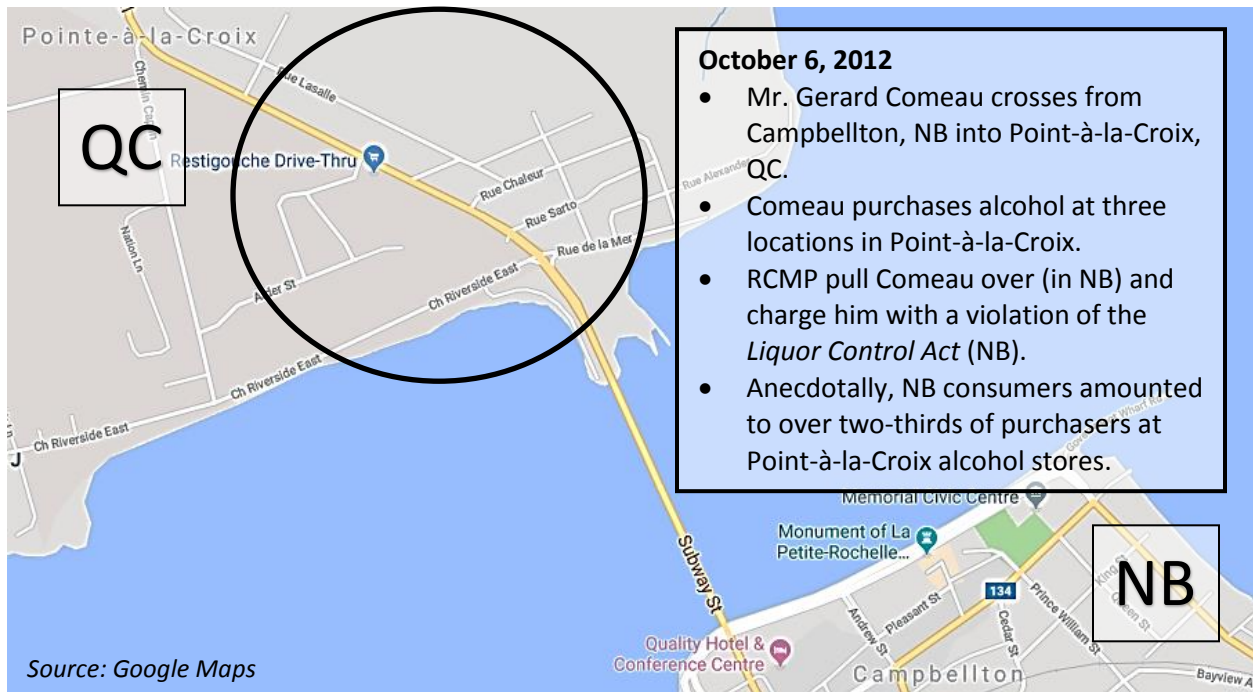


No More Beer Runs?: The “Beer Case” and Interprovincial Trade

R v Comeau, 2016 NBPC 3, 398 DLR (4th) 123, leave to appeal to CA denied, [2016] CarswellNB 445; [2016] NBJ No 232 (QL), rev’d 2018 SCC 15

The “Beer Run” to end all Beer Runs



The Constitution Act, 1867, 30 & 31 Vict, c 3

VIII. REVENUES; DEBTS; ASSETS; TAXATION [...]

121. All articles of the Growth, Produce, or Manufacture to any one of the Provinces, shall, from and after the Union, be admitted free into each of the other Provinces.

Post-mortem articles

Julius Melnitzer, “**Beer Battle: Cross-border out of bounds**”, Lexpert Magazine (July/Aug 2018)

Christopher Moore, “**A case of refined distinctions: Supreme Court beer decision leaves historians and lawmakers to their own debates**”, Canada’s History Magazine (Aug/Sept 2018)

Pre-existing case law, and the case for overturning *Gold Seal*

<i>Cases</i>	<i>Recent Articles</i>
<i>Gold Seal Ltd. v Attorney-General for the Province of Alberta</i> (1921), 62 SCR 424	Ian Blue, <i>On the Rocks; Section 121 of the Constitution Act, 1867, and the Constitutionality of the Importation of Intoxicating Liquors Act</i> (2009), 35 Adv Q 306
<i>Atlantic Smoke Shops Ltd. v Conlon</i> , [1943] 4 DLR 81 (UK JCPC)	Ian Blue, <i>On the Rocks; The Gold Seal Case: A Surprising Second Look</i> (2010), 36 Adv Q 363
<i>Murphy v Canadian Pacific Railway Co.</i> , [1958] SCR 626	Ian Blue, <i>Long Overdue: A Reappraisal of Section 121 of the Constitution Act, 1867</i> (2010), 33:2 Dalhousie Law Journal 162
<i>Reference re Agricultural Products Marketing Act</i> , [1978] 2 SCR 1198	Malcom Lavoie, <i>R. v. Comeau and Section 121 of the Constitution Act, 1867: Freeing the Beer and Fortifying the Economic Union</i> (2017), 40:1 Dalhousie Law Journal 189
<i>Canadian Egg Marketing Agency v Richardson</i> , [1998] 3 SCR 157	

The “essence” and “purpose” test (*précis* of *Comeau*, paras 108 and 111)

Is the **essence** or character of the law to restrict or prohibit trade across a provincial border, like a tariff? A claimant must establish that the law imposes an additional cost on goods by virtue of the goods coming in from outside the province. Put another way, a claimant must establish that the law distinguishes goods in a manner “related to a provincial boundary” that subjects goods from outside the province to additional costs. A prohibition on goods crossing the border is an extreme example of such a distinction.

A claimant must also establish that the **primary purpose** of the law is to restrict trade. A law may have more than one purpose. But impeding trade must be its primary purpose to engage s. 121. The inquiry is objective, based on the wording of the law, the legislative context in which it was enacted, and all of the law’s discernable effects. If the purpose of the law aligns with purposes traditionally served by tariffs, such as exploiting the passage of goods across a border solely as a way to collect funds, protecting local industry or punishing another province, this may, depending on other factors, support the contention that the primary purpose of the law is to restrict trade.

Some unanswered questions

Does section 121 apply to **quasi-commercial government enterprises** or municipal entities? (*Steam Whistle Brewing Inc v Alberta Gaming and Liquor Commission*, 2018 ABQB 476, 79 BLR (5th) 244)

Does section 121 apply differently to the **federal and provincial** governments? (*Comeau*, para 116)

What does **evidence** in section 121 cases look like? Who bears the **onus** of proof? (*Comeau*, para 110)

Will the Court be drawn to debates about the “**likeness**” of goods which frequently occupy WTO Panels?