

**Alberta Veterinary Medical Association v. Pequin, 2002 ABQB 848** Date: 20020925 Action No. 0103 06934

IN THE COURT OF QUEEN'S BENCH OF ALBERTA JUDICIAL DISTRICT OF EDMONTON

IN THE MATTER OF THE VETERINARY PROFESSION ACT, S.A. 1984, c.V-3.1, AS AMENDED;

AND IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 4 OF THE VETERINARY  
PROFESSION ACT FOR AN INJUNCTION TO PREVENT LOUIS PEQUIN FROM BREACHING  
SECTION 2 OF THE VETERINARY PROFESSION ACT;

BETWEEN:

ALBERTA VETERINARY MEDICAL ASSOCIATION

Applicant - and

LOUIS PEQUIN

Respondent

REASONS FOR JUDGMENT of the HONOURABLE MADAM JUSTICE M. B. BIELBY

APPEARANCES:

Karen Ann Smith for the  
Applicant

James A. Moffat for the Respondent

## DECISION

[1] Farriers are not precluded from engaging in equine dentistry in Alberta. The monopoly given to registered veterinarians over the provision of medical services to animals by the Veterinary Profession Act, R.S.A. 1984, c. V-3.1, as amended, (“the Act”), s. 2 does not extend to dentistry in the absence of the express inclusion of dentistry within the statutory definition of those services required to be provided by a registered veterinarian. Public interest and safety concerns do not otherwise dictate the implied inclusion of dentistry within the veterinarian’s area of statutory monopoly even if that were possible, given the wide range of circumstances in which non-veterinarians are expressly permitted to perform all types of veterinary services.

[2] The exception in the Act which allows farriers, although non-veterinarians, to perform certain services upon animals’ legs and feet cannot be interpreted to include equine dentistry.

## ISSUES

[3] The Applicant, the Alberta Veterinary Medical Association (“the Association”), applies for an injunction to prevent the Respondent farrier from practising equine dentistry, a practice which it alleges he carries on in violation of the provisions of s. 2 of the Act.

[4] Brought on by Originating Notice of Motion, this matter was ordered to be tried with viva voce and affidavit evidence on the following issues:

- 1 Does equine dentistry constitute the practice of veterinary medicine;
- 2 If equine dentistry is veterinary medicine, is Mr. Pequin’s conduct subject to the exception set out in s. 2(2)(b) of the Act; and
- 3 Is the Applicant entitled to an injunction enjoining Mr. Pequin from the practice of equine dentistry pursuant to s. 4 of the Act?

## FACTS

[5] The parties admitted many of the relevant facts. The Respondent is a farrier, engaged in the trimming of hooves and the shoeing of horses. He also performs routine equine dental work on horses which I find to be a service which some farriers have traditionally offered in Alberta. He is not a registered veterinarian although he is married to one. He is not an animal health technologist, as that is defined by legislation, and thus able to engage in veterinary medicine under the supervision of a registered veterinarian.

[6] He has offered his services to the public since his 1985 graduation from Olds Agricultural College with a certificate in Advanced Farrier Science. He has lectured and instructed in techniques of equine dentistry and has manufactured equine dental tools for sale.

[7] The Respondent offers the following dental services to the public:

- i. balancing horses' mouths by floating teeth, which is a procedure by which the horses' teeth are filed or rasped and sometimes shortened so that they meet in the eating process;
  - ii. removing caps which are the baby or milk teeth in a horse;
  - iii. removing loose teeth;
  - removing wolf teeth, i.e. vestigial teeth which can interfere with the bit placement in the horses' mouths;
  - removing sharp points on horses' teeth (hooks); and
- vi. performing incisor bite alignments.

[8] The Respondent testified that he does not administer sedation or anaesthetic to the horses upon which he works. Sometimes he works on unsedated animals. Other times he has a veterinarian administer any sedative that is called for in conjunction with the dental work he performs.

[9] Much of the dentistry work performed on horses arises because, as herbivores, their teeth continue to emerge from their gums through most of their lives, to be worn away by continuous grinding against the opposite teeth. Where that grinding action is not performed evenly, teeth grow irregularly with sharp edges or points emerging, or teeth overgrowing where an opposite tooth is missing. These irregularities may be rasped away to restore proper chewing or "balance" to the horse's mouth. Also, most horses have "wolf teeth" which are vestigial remnants which can interfere with the comfortable placement of the bit in the horse's mouth if not extracted.

[10] The Respondent tendered uncontroverted evidence that he had never injured a horse during dental treatment and that his customers were generally satisfied with his work.

[11] The Association was advising farriers as late as 1990 that, in its view, there was no impediment to their engaging in equine dentistry. Todd Williams, a self-styled equine dentist, testified that he had solicited and received a letter from the Association in 1990 in which it advised:

This is to advise you that it is the opinion of the Alberta Veterinary Medical Association Council that routine dental care in horses does not fall under the definition of veterinary medicine in accordance with the Veterinary Profession Act. However, Council feels that any procedure requiring medical or surgical intervention constitutes the practice of veterinary medicine, and therefore any work of this kind would have to be conducted under the direct supervision of a registered veterinarian.

[12] The Respondent did not seek or receive similar advice from the Association at any time, nor learn of the fact it had given this advice to others prior to this litigation commencing.

[13] The Respondent testified that at the Olds Agriculture College he took courses relating to the anatomy and physiology of horses. He testified that the topic of equine teeth was introduced in the anatomy course and one instructor taught his students how to rasp a horse's teeth. His horseshoeing textbook contained a section on teeth. He took additional training in regard to equine dentistry in particular by way of two 5-day courses offered in Nebraska. He continued his education under an equine dentist he briefly brought to Canada from the United States for that purpose and from horse trainers with which he has worked over time. He belongs to no professional association which governs his practice of equine dentistry and takes no reoccurring continuing education although he has done so in the past.

[14] Farriers do not operate under the auspices of any professional body which controls licensing or which ensures minimum levels of competency.

[15] Jeremy Sparshu, who is currently an instructor in the Farrier Science program at Olds, testified that the program became a year in length in about 1986 but it was substantially shorter when taken by the Respondent in 1985. Mr. Sparshu testified that the current program offers an equine anatomy course which contains no instruction in dentistry; a one or two hour overview of teeth is the entire instruction on that topic. Although he took a second equine science course several years subsequent to the Respondent, he had received no instruction at the college in equine dentistry.

[16] At least 75 veterinary clinics in the province offer equine dental services, including one in Drayton Valley, the community in which the Respondent operates his business.

[17] The Association led evidence that while no specific mandatory course in equine dentistry is offered in university veterinary education, that knowledge could be acquired first through a general anatomy course and in later optional course work focussed on horses. New veterinarians might also be expected to learn through exposure to the knowledge of any experienced veterinarians with which they came to practice. Further, each veterinarian registered to practice with the Association in Alberta is required to take a minimum of 15 hours of continuing education annually. Equine dentistry courses are available to be taken on this basis.

[18] The Association led evidence that anyone with good hand/eye coordination could learn the mechanical processes involved in equine dentistry but the challenge lies in diagnosis and timing, which is dependent upon broad underlying knowledge. Education comes into play when something unusual or unexpected happens.

[19] The Association admitted that while some veterinarians personally undertook all dental procedures, others relied upon animal health technologists to do the types of equine dentistry performed by the Respondent, sometimes without further input from a veterinarian once the work commenced. However, in the view of Association witnesses this should occur only with a veterinarian present on the premises although not necessarily observing during the procedure.

[20] Both parties agreed that dental procedures could cause pain and that in certain cases sedatives should be used. Both agreed that where a sedative is used that sedative should be administered by a veterinarian although that requirement is not expressed in the legislation.

[21] The Association led evidence that an unsedated horse which experienced such pain could act in an unexpected manner, giving rise to the possibility of injury to those persons involved in restraining the horse while the procedure was undertaken. More important, perhaps, is the moral and social value of avoiding unnecessary pain to animals.

[22] The Association does not challenge the right of animal owners under the Act to administer sedatives and other medication prescribed by their veterinarian or to perform equine dental procedures on their own animals. Similarly, the legislation permits a horse owner to have such work done by a non-veterinarian under a system of barter of agricultural services.

[23] Dr. Roxanne Bell, qualified to give opinion evidence in the area of equine veterinary practice, testified that in her opinion veterinarians were able to do a better job than anyone else of both diagnosis and resulting tasks such as floating, removal or filing of teeth and molar extraction because of their more comprehensive training in areas of anatomy, physiology and surgery including hands-on clinical experience obtained prior to graduation. She sedates horses more than 95% of the time prior to dental work because the lack of pain makes the treatment easier and safer for all concerned. Only one of the commonly used sedatives for dental work may be obtained on an over-the-counter basis; the rest must be obtained by prescription from a veterinarian for later use by anyone or are restricted drugs which must be administered by the veterinarian personally. In her view it would be a waste of time for a veterinarian to administer a sedative and then have someone else do the subsequent dental work; the veterinarian could do both.

[24] She testified that interest in equine dentistry has blossomed in North America among veterinarians since the early 1990's. In 1993 the Association introduced the first continuing education program in equine dentistry in Alberta. Since then many veterinarians had taken that training. She was less forthcoming about how equine dental work was addressed in the province before this surge of interest by her professional association.

[25] Dr. Duckett, a professor from the Atlantic Veterinary College in Prince Edward Island, gave expert testimony that in her opinion a 10-day course in equine dentistry alone would be too superficial to afford adequate training. She sedates horses 95% of the time before engaging in dentistry. However, in her view, sedation is not necessary if dental records or personal prior familiarity with a horse shows its demeanour is such that it will likely accept the sound and smell of the instruments working on it without unduly moving its head. She agreed that a non-veterinarian could learn to rasp a horse's teeth and that certain tooth problems could be addressed by a non-veterinarian.

[26] The Association and other professional veterinary organizations have published materials which portray animal dentistry as part and parcel of veterinary services available only through a registered veterinarian.

[27] In 1995 the Association issued a position statement on equine dentistry, stating that it should be performed only by veterinarians or by a certified veterinary technician under the employ of a licensed veterinarian. This position appears as part of the ethics and professional guidelines governing veterinarians in Alberta. Similarly, the Association has issued and developed a definition of veterinary medicine in consultation with other veterinarians' professional associations in other provinces as an aspect of a mechanism to insure mobility of veterinarians throughout Canada. That definition expressly includes dentistry as part of veterinary medicine.

[28] On January 28, 2000 the Association published a set of guidelines entitled “Associating with Non-Veterinarians Practising Veterinary Medicine” for the purpose of outlining to its members where and how it was legal to liaise with non-veterinarians. The guideline directs that veterinarians may work only with members of other occupations which are governed under legislative authority, regulations and by-laws. These guidelines were preceded by a press release issued on March 29, 1994 in which the Association strongly discouraged animal owners from hiring non-veterinarians to provide treatment to their animals unless supervised by a veterinarian and promised a formal mechanism under which a veterinarian would be able to delegate licensed professionals from other recognized disciplines to treat conditions diagnosed by that veterinarian.

[29] The Association also issues and makes available to its members a pamphlet on Equine Dental Care, for distribution to the public in veterinary offices. It urges the reader to “Consult your Veterinarian on Equine Dentistry”.

[30] On April 25, 2000 the Association received a written complaint to the effect that the Respondent was engaged in activities which violated the provisions of the Act. That complaint led ultimately to this application.

## **LAW**

[31] The Act reads:

1. In this Act...

(b) “Association” means the Alberta Veterinary Medical Association;...

(p) “veterinary medicine” means a medical service performed with respect to an animal and includes the following:

(i) surgery;

(ii) obstetrics and ova and embryo collection.

2(1) Except as otherwise provided in this Act, no person except a registered veterinarian or permit holder shall engage in the practice of veterinary medicine.

(2) Subsection (1) does not apply to the following:

(a) a technologist practising under the direction or control of an unrestricted veterinarian and in accordance with the regulations;

(b) a person who is engaged in trimming hooves, shoeing and applying or using corrective procedures or devices specifically for gait and stance modifications in animals;

(c) a person or the person’s employee who is engaged in the treatment of the person’s animals or animals of the person’s employer;

(d) a person who is engaged in the examination or preventive or therapeutic treatment of farm animals using non-surgical procedures in return for the performance of similar services by the owner of the animals;

(e) a person or the person’s employee who is engaged in the treatment of farm animals that the person rents or leases from or custom feeds for the owner of the animals, if the owner consents;

(f) a person who is engaged in dehorning cattle, sheep or goats, in docking pigs, sheep or horses or in castrating cattle, sheep, goats, pigs, horses or any other animal prescribed in the regulations made under section 3;

- (g) a person who is using an animal in research at a university, if the research is carried out using acceptable veterinary procedures and the use of the animal has been approved by an appropriate animal care committee of which at least one member is a registered veterinarian;
- (h) a person who gives assistance in a time of urgent need, if the

assistance is given without hire, gain or hope of reward. ...

4. The Court of Queen's Bench, on application by the Council by way of originating notice, may grant an injunction enjoining any person from doing any act that contravenes section 2, notwithstanding any penalty that may be provided by this Act in respect of that contravention.

[32] Pursuant to s. 13(1) (t) and (u) of the Act, the Applicant has the authority to make regulations designating and defining technologist for the purpose of the s. 2(2)(a) exception and also to regulate the areas of veterinary medicine which technologists are permitted to carry out. It is admitted that the Respondent is not qualified to be registered as a technologist under the current regulations.

## **ANALYSIS**

Does the equine dentistry practised by the Respondent fall within the definition of "veterinary medicine"?

[33] The definition of veterinary medicine given in the Act does not expressly include equine dentistry. "Veterinary medicine" is defined as "a medical service performed with respect to an animal" but the legislation does not define "medical service".



[34] In the absence of statutory definition, dictionaries may sometimes be of assistance in determining the ambit of a word or phrase. The Respondent has referred to the dictionary definitions of each of “medicine” and “dentistry” in arguing that the scope of the one term does not include the other. Black’s Law Dictionary, 5<sup>th</sup> ed., West Publishing Co., St. Paul, Minnesota, 1979 defines “medicine” as:

The science and art dealing with the prevention, cure and alleviation of diseases; in a narrower sense, that part of the science and art of restoring and preserving health which is the province of the physician as distinguished from the surgeon and obstetrician.

[35] However, this must not have been the definition of “medicine” which the Legislature had in mind in enacting this legislation because it chose expressly to include surgery and obstetrics within its definition of “veterinary medicine”, whereas those areas are expressly excluded from the Black’s Dictionary definition of “medicine”.

[36] In any event, the Respondent goes on to argue that “medical services” excludes dentistry, referring to the definition of dentist provided by the Concise Oxford English Dictionary of Current English, 7<sup>th</sup> edition:

one whose profession is to treat diseases and malformations of the teeth, extract them, insert artificial ones

However, this definition does not expressly exclude all medical types of services. Therefore, resort to the dictionary does not resolve the issue.

[37] No Alberta Court has previously been called upon to determine whether equine dentistry falls within the definition of “veterinary medicine” in the Act, a definition which appears to be unique to this province. Ontario courts have repeatedly given consent or unopposed injunctions prohibiting equine dentistry by those not falling within the ambit of the differently-worded Veterinarians Act, R.S.O. 1990, c. V-3; see **College of Veterinarians of Ontario v. Popp**, Ontario General Division, No. R.E.717/91, dated October 17, 1995, an unreported decision, by way of example.

[38] In **State of Nebraska v. Jeffrey** (1994) 247 Neb. 100, the Supreme Court of Nebraska found that conduct including diagnosis and doing “just about everything that’s needed done inside a horse’s mouth” violated the prohibition against the unlicensed practice of veterinary medicine. However, the statute governing veterinarians in that jurisdiction expressly defined veterinary medicine as including dentistry, as does the current legislation in the Canadian jurisdictions of British Columbia, Manitoba, Ontario, and the Northwest Territories.

[39] Absent jurisprudence or dictionary definition to determine whether the term “medical service” includes dentistry, we turn to the principles of statutory interpretation. The primary of these principles is that which directs that those things which are not expressly prohibited by legislation are permitted. This principle was applied by the Supreme Court of Canada to determine the limits of exclusivity of pharmacists’ practice in the leading case of **Laporte v. College des Pharmaciens de la Province de Quebec** (1974) 58 D.L.R. (3d) 555 at 556. The Court there reaffirmed a principle originally stated by Taschereau J. in **Paube v. Gauvin** [1954]

S.C.R. 15 at 18:

The statutes creating these professional monopolies, sanctioned by law, access to which is controlled and which protect their members in good standing who meet the required conditions against any competition, must however be strictly applied. Anything which is not clearly prohibited may be done with impunity by anyone not a member of these closed associations.  
(in translation)

[40] A recent example of this principle in action may be found in **Alberta Opticians Association v. London Drugs Ltd.**[2002] A.J. No. 349 (QL) (Alta.Q.B.) where Foster J. dismissed an application for an injunction enjoining the respondent pharmacy from supplying, preparing or dispensing colored contact lenses. The lenses in question had only cosmetic, not refractive, value and were for fashion purposes. Those lenses were found not to fall within the definition of “ophthalmic appliance” over which the Applicant had a professional monopoly pursuant to the Opticians Act, R.S.A. 2000, c. O-9, as amended.

[41] The absence of a comprehensive definition of the scope of the professional activities protected by legislation led to a refusal to prohibit an unlicensed practitioner from land surveying activities in each of **Association of Manitoba Land Surveyors v. Carefoot** (1986) 42 Man. R. (2d) 255 (Q.B.) and **British Columbia (Attorney-General) v. Infomap Services Inc.** (1990) 68 D.L.R. (4<sup>th</sup>) 1 (B.C.C.A.). By comparison a permanent injunction was granted to the Alberta Land Surveyors Association under the provisions of the Alberta Land Surveyors Act which defined the term “land surveyor” and provided extensive definitions for the “practice of land surveying” and “practice of surveying” because the Court was able to find the Respondent’s activities fell expressly within those prohibited by an unlicensed party in **Alberta Land Surveyors’ Assn. v. Hunka** (1995) 173 A.R. 223 (Q.B.).

[42] The application at bar is analogous to each of the first two of these land surveyor decisions. As there the Act is silent as to whether the questioned activity expressly falls within the scope of the statutory monopoly.

[43] An excellent summary of the principles to be applied to judicial consideration of statutorily created professional monopolies is found in the British Columbia Supreme Court decision in **George L. Brough Marine Consultants Ltd. v. Aqua Terra Flotations Ltd.** (1982) 18 B.L.R. 217 which involved a company which had hired a professional engineer from Ontario to perform services for it in British Columbia and then refused to pay him, arguing that he had engaged in the practice of professional engineering without proper certification and, under that province’s legislation, had no right to recover payment as a result. McLachlin J. (as she then was) stated at 223-224: ...it is necessary to set out certain principles of construction applicable to ss. 1 and 21 of the Engineers Act. First, monopolistic provisions in statutes such as the Engineers Act are to be strictly construed. ...

Secondly, the provisions of the Act must be interpreted in accordance with their primary purpose, which is the protection of the public, particularly public safety.

[44] The Association argued that this public safety consideration should exempt it from the rule which would otherwise limit statutory monopolies to the four corners of statutory definition, or stated otherwise, that the rule requiring express inclusion of an activity does not apply where public safety considerations indicate that activity should be performed only by a registered member of their profession. Humane as well as economic considerations mandate that horses receive dental care only from those best able to provide it which arguably would be registered veterinarians given their superior training in the area of animal health.

[45] Aside from observing the rather limited nature of the training available to veterinary medicine students on the specific topic of equine dentistry at this time and aside from noting the rather recent nature of the Association's interest in advancing its claim to a monopoly over this area, to the exclusion of farriers, an examination of the case law does not support the deduction that public interest is sufficient to defeat the application of the principles confirmed by the Supreme Court in **Laporte**, supra. In **Aqua Terra**, supra. there was presumably a public interest in ensuring that engineering services were provided only by competent persons, yet the legislation was not interpreted for that reason to extend legislative monopoly to the activities in which the Respondent was engaged. Similarly, in regard to pharmacists in the **Laporte** case. While the Respondents in those cases had qualifications from other jurisdictions or companion professions from which one might presume competence, Courts in other cases have refused to interpret the monopoly to exclude activities performed by those who did not have such qualifications, for example the drugstore merchants in **Alberta Opticians**, supra. Therefore, the fact there is a public interest in ensuring competent equine dentistry does not in and of itself exempt the Association from the general rule as described by the Supreme Court of Canada in **Laporte**, supra.

[46] Protection of the public has been recognized by Saskatchewan courts as one of the most important purposes of the comparable legislation in that province; see **Saskatchewan Veterinary Medical Assn. v. Murray** [2002] S.J. No. 98 (Q.B.) However, that purpose, primary as it may be, does not override the need for specificity in definition particularly in regard to this type of legislation. This Act, unlike the legislation governing most other professions, expressly allows anyone to practice veterinary medicine on animals within certain circumstances so long as they do not charge money for doing so. Further, section 2(2) exempts the following from the prohibition on the practice of veterinary medicine by non-veterinarians: animal owners, their employees, lessees of farm animals, and non-surgical treatment performed by anyone on a barter basis. The Legislature therefore respected economic considerations underlying the agriculture industry as a governor on the creation of an exclusive mandate for veterinarians .

[47] Veterinary medicine is thus distinguished from human medicine or dentistry where competency and pain prevention are viewed from a non-economic focus. Therefore, the Legislature must not have had the intention to weigh public health considerations for animals to the same way as for humans. Public safety concerns must be interpreted in the light of this insight into legislative intent, an insight which leads to the conclusion that these concerns have not generated a practice monopoly for veterinarians in the absence of express statutory mandate where public interest concerns have not outweighed that requirement for professions which serve people.

[48] Even if Justice McLachlin's (as she then was) comments in the **Aqua Terra** case can be interpreted as creating an overriding principle of statutory interpretation due to public safety concerns in certain circumstances, an interpretation which does not appear to have been accepted to date, on the facts of this case in any event the Association has failed to establish that public safety concerns are met only by prohibiting the Respondent from continuing to practice equine dentistry.

[49] The Respondent has more experience in the area than many veterinarians. Nothing suggests that he has injured horses, or that the horses he worked on injured their handlers during treatment. While he sometimes works on unsedated animals, sedation is neither mandated nor the universal norm for veterinarians undertaking this service.

[50] Equine dentistry is a relatively new area of interest to the Association, up to 1990, it did not consider it to fall within the definition of veterinary medicine. The subject is not a mandatory aspect of the education of a veterinarian, nor is extensive training in the area afforded even to those veterinary students who choose to specialize in treating horses. While continuing education courses are available on the topic subject they are not mandatory. No evidence was offered to demonstrate the percentage of practising veterinarians who have successfully completed such training.

[51] In the context of this evidence the fact that the Respondent does not belong to a professional organization which regulates and oversees his practice of equine dentistry does not compel the conclusion that he poses unacceptable risks to the public.

[52] Interestingly, an examination of the legislative history of the Act shows that recent amendments may in fact have narrowed the scope of the monopoly protected by the definition of "veterinary medicine". Equine dentistry may have fallen within a veterinarian's exclusive mandate under previous legislation but, if so, disappeared from Alberta legislation with the repeal of the Veterinary Surgeons Act, S.A. 1964, c. 104.

[53] The repealed legislation defined "veterinary medicine, in s. 2(c)(ii) as follows:

"veterinary medicine" means any professional service usually performed by a veterinary surgeon or veterinarian including

- (i) the application of surgery or medicine to animals,
- (ii) the diagnosis or treatment of, and the prescribing, treating, manipulating or operating for the prevention, alleviation or correction of any disease, lesion, disorder or physical condition of animals, with or without the use of instruments, appliances, medicine, drugs, preparations or anaesthetics, and

(iii) the giving of advice in respect of any of the matters mentioned in subclauses (i) and (ii),

with a view to obtaining a fee or salary. (emphasis added)

[54] Conceivably the filing or extraction of horses' teeth could have fallen within such a definition which was replaced with the current definition during the substantial overhaul of the legislation which led to the 1984 introduction of the current Act containing a definition of "veterinary medicine" which does not contain a wide list of expressly included areas of practice.

[55] As the current legislation was enacted well subsequent to the Supreme Court's decision in **Laporte**, supra., it must be assumed that the Legislature, being familiar with the principles in that case, did not intend to include dentistry within the statutory definition of veterinary medicine. Legislative drafters would have known that those areas not expressly included in a statutory definition would be considered to be excluded. Had it wished to include dentistry it could have done so expressly, as it did with regard to surgery and obstetrics. Failure to make such an express addition to the definition indicates an intention to exclude dentistry.

[56] I reject the submission that the fact certain other Canadian jurisdictions have included dentistry specifically within the definition of "veterinary medicine" evidences an overriding public interest which compels the implied addition of that activity to Alberta's definition of "veterinary medicine". On the contrary, the fact that other jurisdictions saw the need to expressly state that only licensed veterinarians could practice animal dentistry compels the opposite conclusion, that the absence of such a provision indicates that the Legislature of Alberta had the opposite intention in 1984 when the current Act became law.

[57] The Association's 1994 press release, ethical guidelines, public information booklet, and position statement state that dentistry is part of veterinary medicine and, by deduction, cannot be performed by farriers. However, the Association has no authority to grant itself a wider jurisdiction than that accorded by the provincial legislature; those self-serving publications do nothing to advance its current cause.

[58] In summary, the Act does not afford registered veterinarians the exclusive right to practice equine dentistry either expressly or as a result of necessary implication arising from an overriding concern for public safety.

[59] This interesting case offers an example of the tension created when a profession expands its activities into areas of public need previously occupied by others. The profession may well, eventually if not initially, be in a position to service that public need more competently than those who did so historically, through superior education and training offered to its members. That evolution alone, however, will not automatically augment the profession's exclusive statutory mandate; if the words of the statute which grants that profession exclusive rights are not broad enough to embrace its area of expanded activity, it is the task of the Legislature alone to address any arising concerns; see **Architectural Institute of British Columbia v. Lee's Design & Engineering Ltd.** (1979) 96 D.L.R. (3d) 385 (B.C.S.C.); **Alberta Opticians Association v. London Drugs Ltd.**, supra.

If so, does the Respondent's conduct fall within the s. 2 exceptions to the prohibition against unlicensed practice ?

[60] Had I concluded that equine dentistry fell within the definition of "veterinary medicine" I would not have found the Respondent's activities were nonetheless authorised on the basis that they fall within the exemptions created by s. 2(2)(b) of the Act, which reads:

2(1) Except as otherwise provided in this Act, no person except a registered veterinarian or permit holder shall engage in the practice of veterinary medicine.

(2) Subsection (1) does not apply to the following: ...

(b) a person who is engaged in trimming hooves, shoeing and applying or using corrective procedures or devices specifically for gait and stance modifications in animals; ...

[61] The Respondent argued that this exemption applied to him because he is engaged in applying or using corrective procedures or devices specifically for gait and stance modifications in animals. He testified that poor dental health can affect an animal's gait and stance. If the animal experiences dental pain it resists taking the bit which affects the manner in which the horse moves and stands. Gait means the movement of a horse and stance means how it stands.

[62] Dr. Dan Martin gave expert opinion evidence regarding the relationship of gait and stance to dental health in horses. One of eight certified veterinary chiropractors in Alberta, he testified that many aspects of equine health affect gait and stance. These include dental health. If the horses' teeth do not close properly, adjoining muscles may be thrown out of balance which may ultimately lead to poor spacial orientation leading to poor gait and stance. He testified that animals can become lethargic, head-tossers and generally unmanageable due to dental pain.

[63] While the Association experts each opined that in their view dental health had no bearing on gait and stance, Dr. Martin's observation that many aspects of poor health, including poor dental health, can affect a horse's gait and stance, makes common sense.

[64] That said, I do not find that, notwithstanding his own evidence to the contrary the Respondent, in performing equine dentistry, did so specifically to modify the animals' gait and stance, so as to bring equine dentistry within the phrase "applying or using corrective procedures...specifically for gait and stance modifications in animals" as required by the s. 2 (2)(b) exemption. Rather, the dentistry was performed with a wider goal in mind, to restore the horse to overall health by removing pain and allowing it to eat properly.

[65] This is not the only reason for finding that the Respondent has not brought his dental activities within that exception. If all that is required to meet this exemption was that the procedure performed had a positive potential bearing on gait or stance, virtually all medical treatments would be exempted when performed by anyone because, as observed by Dr. Martin, any such treatment which improves an animal's health would improve gait and stance. Such an interpretation would emasculate the provisions of s. 2(1) of the Act which directs that no person other than a registered veterinarian shall engage in the practice of veterinary medicine, i.e. provide a medical service performed with respect to an animal. Applying the Respondent's interpretation anyone could do so, because any medical service would potentially improve a horse's overall health and therefore its gait and stance.

[66] A fundamental principle of statutory construction mandates that meaning be given to every section of an Act, as described by E.A. Drieger in his text *Construction of Statutes*, 2<sup>nd</sup> ed. at p. 91-92:

Not only must the whole Act be read, but every provision of the act should, if possible, be given meaning; hence, if there are rival constructions the general principle is that the construction that gives effect to the whole of the statute, or the provision under consideration, should be adopted in preference to one that renders part thereof meaningless.

[67] This is all the more apparent where the portion of the statute which the Respondent's construction would render meaningless embodies the basic purpose and foundation of the statute. The Act exists to limit the provision of medical services to animals in Alberta to those who are qualified to do so by training and regulation. A construction which would allow anyone, essentially, to provide those services at least to horses would render the meaning and purpose of the Act nugatory and must be avoided for that reason.

[68] A second fundamental principle of statutory construction, *eiusdem generis* comes into play in interpreting the scope of the s. 2(2)(b) exception. That rule is that "general words may be restricted to the same genus as the specific words that precede them"; see **Thames & Mersey Marine Insurance Co. v. Hamilton, Fraser & Co.** (1887) 12 A.C. 484 at 490. In application of this principle the use of the words "trimming hooves" and "shoeing" limit the meaning to be applied to the more general terms "applying or using corrective procedures or devices" to those relating to the animal's legs and feet. The more specific terms relate to legs and feet; so should the scope of the more general terms which follow be limited to relating to legs and feet.

[69] Procedures performed on other parts of the animal's body, including the mouth, would thus be excluded from the operation of the exception. In the result, equine dentistry does not fall within the s. 2(2)(b) exception.

If not, should the injunction be granted?

[70] In light of the conclusion that the Respondent's practice of equine dentistry does not violate s. 2 of the Act, no ground for the granting of an injunction against his activities has been established.

## **COSTS**

[71] The parties may speak to costs, if necessary.

HEARD on the 20<sup>th</sup> day of June 2002. **DATED** at Edmonton, Alberta this 25<sup>th</sup> day of September 2002.

**J.C.Q.B.A.**