manipulating and operating for the prevention, alleviation or correction of a disease, injury, pain, deficiency, deformity, defect, lesion, disorder or physical condition of or in any animal, with or without the use of any instrument, appliance, medicine, drug, anesthetic or antibiotic or biologic preparation, and
>
> (c) the giving of advice in respect of anything mentioned in this definition with or without a view to obtaining a fee or other reward.
>
> [emphasis added]

[7] Section 27(2) of the ***Act*** lists activities deemed to be the practice of veterinary medicine:

> (2) Without limiting subsection (1), a person is deemed to practise veterinary medicine within the meaning of this Act if the person does any of the following:
>
> (a) by advertisement, sign or statement of any kind, written or verbal, alleges or implies that the person is or holds himself or herself out as being qualified, able or willing to diagnose, prescribe for, prevent or treat any animal disease, ailment, deformity, defect or injury or to perform any operation to remedy any animal disease, ailment,

deformity, defect or injury, or to examine or advise on the physical condition of an animal;

(b) diagnoses or offers to diagnose an animal disease, ailment, deformity, defect or injury, or who examines or advises on, or offers to examine or advise on, the physical condition of an animal;

(c) prescribes or administers a drug, serum, medicine or any substance or remedy for the cure, treatment or prevention of an animal disease, ailment, deformity, defect or injury;

(d) prescribes or administers a treatment or performs an operation or manipulation or supplies or applies any apparatus or appliance for the cure, treatment or prevention of any animal disease, ailment, deformity, defect or injury;

(e) acts as the agent, assistant or associate of any person, firm or corporation in the practice of veterinary medicine;

(f) operates, manages or controls the operation and conduct of an animal hospital, treatment centre or place where veterinary medicine is practised.

[emphasis added]

[8] Section 27(1) of the ***Act*** limits the practice of veterinary medicine:

A person not registered under this Act, or who is suspended from practice, must not practise or offer to practise veterinary medicine.

[9] Section 28 of the ***Act*** provides exceptions to the limitations on practicing veterinary medicine:

Nothing in this Act applies to or affects any of the following:

(a) the furnishing of first aid or temporary assistance to an animal in an emergency;

(b) the treatment of an animal by its owner, by a member of the owner's household or by a person regularly employed full time by the owner in agricultural or domestic work;

(c) caponizing and taking of poultry blood samples;

> (d) the treatment of an animal by an employee of a member under the supervision of the member, or by an enrolled student of veterinary medicine employed by a member and authorized by that member to undertake the treatment;
>
> (e) the practice of veterinary medicine by a person not ordinarily resident in British Columbia but registered under the governing Act of any other province, state or jurisdiction, while employed or engaged by a member to advise or assist the member as a consultant concerning veterinary medicine;
>
> (f) a person engaging in scientific research which reasonably requires experimentation involving animals.
>
> [emphasis added]

[10] Section 35 of the ***Act*** permits the BCVMA to apply for an injunction to restrain a person from practicing veterinary medicine in contravention of the ***Act***:

> The Supreme Court may, on the application of the association and on being satisfied that there is reason to believe that there is or will be a contravention of this Act, grant an injunction restraining a person from committing the contravention and, pending disposition of the proceeding seeking the injunction, the court may grant an interim injunction.

SUMMARY OF THE PARTIES' POSITIONS

[11] The BCVMA submits that when the proper rules of statutory interpretation are applied, the Disputed Activities are clearly "dentistry" and thus part of the practice of "veterinary medicine" within the meaning of the ***Act***. It says that even if the Court finds that the Disputed Activities are not "dentistry", they are still "veterinary medicine" by virtue of that definition including, *inter alia*, the "treating ... for the ... alleviation or correction of a ... physical condition of or in any animal ... ". It also says that it is in the public interest to prohibit and enjoin Bishop from performing the Disputed Activities, unless he performs them in compliance with the ***Act***.

[12] Bishop admits that he has engaged in the Disputed Activities, but says that the Disputed Activities are not within the definition of "veterinary medicine" in the ***Act*** (although he does agree with the BCVMA that removing teeth and giving sedation are "veterinary medicine".) Therefore, he says, the orders sought by the BCVMA should not be granted.

[13] In support of his interpretation of the ***Act***, Bishop relies on two major points: first, that as the ***Act*** is a statute creating a professional monopoly, it must be strictly construed against those enjoying the monopoly; and, second, that the meaning of "dentistry" in the ***Act*** must be interpreted in light of the circumstances existing when the provision at issue was placed in the ***Act*** in 1967.

[14] Bishop also submits that even if the Disputed Activities are found to be "dentistry" within the meaning of the ***Act***, because of a lack of qualified veterinarians available to perform the Disputed Activities, it is against the public interest to enjoin him from performing the Disputed Activities.

ISSUES

[15] The issues for the Court's consideration are:

(a) Is it appropriate for this matter to be decided by way of application, or should it be referred to the trial list pursuant to Rule 52(11)(d)?

(b) What are the proper principles of statutory interpretation to be employed in interpreting the ***Act*** and in particular:

(i) should the Court employ a strict construction of the ***Act*** on the basis that it creates a professional monopoly; and

(ii) should the Court consider the circumstances surrounding the practice of veterinary medicine in 1967, or at the current time?

(c) Are the Disputed Activities:

(i) "dentistry" within the meaning of the ***Act***, and therefore part of the practice of "veterinary medicine" within the meaning of the ***Act***; or

(ii) part of the practice of "veterinary medicine" within the meaning of the ***Act***, despite not being "dentistry" within the meaning of the ***Act***?

(d) In the event that the Court finds that the Disputed Activities are "veterinary medicine", is it against the public interest to enjoin Bishop from performing the Disputed Activities?

DISCUSSION

a) Converting this Matter into an Action

i) The Parties' Positions

[16] Bishop submits that a threshold question for the Court is whether this matter must be removed to the trial list pursuant to Rule 52(11)(d).

[17] Rule 52(11)(d) states:

> On an application the court may
>
> ...
>
> (d) order a trial of the proceeding, either generally or on an issue, and order pleadings to be filed, and may give directions for the conduct of the trial and of pre-trial proceedings, and for the disposition of the application.

[18] Bishop submits that there is enough uncontroverted evidence to make the findings of fact and draw the inferences necessary to decide this matter, but unless the Court does not need to resolve any questions of Bishop's competence and is

willing to "embrace" the following as facts, then the matter must be referred to the trial list:

a) floating horses' teeth is essential to maintaining horses' health (almost like feeding them);

b) for hundreds of years floating horses' teeth has been done by farriers;

c) veterinarians receive next to or absolutely no training in equine dentistry in veterinary school and some small amount of training for floating teeth is available on a continuing education basis;

d) Bishop has taken over the floating of horses' teeth from numerous veterinarians and has accomplished astonishing improvements in their health;

e) Bishop is far more qualified than all or virtually all veterinarians in the province to float horses' teeth;

f) the current definition of "veterinary medicine", which includes the word "dentistry", first appeared in the ***Veterinary Medical Act***, S.B.C. 1967, c. 55 (a precursor to the ***Act***); until the 1990s, veterinarians were not prepared to float horses' teeth; and, accordingly, if the definition of "veterinary medicine" precluded people who are not veterinarians from floating teeth, the enactment of that definition would have effectively prohibited horse owners from lawful access to treatment which was vital to their horses' health;

g) even today, there are not enough competent veterinarians in the province to float the teeth of all the horses who need it;

h) very many extremely knowledgeable horsemen and women have had terrible experiences with veterinarians floating horses' teeth and would be most upset if Bishop were put out of business; and

i) it would work a tremendous hardship on those horse owners – and thus be against the public interest – to grant an injunction in this case.

[19] Furthermore, Bishop submits it is trite law that a Court will refer a matter to the trial list unless it can be satisfied that it is "manifestly clear" that the respondent is without a defence of fact or law that deserves to be tried, and that the threshold a respondent must meet to have a matter referred to the trial list is "very low": ***Taku River Tlingit First Nation v. Tulsequah Chief Mine Project***, [1999] B.C.J. No. 984 (S.C.) (QL) at paras. 5-10, leave to appeal to C.A. refused (1999), 38 C.P.C. (4th) 64, 1999 BCCA 442, aff'd 1999 BCCA 550; ***Northland Bank v. Kocken*** (1993), 77 B.C.L.R. (2d) 377, 100 D.L.R. (4th) 753 (C.A.).

[20] The BCVMA submits, in reply, that it is unnecessary and would be unduly time consuming and costly (both for the parties and the Court) to convert this matter into an action and place it on the trial list.

[21] It submits that a petition should only be converted into an action when there are serious and disputed questions of law or fact involved which cannot be properly and adequately resolved unless there is a trial. It submits that even if there are

disputed issues of fact, a trial is not appropriate if the issues can be resolved based on the affidavit materials before the Court: ***Douglas Lake Cattle Co. v. Smith*** (1991), 54 B.C.L.R. (2d) 52, 78 D.L.R. (4th) 319 (C.A.); ***Woodward's Ltd. v. Montreal Trust Co.*** (1992), 69 B.C.L.R. (2d) 348 (S.C.); ***Masters Realty Inc. v. Bellevue Properties Ltd.***, [1995] B.C.J. No. 672 (S.C.) (QL).

[22] It submits that as the material point in dispute in the case at bar is the legal issue of statutory interpretation, this matter should not be referred to the trial list: it may be unnecessary for the Court to consider and weigh the expert opinions given by the parties in order to decide the legal issues; the factual matters on which the parties disagree do not have to be resolved by the Court in order to decide the application before it; and, to the extent that any such issues do have to be decided, they are adequately addressed in the affidavit evidence.

ii) Decision

[23] I agree with the BCVMA that this case is essentially a question of law - the proper statutory interpretation of the ***Act*** - and that the issues in dispute can be resolved on the basis of the affidavit materials before the Court.

[24] The authorities cited by the parties indicate that a trial is usually ordered when there are material facts in dispute which give rise to a triable issue that would benefit from the litigation procedures auxiliary to an action, such as pre-trial discovery or cross-examination.

[25] In this case, there are no significant legal or factual disputes that would benefit from pre-trial discovery or cross-examination. The parties agree on the

nature and scope of the Disputed Activities; there is no need to make any findings in regard to Bishop's competence or the training provided to veterinarians in regard to the Disputed Activities; and, there is no need to determine if there is a shortage of veterinarians capable of performing the Disputed Activities.

[26] The only noteworthy factual dispute between the parties is in regard to whether it was generally veterinarians or farriers who performed the Disputed Activities in 1967. This issue cannot affect the resolution of this case because, as I have set out below, it is not a determinative factor in determining the proper interpretation of the word "dentistry" in the ***Act***.

[27] Therefore, I decline to order this matter be converted into an action.

b) The Proper Interpretation of the *Act*

i) The Parties' Positions

[28] The BCVMA submits that generally, courts should take a common sense approach to statutory interpretation, and should have regard to the ordinary meaning of the words: Ruth Sullivan, *Sullivan and Driedger on the Construction of Statutes*, 4th ed. (Markham, Ont.: Butterworths, 2002) at p. 34.

[29] It submits that the proper approach to statutory interpretation in this case is that originally set out in E.A. Driedger, *The Construction of Statutes* (Toronto: Butterworths, 1974) at p. 67, and affirmed by Iacobucci J., speaking for the Court, in ***Bell ExpressVu Limited Partnership v. Rex***, [2002] 2 S.C.R. 559 at para. 26, 212 D.L.R. (4th) 1, 100 B.C.L.R. (3d) 1, 2002 SCC 42:

> To-day there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.... ["Driedger's Modern Approach"]

[30] Conversely, Bishop submits that statutes which create professional monopolies are special cases that are strictly construed against those claiming the monopoly (the "Strict Construction Rule"): ***Association of Manitoba Land Surveyors v. Carefoot*** (1986), 42 Man. R. (2d) 255 (Q.B.), citing ***Pauzé v. Gauvin*** (1953), [1954] S.C.R. 15; ***Laporte v. College of Pharmacists (Québec)*** (1974), [1976] 1 S.C.R. 101, 58 D.L.R. (3d) 555, 23 C.C.C. (2d) 45; ***George L. Brough Marine Consultants Ltd. v. Aqua Terra Flotations Ltd.***, [1982] 18 B.L.R. 217 (B.C.S.C.) and ***Architectural Institute of British Columbia v. Lee's Design & Engineering Ltd.*** (1979), 96 D.L.R. (3d) 385 (B.C.S.C.); ***British Columbia (Attorney-General) v. Infomap Services Inc.*** (1990), 68 D.L.R. (4th) 1 (B.C.C.A.); ***R. v. Wong*** (1979), 24 A.R. 430, [1979] 6 W.W.R. 163 (Prov. Ct.); ***In Re Ontario Medical Act*** (1906), 13 O.L.R. 501 (C.A.).

[31] Bishop submits that the proper interpretation of the term "dentistry" in the ***Act*** is, therefore, narrower than the colloquial use of the term. He says that the BCVMA cannot succeed if there is any reasonable interpretation of the term "veterinary medicine" that does not include the Disputed Activities.

[32] Bishop notes especially ***British Columbia Veterinary Medical Association v. MacDonald***, 2004 BCSC 807, aff'd (2005), 213 B.C.A.C. 10, 2005 BCCA 225, in

which the Court applied the Strict Construction Rule to the term "dentistry" in the ***Act***.

[33] The BCVMA replies that Driedger's Modern Approach applies even to legislation creating professional monopolies: ***Alberta Land Surveyors' Association v. Hunka*** (1995), 173 A.R. 223 at paras. 9-10 and 16, 32 Alta. L.R. (3d) 384 (Q.B.). It says that the Strict Construction Rule applies to monopolistic statutes only when the language of the statute, given its ordinary/common sense/plain meaning, is ambiguous and the impugned activity is not clearly prohibited: ***Lee's Design***; ***Infomap***; ***Canada v. Ipsco Recycling Inc.*** (2003), [2004] 2 F.C.R. 530 at paras. 53-54, 243 F.T.R. 72, 2003 FC 1518; ***Canpar Holdings Ltd. v. Saskatchewan (Minister of Energy and Mines)*** (1987), 60 Sask. R. 128 (C.A.); ***R. v. Maddeaux*** (1997), 33 O.R. (3d) 378, 115 C.C.C. (3d) 122 (C.A.), leave to appeal to S.C.C. refused [1997] 3 S.C.R. xi. It says that in this case, the ***Act*** is unambiguous and therefore, the Strict Construction Rule is inapplicable.

[34] Bishop also submits that when interpreting statutes that do not have a constitutional dimension, courts are obliged to interpret the words in the statute as they were meant when they first appeared (the "Original Meaning Rule"): *Sullivan and Driedger*, *supra*, at pp. 105 ff.

[35] Therefore, he says, the Court must examine the evidence as it existed in 1967, the year the current definition of "veterinary medicine" was added to the ***Act***. He says that in 1967, no one thought of floating horses' teeth as part of "veterinary medicine"; in 1967, it was farriers who floated horses' teeth; and, until the 1990s,

veterinarians were unprepared to float horses' teeth. Bishop says that if his actions would not have been illegal in 1967, they cannot be illegal now.

[36] Conversely, the BCVMA submits that the evidence demonstrates that the term "veterinary medicine" did encompass the Disputed Activities in 1967.

[37] The BCVMA also submits that where a statute has been enacted to regulate an ongoing activity over an infinite period of time, as has the ***Act***, there should be a dynamic interpretation of the legislation, and the court must consider evidence of the current situation to determine if the legislation is being contravened: *Sullivan and Driedger*, *supra*, at pp. 107 and 112-113; ***Interpretation Act***, R.S.B.C. 1996, c. 238, ss. 7 and 8; ***Canadian Pacific Railway Co. v. McCabe Grain Co. Ltd.*** (1968), 69 D.L.R. (2d) 313 at 327 (C.A.); ***British Columbia Telephone Co. v. Minister of National Revenue*** (1992), 139 N.R. 211 (C.A.); ***Kimberly-Clark Nova Scotia v. Nova Scotia Woodlot Owners*** (1998), 175 N.S.R. (2d) 34 at paras. 86-91, 18 Admin. L.R. (3d) 67 (S.C.), aff'd (2000), 182 N.S.R. (2d) 288, 41 Admin. L.R. (3d) 36, 2000 NSCA 23, leave to appeal to S.C.C. refused [2000] 2 S.C.R. x; ***R. v. 974649 Ontario Inc.***, [2001] 3 S.C.R. 575, 206 D.L.R. (4th) 444, 159 C.C.C. (3d) 321, 2001 SCC 81.

[38] Bishop argues, in reply, that if the Court adopted a dynamic statutory interpretation of the ***Act***, then beneficiaries of monopolistic statutes could continually amend the statutes that stifle their competition by expanding into new marketplaces, as, for example, veterinarians have done by expanding their practices to the floating of horses' teeth. He says that according to this "dynamic" approach, no decision on

statutory interpretation would ever be binding, as a party could always argue that the circumstances of the legislation had changed.

ii) Decision

[39] I agree with the BCVMA and find that Driedger's Modern Approach is the proper approach to use in determining the meanings of "dentistry" and "veterinary medicine" in the ***Act***.

[40] At paras. 6 and 10 of ***MacDonald***, *supra*, Low J.A., speaking for the Court, endorsed Driedger's Modern Approach to determine the meaning of "dentistry" in the ***Act***. It is clear from Low J.A.'s decision that Driedger's Modern Approach is preferable to the Strict Construction Rule, which was employed in ***George L. Brough***, *supra*, ***Lee's Design***, *supra*, ***Infomap***, *supra*, and the trial decision of ***MacDonald***, *supra*.

[41] As stated by Low J.A. at para. 6 of ***MacDonald***, *supra*, Driedger's Modern Approach is "the fundamental principle of statutory interpretation." In ***Bell ExpressVu***, *supra*, Iacobucci J. states at para. 26:

> In Elmer Driedger's definitive formulation, found at p. 87 of his *Construction of Statutes* (2nd ed. 1983):
>
> > Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.
>
> Driedger's modern approach has been repeatedly cited by this Court as the preferred approach to statutory interpretation across a wide range of interpretive settings: see, for example, *Stubart Investments Ltd. v. The Queen*, [1984] 1 S.C.R. 536, at p. 578, *per* Estey J.; *Québec (Communaute urbaine) v. Corp. Notre-Dame de Bon-Secours*,

> [1994] 3 S.C.R. 3, at p. 17; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21; *R. v. Gladue*, [1999] 1 S.C.R. 688, at para. 25; *R. v. Araujo*, [2000] 2 S.C.R. 992, 2000 SCC 65, at para. 26; *R. v. Sharpe*, [2001] 1 S.C.R. 45, 2001 SCC 2, at para. 33, *per* McLachlin C.J.; *Chieu v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 84, 2002 SCC 3, at para. 27. I note as well that, in the federal legislative context, this Court's preferred approach is buttressed by s. 12 of the *Interpretation Act*, R.S.C. 1985, c. I-21, which provides that every enactment "is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects".
>
> [emphasis added]

[42] Also, as noted by Iacobucci J., employing Driedger's Modern Approach also usually accords with interpretation legislation, in this case, s. 8 of the ***Interpretation Act***, R.S.B.C. 1996, c. 238, which states:

> *Enactment remedial*
>
> 8 Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

[43] I also agree with the BCVMA and find that the Strict Construction Rule is inapplicable in this case.

[44] In ***Bell ExpressVu***, *supra*, at para. 28, Iacobucci J. found that secondary principles of statutory interpretation (such as the Strict Construction Rule) should be employed only in cases of ambiguity and in ***MacDonald***, *supra*, at para. 9, Low J.A. found that there is no ambiguity in the word "dentistry" in the ***Act***. Therefore, the Strict Construction Rule should not be applied to the term "dentistry" within the meaning of the ***Act***.

[45] I also agree with the BCVMA and find that the Original Meaning Rule is inapplicable to this case.

[46] Applying the Original Meaning Rule in statutory interpretation is the exception rather than the rule. As set out in S*ullivan and Driedger, supra,* at p. 105:

> It is presumed that the meaning of words used in legislation is stable. Unless there is reason to suppose that a change in meaning has occurred, the current and the contemporaneous understandings of a provision are assumed to be the same. However, this assumption is open to challenge ....

[47] The evidence has not shown that the meaning of the word "dentistry" has changed since 1967, or that in 1967 there was a different general understanding of whether the term "dentistry" in the ***Act*** included or excluded the Disputed Activities.

[48] To the contrary, the BCVMA has provided documentary evidence that suggests a static meaning of the term "dentistry", and that since at least 1914, the Disputed Activities have been considered dentistry. In Louis A. Merillat, *Animal Dentistry and Diseases of the Mouth*, vol. 1 (Chicago: Alexander Eger, 1914), the author states at pp. 13-14 and 15:

> As the extraction, replacement and repair of the decayed tooth is the chief occupation of the human dentist, so is cutting and floating enamel points the principal work of the animal dentist.
>
> ...
>
> A summary of the exact scope of animal dentistry is as follows:
>
> > 1st. The cutting and floating of the enamel points of the horse and ox....

[49] Furthermore, in my opinion, applying the Original Meaning Rule in the manner proposed by Bishop would not assist his case, as the evidence does not support his contention that farriers, as opposed to veterinarians, provided equine dentistry services in 1967.

[50] Dr. John Gilray, a veterinarian practicing in Aldergrove, in his affidavit sworn June 23, 2004, in support of the BCVMA's application, deposes that equine dentistry, including the floating of horses' teeth, has always been an integral part of his equine veterinary practice. He has regularly engaged in the floating of horses' teeth since he commenced his equine practice in this province in 1959.

[51] Dr. Gilray also deposes that from 1959 to the present, he has been aware of numerous other veterinarians engaged in equine practice also floating horses' teeth, because he personally observed other veterinarians doing so from time to time, and because he spoke to other veterinarians during this time period about this work. He has also been aware of some non-veterinarians engaged in this kind of work during this same time period. Some of them were farriers, but some were not. During this same time frame he has been aware of numerous farriers who have limited their work to horse-shoeing and who have not, to his knowledge, engaged in the floating of horses' teeth or in other equine dentistry.

[52] Dr. John Twidale, a veterinarian practicing in Langley, in his affidavit sworn June 24, 2004, in support of the BCVMA's application, deposes that as part of his training he was taught how to float horses' teeth and he regularly performed this work between 1969 and 1973. From 1973 to the present he has been engaged

solely in an equine veterinary practice in Langley and has floated horses' teeth on a regular basis. Since 1969 he has been aware of other veterinarians in this province also engaging in floating horses' teeth based on discussions he has had with other veterinarians at veterinarian meetings and continuing education courses on equine dentistry.

[53] Against the evidence of the doctors is that of Ms. Dorothy-Jean McIvor, an experienced horsewoman, who, along with her husband, operated a proprietorship known as "McIvor Racing Stables" from 1972 to 1981. In her affidavit sworn March 24, 2005, in support of Bishop's response to the BCVMA's application, she deposes that throughout the time she and her husband were operating the stables, although there was always a veterinarian on call at the harness race track in Cloverdale during all races, the fact was that everyone took it for granted that farriers did the regular floating of horses' teeth, and veterinarians did not. She says that there was simply never any question that the farriers floated teeth and would remove wolf teeth without anaesthetic. Ms. McIvor also deposes that the situation with all the other owners and their veterinarians with whom she had contact was that the veterinarians did not do the regular floating of horses' teeth; they were aware that farriers did the regular floating of horses' teeth and took it for granted; and, it was simply understood that veterinarians did not do the regular floating of horses' teeth.

[54] In my opinion, despite the evidence of Ms. McIvor, the evidence of Drs. Gilray and Twidale remains uncontradicted. If it had been necessary to consider the evidence on this point, I would have preferred the evidence of the doctors, given

their longstanding experience as professionals practising equine dentistry in the province from, in one case, the 1950s, until the current time.

[55] Furthermore, even if I were to accept that farriers performed the Disputed Activities in 1967, it does not automatically follow that the Disputed Activities were not "dentistry" within the meaning of the ***Act***. As counsel for Bishop reasoned, most veterinarians board cats and dogs, but that does not mean that boarding cats and dogs is necessarily the practice of veterinary medicine. Similarly, just because farriers did in 1967, or do now, perform the Disputed Activities does not mean they are not practising "dentistry" or "veterinary medicine" within the meaning of the ***Act***.

c) The Meaning of "Dentistry" in the *Act*

[56] The ***Act*** does not define the term "dentistry." According to Driedger's Modern Approach, to interpret the word "dentistry" in the ***Act***, the Court must consider: the words of the ***Act*** in their entire context and grammatical and ordinary sense; the scheme of the ***Act***; the object of the ***Act***; and, the intention of the legislature.

i) The Ordinary Meaning of "Dentistry"

[57] With respect to what constitutes a word's "ordinary" sense, *Sullivan and Driedger, supra,* states at p. 21:

> Most often, however, [ordinary meaning] refers to the reader's first impression meaning, the understanding that spontaneously emerges when words are read in their immediate context – in the words of Gonthier J., "the natural meaning which appears when the provision is simply read through". [citing *Canadian Pacific Airlines v. Canadian Air Line Pilots Assn.,* [1993] 3 S.C.R. 724 at 735].

[58] The BCVMA submits that the ordinary meaning of practising dentistry in respect of animals must include examining, diagnosing or advising on the condition of an animal's teeth and performing or administering any treatment on an animal's teeth.

[59] It submits that the following dictionary definitions support its position on the ordinary meaning of the term "dentistry":

(a) The *Merriam-Webster Dictionary* defines "dentist" as "one whose profession is the care and replacement of teeth";

(b) Thomas J. Zwemer, ed., *Mosby's Dental Dictionary* (St. Louis: Mosby, 1998) defines "dentistry" as "the science and art of preventing, diagnosing, and treating diseases, injuries and malformations of the teeth, jaws, and mouth and of replacing lost or absent teeth and associated structures";

(c) The *New Standard Unabridged Dictionary of the English Language* defines "dentistry" as "the practice or art of a dentist; operations performed on the teeth; dental surgery" and "dentist" as "one who practices dental surgery, as filling, cleansing, adjusting, or extracting teeth, and providing artificial dentures; a dental surgeon";

(d) *Stedman's Medical Dictionary*, 26th ed. (Baltimore: Williams & Wilkins, 1995) defines "dentistry" as "[t]he healing science and art concerned with the embryology, anatomy, physiology, and pathology of the oral-

facial complex, and with the prevention, diagnosis, and treatment of deformities, pathoses, and traumatic injuries thereof"; and

(e) Clayton L. Thomas, ed., *Taber's Cyclopedic Medical Dictionary,* 19th ed. (Philadelphia: F.A. Davis, 2001) defines "dentistry" as:

> 1. The branch of medicine dealing with the care of teeth and associated structures of the oral cavity. It is concerned with the prevention, diagnosis, and treatment of diseases of the teeth and gums. 2. The art or profession of a dentist.

[60] Conversely, Bishop submits that the above definitions support his position that the Disputed Activities are not part of dentistry. He notes that the *Merriam-Webster* definition of "dentist" is a conjunctive phrase, "one whose profession is the care and replacement of teeth" (emphasis added), and that he does not replace horses' teeth. He makes the same point in regard to the *Mosby's Dental Dictionary* definition of "dentistry": "the science and art of preventing, diagnosing, and treating diseases, injuries and malformations of the teeth, jaws, and mouth and of replacing lost or absent teeth and associated structures" (emphasis added).

[61] Bishop also notes that the *Taber's Cyclopedic Medical Dictionary* and *Stedman's Medical Dictionary* definitions of "dentistry" involve diseases, deformities, pathoses and injuries of the teeth and gums. He says that his work does not involve diseases, injuries or other unnatural or atypical conditions, but rather is care in response to the natural eruption patterns of horses' teeth; it is "routine maintenance".

[62] The BCVMA submits that the ***Dentists Act***, R.S.B.C. 1996, c. 94, also supports its position that the Disputed Activities are part of the ordinary meaning of the term "dentistry". Sections 67(1)(a) and (b) of the ***Dentists Act*** state:

> 67 (1) A person is deemed to be practising the profession of dentistry within the meaning of this Act who, for a fee, salary, reward or commission paid or to be paid by an employer to the person, or for fee, money or compensation paid or to be paid either to the person or an employer, or any other person, does any of the following:
>
> (a) examines, diagnoses or advises on any condition of the tooth or teeth, jaw or jaws of any person;
>
> (b) directly or indirectly takes, makes, performs or administers any or any part of an impression, operation or treatment of any kind of, for, or on the tooth or teeth, jaw or jaws, or of, for, or on any disease or lesion of the tooth or teeth, jaw or jaws, or their malposition, of any person;
>
> [emphasis added]

[63] Bishop submits that it is inapposite to refer to the ***Dentists Act*** for a definition of dentistry, as the legislation refers specifically to persons rather than animals.

[64] The BCVMA also submits that its interpretation of the ordinary meaning of the term "dentistry" is supported by case law in jurisdictions with similar veterinary legislation.

[65] In ***State ex rel. Dept. of Health v. Jeffrey*** (1994), 525 N.W.2d 193, 247 Neb. 100 (Sup. Ct. App. Div.), the Supreme Court of Nebraska considered the meaning of the word "dentistry" as used in the ***Nevada Veterinary Practice Act*** (Neb. Rev. Stat. § 71-1, 154(2)): "veterinary medicine 'shall include veterinary surgery, obstetrics, dentistry, and all other branches or specialties of veterinary medicine.'" Endacott J. states at p. 199:

> Section 71-1, 154(2) provides that veterinary medicine shall include dentistry. When statutory language is plain and unambiguous, no judicial interpretation is needed to ascertain a statute's meaning. [citation omitted] Given its ordinary meaning, dentistry, as used in § 71-1, 154(2), includes procedures performed in an animals' mouth....

[66] Based on this meaning of "dentistry", Endacott J. upheld a lower court order enjoining a non-veterinarian from engaging in the business of equine dentistry, including "the filing, cutting, removing, trimming and buffing of a horse's teeth, as well as diagnosing cheek, gum, and tongue conditions ...".

[67] Similarly, in ***College of Veterinarians of Ontario v. Popp*** (17 October 1995) R.E. 717/91 (Ont. Gen. Div.), Bolan J. considered the meaning of the "practice of veterinary medicine", which was defined in the ***Veterinarians Act***, R.S.O. 1990, c. V.3., s. 1 as "includ[ing] the practice of dentistry, obstetrics including ova and embryo transfer, and surgery, in relation to an animal other than a human being". Bolan J. states at p. 1: "I am satisfied that the practice of veterinary medicine includes the practice of dentistry and that floating teeth is in fact a dental procedure."

[68] Bishop submits that the Court should follow the contrary conclusion reached in ***Veterinary Medical Assn. (Alberta) v. Pequin*** (2002), [2003] 1 W.W.R. 131, 24 C.P.C. (5th) 336, 2002 ABQB 848, aff'd [2004] 11 W.W.R. 479, 48 C.P.C. (5th) 193, 2004 ABCA 89, leave to appeal to S.C.C. refused [2004] 2 S.C.R. v, in which the Court states at para. 1: "Farriers are not precluded from engaging in equine dentistry in Alberta."

[69] However, as noted by the BCVMA, the statute at issue in ***Pequin***, *supra*, the ***Veterinary Profession Act***, R.S.A. 1984, c. V-3.1, does not refer to dentistry in its

definition of veterinary medicine, but rather defines veterinary medicine as "a medical service performed with respect to an animal and includ[ing] the following: (i) surgery; (ii) obstetrics and ova and embryo collection." Therefore, the case concerned whether dentistry was included in the term "medical service." At para. 38, Bielby J. distinguished the veterinary statutes of B.C., Ontario, Manitoba, the Northwest Territories and Nebraska, all of which expressly include dentistry in the definition of veterinary medicine.

[70] Furthermore, Bielby J. noted that a repealed definition of "veterinary medicine" in the statute, which contained wording similar to ss. (b) of the ***Act***'s definition of "veterinary medicine", could have encompassed the filing of horses' teeth had it still been in force. However, the repeal of that section of the definition and its replacement with a much shorter definition gave rise to an inference that the legislature did not intend to include equine dentistry in the definition of "veterinary medicine." It is also important to note for the purposes of the instant case that Bielby J. did not appear to contemplate that the floating of horses' teeth might not be dentistry, but treated it as a "given".

[71] Bishop also refers to ***MacDonald***, *supra*. In ***MacDonald***, although Low J.A. suggested that the proper approach to the statutory interpretation of "dentistry" was Driedger's Modern Approach, his Lordship also found that the learned trial judge, who had employed the Strict Construction Rule from ***Laporte***, *supra*, ***Infomap***, *supra*, and ***Lee's Design***, *supra*, had nonetheless properly determined the meaning of "dentistry" in the ***Act***. At para. 9 of the appeal decision, Low J.A. suggested that

the meaning of "dentistry" in the ***Act*** was "the scientific treatment of diseases of the teeth in animals ... and not ... all dental services".

[72] I find that the ordinary meaning of "dentistry" in the ***Act*** relates to the diagnosis or treatment of an animal's teeth or gums that is primarily health-related.

[73] Such a meaning accords with both general and specialized dictionary definitions of the terms "dentist" and "dentistry"; with decisions of other common law jurisdictions, such as Ontario and Nebraska, which have veterinary legislation similar to the ***Act***; and, in my opinion, most importantly, with, as described in *Sullivan and Driedger, supra*, at p. 21, "the reader's first impression meaning".

ii) The Context of "Dentistry" in the *Act*

[74] The ***Act's*** use of the term "dentistry" is in ss. (a) of the definition of "veterinary medicine", which states that "veterinary medicine" means "the art and science of veterinary medicine, dentistry and surgery, and includes (a) the application of medicine, dentistry or surgery to any animal".

[75] The associated words rule, *noscitur a sociis* (the meaning of the word can be gathered from the context), described in *Sullivan and Driedger, supra,* at p. 173, is apposite:

> The associated words rule is properly invoked when two or more terms linked by "and" or "or" serve an analogous grammatical and logical function within a provision. This parallelism invites the reader to look for a common feature among the terms. This feature is then relied upon to resolve ambiguity or limit the scope of the terms. Often the terms are restricted to the scope of their broadest common denominator....

[76] In this case, as "medicine" and "surgery" both relate to the prevention, diagnosis and treatment of health conditions, their use suggests that the word "dentistry" should be limited in scope to meaning a practice relating to health conditions.

[77] Thus, I find that the context of the term "dentistry" in the ***Act*** suggests that "dentistry" should be limited in scope to referring to health conditions, as opposed to any other services related to the teeth and gums, such as cosmetic services.

iii) The Object and Scheme of the *Act* and Intention of the Legislature

[78] I agree with the BCVMA and find that the object of the ***Act*** is the protection of the public and of animals, and that the scheme of the ***Act*** is the restriction and regulation of the group of persons who may perform veterinary activities.

[79] In ***George L. Brough***, *supra*, McLachlin J. (as she then was) noted at p. 224 that the primary purpose of monopolistic statutes is the protection of the public, particularly public safety. Correspondingly, in ***MacDonald,*** *supra*, at para. 34, the learned trial judge noted, in determining whether an impugned activity was "dentistry" within the meaning of the ***Act***, that the activity was not a health risk to dogs and did not involve any public safety concerns.

iv) Conclusion on the Meaning of "Dentistry"

[80] I think it is clear, after considering all the factors comprising Driedger's Modern Approach, that the meaning of "dentistry" in the ***Act*** is, at its core, related to the health of teeth and gums, as opposed to cosmetic or any other type of care of an animal.

[81] In ***MacDonald***, *supra*, at para. 9, Low J.A. described dentistry as being related to the treatment of diseases. However, I think the definition must also include the diagnosis and treatment of deformities, injuries and other serious oral health conditions.

[82] This interpretation is supported by the reasons of the learned trial judge in ***MacDonald***, *supra*: the learned trial judge found at para. 33 that the respondent's surface cleaning of dogs' teeth was "essentially cosmetic", an "advanced form of grooming or tooth brushing", not a "health service", and, not dentistry or veterinary medicine under the ***Act***; and, found at para. 34 that the services provided by the respondent in that case did not pose any health risk to the dogs receiving the services. These findings were not overturned on appeal.

[83] In essence, the term "dentistry" in the ***Act*** involves the diagnosis, care or treatment of an animal's teeth or gums that is primarily health-related; i.e. a practice which, based on the quality of the service provided, has a real likelihood of affecting, positively or negatively, the health of the animal being diagnosed or treated.

[84] This definition excludes purely cosmetic services, such as those provided in ***MacDonald***, *supra*, but does not unduly limit the broad language the legislature used in its definition of "veterinary medicine" in the ***Act***. It also accords with the ordinary meaning of the term "dentistry", as well as with the common law of jurisdictions, such as Ontario and Nebraska, with veterinary legislation similar to the ***Act***.

d) Whether the Disputed Activities are "Dentistry"

[85] For the reasons set out below, I find that performing the Disputed Activities is practising "dentistry", and thus "veterinary medicine", within the meaning of the ***Act***.

[86] First, Bishop's evidence makes it clear that the Disputed Activities are health-related, as opposed to cosmetic.

[87] Bishop, in his affidavit sworn December 8, 2002, deposes that horses' teeth erupt throughout their lives and that domesticated horses, which eat soft food and graze little, can develop tooth problems. Their teeth wear unevenly and develop points and this can result in severe health consequences for a horse. The Disputed Activities he provides are meant to avoid such health consequences.

[88] Stephanie Cowles, a farrier, in her affidavit sworn January 22, 2004, in support of Bishop's response to the BCVMA's application, deposes:

> Tooth floating involves being able to balance precisely the horse's mouth. All it takes to impair seriously the horse's performance and well-being is overlooking a slight rough edge or high spot....
>
> ...
>
> When the work is not done properly, the horse continued to suffer discomfort, and that has a detrimental effect on his or her performance and behaviour....
>
> ...
>
> ... The live part of a horse's tooth is well down in the jawbone. The vast majority of problems that arise are due to irregularities and imbalances in the erupted, visible parts of the teeth, which are without nerves or blood supply. These imbalances lead to restricted and improper jaw movements, and also to pain and discomfort for the horse. In turn, this leads to improper food mastication, sometimes poor physical condition, decreased life expectancy, poor physical

> performance, including reproductive performance, and behaviour problems. The goal of equine tooth care is to correct the imbalances to restore proper grinding surfaces to the molars and a full range of motion to the horse's jaw. If proper tooth care is begun early in a horse's life, serious problems, such as, abscessed teeth, which may require x-ray and general anaesthetic, can be avoided.

[89] Karen MacGregor, a horsewoman, in her affidavit sworn December 4, 2002, in support of Bishop's response to the BCVMA's application, deposes:

> I have had my Friesian's teeth floated every year for seven years by four different veterinarians and his immune system gradually went down hill to the point that his thyroid was not functioning properly. Now, thanks to Mr. Bishop's excellent work floating my Friesian's teeth, the horse is healthy and eating well and his energy has improved....

[90] Second, it is clear that the quality of the performance of the Disputed Activities can have serious effects on a horse's health.

[91] Bishop's own evidence suggests serious health consequences can develop if the Disputed Activities are improperly performed. In his affidavit sworn December 8, 2002, Bishop deposes:

> I have heard from several sources that [a veterinarian] conducted a clinic at Olds College in Olds Alberta. The purpose of the seminar was to educate veterinarians on how to float horses' teeth. After [the veterinarian] and his students were finished working on the horses, the horses could not be used in the College and could not eat because of the damage done to their teeth and mouths.

[92] Third, the evidence suggests that it was the intention of the legislature to include the Disputed Activities in the meaning of "dentistry."

[93] The evidence of Drs. Gilray and Twidale, set out above, suggests that the Disputed Activities were very much the part of the practice of veterinarians who were performing equine dentistry in 1967 and, in my view, the legislature must have fully

intended to capture these kinds of activities when it amended the ***Act*** to include the practice of dentistry.

e) Whether the Disputed Activities are "Veterinary Medicine"

[94] The BCVMA submits that even if the Disputed Activities are not "dentistry" within the meaning of the ***Act***, they are nonetheless part of the practice of "veterinary medicine" within the meaning of the ***Act***.

[95] Subsection (b) of the ***Act***'s definition of "veterinary medicine" includes: "[t]reating ... for the prevention, alleviation or correction of a disease, injury, pain, deficiency, deformity, defect, lesion, disorder or physical condition of or in any animal, with or without the use of any instrument ...".

[96] The BCVMA submits that floating or filing an animal's teeth using power tools or manual tools (in order to prevent negative health consequences, improve mastication, etc.) constitutes treatment for the alleviation or correction of a physical condition of a horse.

[97] Bishop submits, in reply, that construing the term "physical condition" in the definition of "veterinary medicine" broadly, rather than strictly, would bring about the absurd result that the trimming of horses' hooves or grooming of horses' manes would be part of the practice of veterinary medicine - it would force the Court to hold that farriers, blacksmiths and horse groomers practice veterinary medicine. Rather, he says, the term "physical condition" is limited by the principle of *noscitur a sociis* to mean some sort of deformity or illness.

[98] In ***MacDonald***, *supra*, at para. 32, the learned trial judge cautioned against an overly broad interpretation of the ***Act***:

> Public policy concerns regarding the welfare of animals may require some latitude in allowing the provision of services to animal owners by persons providing cosmetic or grooming services for animals, who may incidentally be caught by the broad definition set out in the *Act*. I can imagine a host of persons in everyday situations who could be caught by the extremely broad language of s. 27 of the *Act*. If I were to construe the *Act* broadly, it would certainly lead not only to unreasonable business consequences, but also to consequences out of step with everyday life. Modern reality is that the many businesses which provide truly cosmetic services to animals need not be governed by the Association.

[99] However, although I agree with the learned trial judge's caution, I do not think it applies to the case at bar.

[100] As discussed above, the Disputed Activities are clearly health-related, not cosmetic, and for that reason, if necessary, I would have found that they constituted veterinary medicine within the meaning of ss. (b) of the ***Act***'s definition of "veterinary medicine".

f) The Public Interest

i) The Parties' Positions

[101] Pursuant to s. 35 of the ***Act***, the Court may, if it is satisfied that there is or will be a contravention of the ***Act***, grant an injunction restraining a person from committing the contravention.

[102] The BCVMA submits that the case law is clear that as Bishop is practising veterinary medicine within the meaning of the ***Act***, a permanent injunction should be granted. It says that Bishop has not proved any reason for the Court to exercise its

rarely used power to refuse such an injunction on discretionary grounds, and that in any case, this is not the appropriate case in which to exercise such a power.

[103] The BCVMA submits that it is not appropriate for the Court to authorize an individual who is unaccountable to the BCVMA, the body designated by the legislature to address competence issues in regard to veterinary medicine, to breach the ***Act***, even if there is a shortage of competent veterinarians in a particular area of practice.

[104] The BCVMA also submits that as the Disputed Activities constitute veterinary medicine within the meaning of the ***Act***, Bishop is breaking the law, and there is always a public interest in upholding the law.

[105] Bishop submits, in reply, that even if the Court finds he is practising veterinary medicine, it should refuse to grant the injunction requested by the BCVMA.

[106] He submits that because the evidence shows that there are not enough qualified veterinarians competent to float horses' teeth in British Columbia, the Court has a discretion, bordering on a duty, to refuse the request for an injunction on the basis that enjoining him from performing the Disputed Activities would be contrary to the public interest: ***Capital (Regional District) v. Smith*** (1998), 61 B.C.L.R. (3d) 217, 168 D.L.R. (4th) 52, 49 M.P.L.R. (2d) 159 (C.A.); ***Ipsco Recycling***, *supra*.

[107] Bishop also submits that because the BCVMA is a trade group seeking to use the Courts to force its competition out of business, the Court should not, as is usually

done in like cases involving the Attorney General as a petitioner, presume that the BCVMA is acting in the public interest.

ii) Decision

[108] I am satisfied that this is an appropriate case in which to exercise my discretion to grant a permanent injunction against Bishop practicing veterinary medicine contrary to s. 27(1) of the ***Act***.

[109] I do not agree with Bishop's submission that it would be against the public interest to order the injunction. Rather, I agree with the BCVMA's submission and find that there is a general presumption that it is in the public interest to have the law obeyed.

[110] In ***Maple Ridge (District) v. Thornhill Aggregates Ltd.*** (1998), 54 B.C.L.R. (3d) 155, 162 D.L.R. (4th) 203, [1999] 3 W.W.R. 93 (C.A.), leave to appeal to S.C.C. refused [1999] 1 S.C.R. xiv, Cumming J.A., for the majority of the Court, states at para. 9:

> Where an injunction is sought to enforce a public right, the courts will be reluctant to refuse it on discretionary grounds. To the extent that the appellants may suffer hardship from the imposition and enforcement of an injunction, that will not outweigh the public interest in having the law obeyed....

[111] Similarly, in ***Ipsco Recycling***, *supra*, at para. 51, Dawson J., relying in part on ***Maple Ridge***, *supra*, and ***Capital (Regional District) v. Smith***, *supra*, found that in relation to statutorily-authorized discretionary injunctions sought by parties other than the Attorney General, hardship arising from an injunction "will generally not outweigh the public interest in having the law obeyed."

[112] Furthermore, as noted above, the object and scheme of the ***Act*** are the protection of the public and of animals and the regulation of the group of persons who may perform veterinary activities. These objectives also suggest than it is in the public interest to exercise the Court's discretion to grant an injunction to ensure that the ***Act*** is obeyed.

[113] In addition, as noted by the BCVMA, the injunction it seeks will not prevent Bishop from providing the Disputed Activities under the supervision of a veterinarian, or otherwise in accordance with the ***Act***.

[114] I also disagree with Bishop's submission that the Court should be concerned that the BCVMA is self-interested in seeking an injunction. The reasoning in ***Attorney-General for Alberta ex rel Rooney v. Lees and Courtney***, [1932] 3 W.W.R. 533 (Alta. S.C.) contradicts that submission.

[115] In that case, the Attorney General was seeking an injunction prohibiting the defendants from taking dental impressions of patients' bites, on the basis that doing so was contrary to ***The Dental Association Act***, R.S.A. 1922, c. 204. McGillivray J.A. held that the defendants were practising dentistry contrary to the statute, and in considering whether to order an injunction restraining the defendants from practising dentistry, states at pp. 540-41:

> As to the suggestion that the action is in reality the action of a member of the Dental Association and so is not maintainable merely because the Attorney-General has allowed the use of his name, I am of the opinion that the action is none the less the Attorney-General's action because it is brought on the relation of a member of the Dental Association (who may become liable for the costs of the action) and

> that so long as the nature of the action is to prevent the non-observance of statutory prohibitions by private individuals the Court is not concerned with whether or not the relator had private interests to serve in inducing the Attorney-General to act.
>
> [emphasis added]

[116] The proceeding at bar was instigated, as was ***Rooney***, *supra*, to prevent the non-observance of statutory prohibitions by a private individual.

[117] I would note here that Bishop's competence at performing the Disputed Activities has not been seriously challenged. The evidence before the Court includes glowing references in regard to Bishop's work.

[118] However, Bishop's competence is not relevant to whether an injunction should be ordered. McGillivray J.A. states at p. 541 of ***Rooney***, *supra*:

> [I]t has not been affirmatively shown that the work done by these defendants has led to any harm to members of the public. I have come to the conclusion, however, that in such an Act as the one under consideration the prohibitions are for the protection of the public at large so that loss of health or life itself may not be suffered as a consequence of unqualified persons practising dentistry and that proof of non-observance of the statutory prohibitions constitutes proof of public risk and danger.
>
> It may be truly said that the most competent dentist in the world might practise dentistry in Alberta while not registered without danger to the public health but the Act is not aimed at individuals; it is a general Act for the general protection of the public against all persons whether competent or not who have not made themselves amenable to the discipline of the body that the Legislature has put in control of dentistry in this province.

[119] In summary, I find that it is in the public interest that Bishop be prohibited and enjoined from breaching the ***Act***.

CONCLUSION

[120] Thus, I am satisfied, and find that the legislature intended to confine the Disputed Activities to veterinarians, and that Bishop in carrying out the Disputed Activities has engaged in equine dentistry and in the practice of veterinary medicine contrary to the provisions of the ***Act***.

[121] In the result, the BCVMA is entitled to the orders sought in its petition, with costs to the BCVMA.

"B.I. Cohen J."

The Honourable Mr. Justice B.I. Cohen