

**EXAM 6 – CANADA, SPRING 2018**

1. (1.25 points)

Due to the Privy Council's decision on one historical case, an insurance company is usually incorporated federally if it wants to carry on business in more than one province.

a. (0.5 point)

Describe the facts of the case.

b. (0.75 point)

Describe the decisions made by the Privy Council regarding this case.

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**EXAM 6C SPRING 2018 SAMPLE ANSWERS AND EXAMINER'S REPORT**

<b>QUESTION 1</b>	
<b>TOTAL POINT VALUE: 1.25</b>	<b>LEARNING OBJECTIVE(S): A1</b>
<b>SAMPLE ANSWERS</b>	
<b>Part a: 0.5 point</b>	
<u>Sample 1</u>	
<ul style="list-style-type: none"> <li>• “The Insurance Reference Case” or “The Attorney-General for Canada v. The Attorney-General for Alberta”</li> <li>• The federal parliament required insurance company to incorporate federally if it wants to operate in more than one province. The Attorney General of Alberta defected by stating this is an ultra-vires – Authority over trade / commerce doesn’t extend to licensing system by Federal, and it deprives provincial rights of licensing.</li> </ul>	
<u>Sample 2</u>	
<ul style="list-style-type: none"> <li>• A. General Alberta v A. General Canada</li> <li>• Federal government introduce law that requires insurer to be federally incorporated. A. General Alberta challenged constitutionality of that law.</li> </ul>	
<b>Part b: 0.75 point</b>	
<u>Sample 1</u>	
<ul style="list-style-type: none"> <li>• Privy Council ordered this is ultra vires for federal to interfere with licensing system.</li> <li>• The provincial incorporated insurers have capacity but not right to operate in another province without other provinces’ permission. Federally incorporated insurers have the capacity and rights to operate in multiple provinces.</li> <li>• Foreign companies can be required to be licensed federally in order to operate in provinces, even they only want to operate in one province.</li> </ul>	
<u>Sample 2</u>	
<ul style="list-style-type: none"> <li>• Privy Council ruled that trade and commerce did not extend to licensing system. Law was ultra vires.</li> <li>• Federal can require licensing foreign companies, even if the foreign company wants to operate in only one province.</li> <li>• Provincially incorporated company has rights to operate in another province.</li> </ul>	
<b>EXAMINER'S REPORT</b>	
Candidates were expected to know the basics of the Privy Council decision that resulted in the division of responsibility between federal and provincial regulators.	
<b>Part a</b>	
Candidates are expected describe the facts of the case. Candidates could either provide the case name and a brief description of the facts or provide a more detailed description of the facts.	
Common errors included:	
<ul style="list-style-type: none"> <li>• Incorrectly identifying the case name, such as “The Reference Case” or “Ontario Fire Insurance Act.”</li> <li>• Not describing the facts of the case accurately.</li> </ul>	

## EXAM 6C SPRING 2018 SAMPLE ANSWERS AND EXAMINER'S REPORT

### Part b

Candidates were expected to identify the three decisions made by the Privy Council with regard to the case.

Common errors included:

- Not identifying all three decisions. In particular, the decision that the federal government has the power to require a foreign company to obtain a federal license prior to doing business in Canada was often missed.
- Providing answers based on an incorrect case. For example:
  - The decision overturned *Paul vs. Virginia*; trade and commerce in more than one state is subject to federal regulation if an insurer wants to carry business in multiple states.