

Regina v Comeau Has Profound Implications For Interprovincial Trade

Administrative Law | Constitutional Law | Liquor Control Act | Litigation | Litigation & Dispute Resolution | New Brunswick | Supreme Court of Canada

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The recent New Brunswick court decision in *Regina v Comeau*, 29 April 2016 has profound implications for interprovincial trade. The court held that a provision of the New Brunswick Liquor Control Act prohibiting beer from out-of-province, unless it had been purchased from ANBL, was unconstitutional because it was an unlawful non-tariff trade barrier.

This decision is remarkable because the court said that:

1. s. 121 of the *Constitution Act*, 1867 prohibited all tariff and non-tariff trade barriers between the provinces.
2. older decisions of the Supreme Court of Canada that said otherwise were wrongly decided.

Section 121 states that all articles of the growth, produce, or manufacture of any one of the provinces shall be admitted free into each of the other provinces.

This decision makes it likely that superior courts in Canada will order that the similar provisions in other provincial liquor legislation are unconstitutional. Quashing such provisions would eliminate the power of the provincial liquor corporations to impose any mark-ups on beer, wine and liquor.

Provincial liquor monopolies are created by s. 3(1) of the *Importation of Intoxicating Liquors Act*, R.S.C., 1985, c. I-3 (**IILA**). In simple terms s. 3(1) states:

3 (1)... no person shall import... into any province... any ... liquor, except such as has been... consigned to ... any board that... is vested with the right of selling intoxicating liquor.

The IILA was passed by parliament in 1926 because provincial law does not allow provinces to prohibit the importation of liquor. The 1926 arrangement was intended to give provinces a monopoly over all liquor entering a province so that they could control it.

However, it is almost 100 years later and Canadian culture has long evolved from the zeitgeist of 1926. Provincial liquor monopolies today are nothing more than a cash-grab by provincial governments. If s. 3(1) was declared unconstitutional, provinces could still enforce socially responsible drinking behaviour through control of licensing, hours of operation and age of purchasers, etc., without needing to have a monopoly over the sale of liquor. Look at the rest of the western world and Asia and you will see that.

Similarly, the Comeau decision means a free market in milk, cheese and eggs and other food products because the legislation that creates marketing boards are clearly non-tariff trade barriers.

The Comeau case tells us conclusively that s.3(1) and the marketing board regulations are non-tariff trade barrier between provinces which are unconstitutional. If we have them declared so, it would mean: (1.) the LCBO would no longer have sole control or a monopoly over the sale of beer and liquor and marketing boards would no longer have a monopoly; (2.) it would mean that businesses could contract for wine, beer and milk, cheese and eggs and anything else wherever they please.

The Crown is appealing this decision and the Appeal will likely be heard in early 2017.

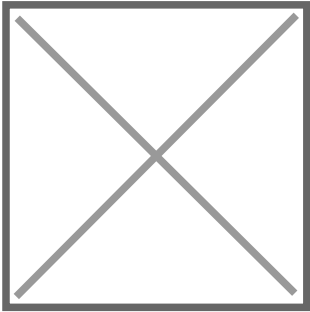
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