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5 Minutes for Business

R v Comeau and the Fight for Interprovincial Free Trade

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What do Canadians want for Christmas this year? It looks like we all have good cheer on our minds: An Ipsos poll¹ released a few days ago found that 89% of Canadians believe they should be able to buy any amount of alcohol they want in one province and transport it to another.

Restrictions on the movement of beer and wine across provincial boundaries are just one example of the barriers that impede trade within Canada, drive up business costs, and hurt Canadian consumers.

In many cases, the problem is unnecessary differences in provincial and territorial regulations, leading to complex, and costly compliance requirements for businesses operating across provincial boundaries. In other more egregious cases, like restrictions on the interprovincial movement of alcohol, it is nothing less than out-and-out protectionism.

There is no question that freer trade among provinces and territories would lower the cost of doing business in Canada, attract more investment, and provide more choices at more competitive prices for consumers. However, governments have been slow to take meaningful action to remove these barriers. Restrictions on the sale and transportation of beer and wine have been off limits to any reform initiative. But, not all hope is lost. Like an awkward holiday dinner with the in-laws, beer and wine might save us still.

The Canadian Chamber is an intervener in the Supreme Court Case, *R v Comeau*. Gerald Comeau is the New Brunswick retiree who five years ago drove to Quebec to buy some alcohol. On his way home, crossing back into New Brunswick, he received a ticket from the RCMP for transporting alcohol across the

border. He challenged the ticket in court won. Now the case has gone all the way up to the Supreme Court.

Although the Comeau case is about alcohol, its implications are much larger. With the Comeau case, the Supreme Court has the opportunity to take an historic step towards freer interprovincial trade. The case rests on the interpretation of s. 121 of the Canadian Constitution, which states, "All Articles of the Growth, Produce, or Manufacture of any one of the Provinces shall, from and after the Union, be admitted free into each of the other Provinces."

The courts have interpreted this provision narrowly in the past, which has allowed provincial and territorial governments to enact trade barriers to protect domestic producers. However, the Chamber believes that a broader interpretation, which could outlaw many of the protectionist trade practices that have been engaged in for years, is appropriate.

As the Comeau case proceeds, there are signs that governments in Canada understand that the status quo is unsustainable. Earlier this year, the federal, provincial and territorial governments enacted the *Canadian Free Trade Agreement*, a pact which holds promise to remove barriers and facilitate regulatory harmonization between jurisdictions through a regulatory reconciliation process. While that is a nice stocking stuffer, a win for Gerald Comeau may be the perfect Christmas present for Canadians.

A [short summary](#) of the Comeau case and our legal argument is available here. Our lawyers present oral arguments at the Supreme Court hearing in Ottawa on December 6 and 7, 2017.

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¹ The poll was commissioned by the Montreal Economic Institute, Canadian Constitutional Foundation and the Atlantic Institute for Market Studies