SCC File No. 37398

IN THE SUPREME COURT OF CANADA
(On Appeal from the New Brunswick Court of Appeal)

BETWEEN

HER MAJESTY THE QUEEN

APPLICANT
(Appellant)

-AND-

GERARD COMEAU

RESPONDENT
(Respondent)

RESPONDENT'S RESPONSE TO APPLICATION FOR LEAVE TO APPEAL
(GERARD COMEAU, RESPONDENT)
(Pursuant to Rule 27 of the *Rules of The Supreme Court of Canada*)

GARDINER ROBERTS LLP
Bay Adelaide Centre, East Tower
22 Adelaide St. W., Suite 3600
Toronto, Ontario M5H 4E3

Ian Blue
Arnold Schwisberg
Mikael Bernanrd

Tel: (416) 865-2962
Fax: (416) 865-6636
Email: iblue@grllp.com

Counsel for the Respondent,
Gerard Comeau

SUPREME ADVOCACY LLP
340 Gilmour Street, Suite 100
Ottawa, Ontario K2P 0R3

Marie-France Major
Tel: (613)695-8855
Fax: (613)695-8580
Email: mfmajor@supremeadvocacy.ca

Ottawa Agent for Counsel for the
Respondent, Gerard Comeau

THE ATTORNEY GENERAL OF NEW BRUNSWICK
PUBLIC PROSECUTION SERVICES
Carleton Place
P.O. Box 6000
Fredericton, NB E3C 5H1

William B. Richards
Kathryn A. Gregory
Tel: (506) 453-2784
Fax: (506) 453-5364
Email: bill.richards@gnb.ca

Counsel for the Applicant

GOWLING WLG (CANADA) LLP
Barristers and Solicitors
160 Elgin Street
26th Floor
Ottawa, ON K1P 1C3

D. Lynne Watt
Tel: (613) 786-8695
Fax: (613) 788-3509
Email: **Lynne.watt@gowlingwlg.com**

Ottawa Agent for Counsel for the Applicant

TABLE OF CONTENTS

TAB **PAGE**

RESPONSE MEMORANDUM OF ARGUMENT

PART I – OVERVIEWAD STATEMENT OF FACTS 1

Scope of the Comeau Interpretation 2

Test for what constitutes a trade-barrier 3

Should s. 121 be allowed to limit legislative powers?.....4

Is s. 121 applicable to provincial legislative powers only? 4

Use of historical evidence.....5

The public's interest.....6

PART II - QUESTIONS IN ISSUE.....6

PART III - CONCISE STATEMENT OF ARGUMENT 6

Is s. 121 of the Canadian Constitution a free trade provision? 6

PART IV - COSTS 10

PART V - ORDERS SOUGHT.....11

PART VI - TABLE OF AUTHORITIES 12

PART VII – STATUTES, REGULATIONS, RULES, ETC. 13

MEMORANDUM OF ARGUMENT

PART I - OVERVIEW AND STATEMENT OF FACTS

1. This is the Respondent's response to the Applicant (Appellant)'s application to the Court under s. 40 of the *Supreme Court Act* for an order granting leave to appeal the judgment of the New Brunswick Court of Appeal, dated October 19, 2016, denying leave to appeal the decision of the Provincial Court of New Brunswick, dated April 29, 2016, such that this Court will hear the appeal of the decision of the Provincial Court, or such further or other order that this Court may deem appropriate.

2. In this response, the Respondent will refer to the Supreme Court of Canada as the "Court", the Supreme Court of the United States as "SCOTUS", the Applicant (Appellant) as "the Crown", the decision of the Provincial Court of New Brunswick, dated April 29, 2016 as the "Comeau decision", the interpretation of s. 121 of the Constitution Act, 1867[1] in *Gold Seal Ltd. v. Alberta (Attorney General)*[2] as the "Gold Seal interpretation" and the Comeau decision's interpretation of s. 121 as the "Comeau interpretation".

3. Section 121 of the *Constitution Act, 1867* states that "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." In 1920, the Court in *Gold Seal* held that the only trade-barriers that s. 121 prohibited were customs, duties or taxes affecting interprovincial trade in the products of any province.[3] In other words, s. 121 prohibited tariff trade-barriers only. The Comeau interpretation is that s. 121 prohibits all trade-barriers, whether federal or provincial, both tariff and non-tariff and that *Gold Seal* was wrongly decided. Consequently, the Comeau decision held that s. 134(b) of the New Brunswick *Liquor Control Act* constituted a trade-barrier which violated s. 121 and was, therefore, of no force or effect as against the Respondent. As such, the Comeau decision creates profound economic-rights implications for individuals and for government programmes and policies.

---

1 *Constitution Act, 1867,* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, App II, No 5.
2 *Gold Seal Ltd. v. Alberta (Attorney General,* (1921), 62 S.C.R. 424 [*Gold Seal*].
3 *Ibid* at paras 456 & 470.

4. The Respondent adopts and incorporates herein by reference the Crown's arguments in paragraphs 13 to 22 under the heading "What Is The Jurisdiction Of This Court To Hear This Appeal?" in the Crown's Memorandum of Argument. Under s. 40(1) of the *Supreme Court Act*,[4] the onus is upon those supporting an application for leave to appeal to satisfy the Court that "the … question involved therein is, by reason of its public importance or the importance of any issue of law or any issue of mixed law and fact involved in that question, one that ought to be decided by the Supreme Court or is, for any other reason, of such a nature or significance as to warrant decision by it…".

5. The Respondent agrees with the Crown and joins with it in submitting that the Comeau interpretation of s. 121 creates all the issues described in paragraphs 3 to 7, 15, 32, 38, 47, 54, 59 and 65 of the Crown's Memorandum of Argument and that those issues are ones of significant public importance.

6. The Respondent further submits that the Comeau interpretation raises additional issues of public importance that ought to be decided by the Court as set out in the following paragraphs.

Scope of the Comeau Interpretation

7. The Comeau interpretation changes a constitutional rule that stood for ninety-six years. Because of the authority of the Gold Seal interpretation and the rigidity of the *stare decisis* rule, until recently, governments erected a plethora of non-tariff interprovincial trade-barriers in the form of the *Importation of Intoxicating Liquors Act*,[5] the *Canadian Wheat Board Act*,[6] the *Farm Products Agencies Act*,[7] provincial marketing boards, mandatory sale requirements, prohibition of out-of-province purchases and the imposition of provincial quotas. Different requirements in different provinces about sizes, colours or shapes of containers for products, standards for equipment and repackage requirements[8] also constitute non-tariff trade barriers. These legislative

---

4 *Supreme Court Act*, RSC 1985, c. S-26.
5 *Importation of Intoxicating Liquors Act*, RSC 1985, c. I-3.
6 *Canadian Wheat Board Act*, RSC 1985, c. C-24 (repealed).
7 *Farm Products Agencies Act*, RSC 1985, c. F-4.
8 Examples are taken from: Brian Lee Crowley, Robert Knox & John Robson, "*Citizen of One, Citizen of the Whole: How Ottawa Can Strengthen our Nation by Eliminating Provincial*

and policy initiatives were created to benefit special interest groups, and now all fall under the shadow of the Comeau interpretation. It is publicly important that the Court clarify the scope of the Comeau interpretation in order to minimize future litigation over specific interprovincial trade-barriers, and to alert governments that they need to adjust their programmes, tax-policies and other initiatives to any new paradigm.

Test for what constitutes a trade-barrier

8. The Comeau interpretation does not provide a test for what constitutes an impermissible trade-barrier, as evidenced by the competing interpretations that have already emerged. Professor Michael Marin of the University of New Brunswick Law School believes that the Comeau interpretation captures any measure that merely inconveniences an out-of-province producer, whether or not it is discriminatory or protectionist.[9] On the other hand, in his dissent in *Murphy v. CPR*, Justice Rand stated:

> I take s. 121, apart from customs duties, to be aimed against trade regulation which is designed to place fetters upon or raise impediments to or otherwise restrict or limit the free flow of commerce across the Dominion as if provincial boundaries did not exist. That it does not create a level of trade activity divested of all regulation I have no doubt; what is preserved is a free flow of trade regulated in subsidiary features which are or have come to be looked upon as incidents of trade. What is forbidden is a trade regulation that in its essence and purpose is related to a provincial boundary.[10]

Is a non-tariff trade barrier, therefore, any measure that merely inconveniences an out-of-province producer, or must it be a measure that in its essence and purpose is related to a provincial boundary? It is publicly important that the Court provide guidance on this question.

Trade Barriers with a Charter of Economic Rights", MacDonald-Laurier Institute, True North in Canadian Public Policy 1:2 (June 2010) 4 at 8-9.

9 Michael Marin, University of New Brunswick, *Speaking notes on R. v. Comeau*, Runnymede Society Discussion Panel, Fredericton, November 9, 2016.

10 *Murphy v CPR*, [1958] SCR 626 at para 642.

Should s. 121 be allowed to limit legislative powers?

9. In reflecting upon the controversy of s. 121 and constitutionally entrenched economic rights, Professor Malcolm Lavoie of the University of Alberta Law School notes that the Comeau interpretation "threatens to shift the structure of Canadian federalism, as well as the structure of economic regulation in Canada" and "limit the scope of democratic action."[11] He further notes that "[t]here is simply no question that a robust interpretation of the Constitution's free trade provision would restrict the power of democratic majorities, especially at the provincial level, to set economic policies."[12] Professor Lavoie's points are not a legal argument against the Comeau interpretation, but are reminiscent of the arguments that John W. Davis made to the SCOTUS in 1954. Seeking to uphold the separate, but equal doctrine respecting black Americans established in *Plessy v. Ferguson*,[13] he argued that this interpretation of the equal rights clause had become a *fait accompli* for sixty years and therefore should be left at rest. The SCOTUS, however, overruled *Plessy v. Ferguson* in *Brown v. Board of Education of Topeka*.[14] This historic precedent from civil rights law should inform the question of whether the Court could and should overturn a hundred year-old decision, regardless of its entrenchment, and require governments or special interest groups to adjust to the Comeau interpretation. More broadly, it invites the question of whether the Court should read the Constitution as it is, rather than in accordance with the "notions of theorists".[15]

Is s. 121 applicable to provincial legislative powers only?

10. The recent decisions of the Court on inter-jurisdictional immunity[16] do not support the view that s. 121 is nothing more than an interpretation-aide to the trade and commerce power in

---

[11] Malcolm Lavoie, "*R. v. Comeau* and Section 121 of the *Constitution Act, 1867*: Freeing the Beer and Fortifying the Economic Union," Dal LJ, [forthcoming in 2016] at 16 & 18, online: <https://ssrn.com/abstract=2840845>.

[12] *Ibid.*

[13] *Plessy v. Ferguson*, (1896) 163 U.S. 537.

[14] *Brown v. Board of Education of Topeka*, (1954) 347 U.S. 483.

[15] This question was inspired by LaForest, J.'s aphorism in *Ontario Hydro v. Ontario (Labour Relations Board)*, [1993] 3 SCR 327 at para 370.

[16] *Ontario v. Canadian Pacific Ltd*., (1993), 13 O.R. (3d) 389 at para 398; affirmed [1995] 2 S.C.R. 1028; *Air Canada v. Ontario* , [1997] [1997] 2 SCR 581 at para 55; *Canadian*

s. 91(2) and applicable to provincial trade-barriers only. However, the question arises whether the trade and commerce power, by itself, provides Parliament with sufficient authority to prohibit interprovincial trade-barriers.[17]

11. The Court has held that Parliament acting under s. 91(2), even with the "notwithstanding anything in this Act" phrase, cannot trump ss. 92(13) and 92(16) powers.[18] Any federal power is also subject to other provisions of the Constitution, such as ss. 21 to 27, 35, 96, 85, 100 to 103, and of course, the Charter. Why, therefore, should federal powers not also be subject to the plenary and independent s. 121?

12. These are questions of broad public importance that also require consideration by the Court.

Use of historical evidence

13. It is apparent from the Comeau decision that while a purposive interpretation was followed, emphasis within that analysis was placed on the legislative history and historical context of s. 121.[19] The Respondent submits that the use of historical evidence was appropriate and sufficient to determine that Gold Seal was incorrectly decided, especially since the Court previously used historical evidence to interpret s. 92(10)(a) of the *Constitution Act, 1867*[20] and has reaffirmed that the Constitution must be interpreted in light of its historical, philosophical and linguistic context.[21] If the legislative history of a provision is one element of a purposeful

---

Western Bank v. Alberta, [2007] 2 S.C.R. 3 at paras 47- 49*; Quebec (Attorney General) v. Canadian Owners and Pilots Association*, [2010] 2 S.C.R. 536 at para 26; *Marine Services International Ltd. v. Ryan Estate*, [2013] 3 SCR 53 at paras 50 & 53-56*; Alberta (Attorney General) v. Moloney*, [2015] 3 S.C.R. 327 at para 29.

17 Asher Honickman, "A Marriage Made in Britain: Section 121 and the Division of Powers" at paras 3, 12-13, online: <http://canliiconnects.org/en/commentaries/43804>.

18 *Reference re Securities Act*, [2011] 3 S.C.R. 837.

19 *Supra* note 11 at paras 1-2.

20 *Consolidated Fastfrate Inc. v Western Canada Council of Teamsters*, [2009] 3 SCR 407 at para 32.

21 *Caron v. Alberta*, [2015] 3 SCR 51 at paras 117 and 218. See also: *Reference re Employment Insurance Act (Can.), ss. 22 and 23*, [2005] 2 SCR 669 at para 45, viz. "On the one hand, no constitutional head of power is static. On the other hand, the evolution of society cannot

interpretation, how can a review of historical evidence not be appropriate? This is a question of public importance that the Court should address.

The public's interest

14. The Comeau interpretation has significantly raised the consciousness of the public about interprovincial free trade and the possibility of interprovincial purchases of wine, beer, dairy products, maple syrup and other Canadian products not obtainable in certain provinces. This is evidenced by the hundreds of domestic and international reports, articles, op-ed pieces and editorials about the Comeau decision. It is publicly important that the Court hear this appeal in order to requite the wide interest in this compelling public issue.

PART II - QUESTIONS IN ISSUE

15. The Respondent agrees with the issues as stated in paragraphs 11 and 12 of the Crown's Memorandum of Argument.

PART III - CONCISE STATEMENT OF ARGUMENT

Is s. 121 of the Canadian Constitution a free trade provision?

Argument in Chief

16. It is unnecessary for the Respondent to re-state his argument made before the trial judge. The Comeau decision adopted most of the Defence's written argument prepared by counsel for the Respondent.[22] The Respondent submits that the Comeau interpretation of s. 121 is correct

---

justify changing the nature of a power assigned by the Constitution…" and *B(R) v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 SCR 315 at para 337, viz. judges must play an " important creative role enabling the law to change and adapt constantly to our society... but such interpretation must be strictly limited and circumscribed by the guidelines laid down by the Constitution or the legislation that our country, through its elected leaders and representatives, has adopted."

[22] This written argument was drafted by Ian A. Blue, Q.C. It was based, in turn, on four published papers on s. 121 written by him and on the expert evidence of Dr. Smith. Mr.

and ought to be upheld by the Court. In making this submission, the Respondent relies upon the reasoning in the Comeau decision and the Respondent's expert testimony at trial[23] and incorporates them here by reference.

Response to the submissions of the Crown in its Memorandum of Argument

17. In paragraph 25, the Crown states that "Section 121 is not an absolute free trade provision and it does not subordinate sections 91 and 92 constitutional trade and regulatory powers". The Crown cites *UL Canada Inc. v. Quebec*[24] in support of this proposition. However, in the *UL Canada* case, the appellant did not argue that the free movement of goods and products was justified under s. 121, but that it was a component of federalism. Section 121 was not in issue in that case.

18. In paragraph 29, the Crown argues that the context of the Constitution is provided by the rules of the "unwritten constitution" as recognized by *Quebec v. Canada,*[25] *Reference re Senate Reform,*[26] and *Reference re Remuneration of Judges of the Provincial Court (PEI).*[27] The Respondent agrees, but none of these cases mention s. 121 or reference any constitutional convention that would derogate s. 121.

19. In paragraphs 30-32, the Crown cites *Re: Prohibitory Liquor Laws*[28] to argue that Canada's constitutional scheme is designed to accommodate the interests of both the collective

---

Blue's four papers were: Ian A. Blue, "Long Overdue: A Reappraisal of Section 121 Of the Constitution Act, 1867," (2010) 33 Dal LJ 2, at 161; Ian Blue, "Q.C. Free Trade within Canada: Say Goodbye to Gold Seal, Macdonald-Laurier Institute" (May 2011); Ian Blue, "On the Rocks? Section 121 of the Constitution Act, 1867, and the Constitutionality of the Importation of Intoxicating Liquors Act," (2009) 35 Adv. Q. 306; Ian Blue, "On The Rocks; The Gold Seal Case: A Surprising Second Look," (2010), 36 Adv. Q. 363.

[23] A summary of Dr. Smith's evidence is found in the Respondent's Book of Authorities.
[24] 2003 CarswellQue 14921 at para 71 [*UL Canada*].
[25] 1982 CarswellQue 124.
[26] 2014 SCC 32.
[27] [1997] 3 S.C.R. 3.
[28] (1895) 24 S.C.R. 170

and individual members of the federation. The Respondent agrees with this sentiment, but notes that this case did not mention s. 121.

20. In paragraph 35, the Crown asserts that the division of powers between the federal Parliament and provincial legislatures is part of the written Constitution as contained in sections 91 and 92 respectively. The Crown quotes *Reference re Same Sex Marriage*[29] to assert that there "is no topic that cannot be legislated upon…" However, the Crown overlooks the next sentence which states that "the particulars of such legislation may be limited by, for instance, the Charter."[30] The Court, therefore, was careful to qualify the principle of exhaustiveness, which unravels the Crown's argument. It is well known that the exhaustiveness doctrine cannot:

(a) reduce First Nations rights under s. 35 of the *Constitution Act, 1982*;

(b) alter the essential functions of courts under ss. 96 and 100 of the *Constitution Act, 1867*;

(c) derogate rights under the *Canadian Charter of Rights and Freedoms*;

(d) abolish the federal consolidated revenue fund created under ss. 102 and 103 of the *Constitution Act, 1867*;

(e) change the duration of legislative assemblies under s. 85 thereof; or

(f) or change the Senate under ss. 21 to 27 thereof.

21. Similarly, the Respondent submits that the exhaustiveness doctrine cannot abolish or derogate s. 121 which is a plenary and independent provision of the Constitution of the same genus as those just mentioned.

22. In paragraphs 37-38, the Crown cites *Ontario Home Builders' Assn. v. York Region Board of Education*[31] to argue that s. 121 should be construed narrowly by the courts to avoid constraining federal and provincial heads of powers under ss. 91 and 92. However, that case was

---

[29] [2004] 3 S.C.R. 698.
[30] *Ibid* at para 34.
[31] 1996 CarswellOnt 3403.

about the limit on indirect taxation under s. 92(2), and did not mention s. 121. It is therefore of no assistance in interpreting s. 121.

23. In paragraph 40, the Crown argues that constitutional rights are balanced and not hierarchically determined. In support, it cites *R v. Caron*.[32] *R v. Caron*, however, does not mention s. 121 and does not assist in interpreting it.

24. In paragraph 41, the Crown cites *TsiIqhot'n v. British Columbia*.[33] The issue in *Tsilqhot'n* was whether a declaration of aboriginal title requested over an area of British Columbia should be granted and whether British Columbia breached the duty-to-consult that it owed to the Tsilqhot Nation. It does not mention s. 121.

25. In paragraph 42, the Crown cites *Reference re Remuneration*[34] and *Reference re Secession of Quebec*[35] to state that the purpose of Confederation was not to weld the provinces into one, nor to subordinate provincial governments to a central authority, but to establish a central government in which these provinces should be represented, entrusted with exclusive authority only in affairs in which they had a common interest. Subject to this, each province was to retain its independence and autonomy and to be directly under the Crown as its head. From this observation the Crown argues that the cultural, economic and political diversity of regional Canada are the agents which have driven and continue to drive the need for co-operative federalism. The Respondent agrees with these statements, but submits they do not assist in the interpretation of s. 121.

26. In paragraph 45, the Crown cites *Reference re Senate Reform* for the same principle. This case also does not mention s. 121 and does not assist the interpretation of s. 121.[36]

27. In paragraphs 48-54, the Crown cites *Fédération des producteurs de volailles du Québec v. Pelland*,[37] as an example of federal and provincial legislation working concurrently.

---

[32] 2015 SCC 56 at paras 6 & 38.
[33] 2014 SCC 44 [*Tsilqhot'n*].
[34] [1997] 3 SCR 3.
[35] [1998] 2 SCR 217 [*Quebec Secession*].
[36] *Supra* note 26.
[37] 2005 SCC 20 [*Pelland*].

However, the *Pelland case* was concerned with whether a provincial scheme was applicable to production of chicken intended for interprovincial market. It did not mention s. 121 and therefore is not helpful in interpreting it.

28. In paragraphs 63-65, the Crown again argues the exhaustiveness principle as described in *Reference re Same Sex Marriage*. It asserts that there "is no topic that cannot be legislated upon…" The Respondent has responded to that argument in paragraph 22, above.

29. In paragraph 64, the Crown argues that *Morguard Investments Ltd. v. De Savoye*[38] holds that ss. 91 and 92 together achieve the same results as s. 121. However, the issue in *Morguard* was whether an Alberta judgement in a mortgage foreclosure case could be enforced in British Columbia. The reference to s. 121 was a passing and uncritical one, in the larger context that the Constitution was intended to create a single country and that it was anarchic and unfair that a person should be able to avoid legal obligations arising in one province simply by moving to another province. It is not of assistance in interpreting s. 121.

PART IV - COSTS

30. The Crown has assured the Respondent that its interest in seeking leave to appeal in this case is not to have a fine levied against the Respondent. Counsel for the Crown and the Respondent have agreed that if the Court grants leave to appeal the Comeau decision and agrees to hear the appeal, the Crown will not oppose a request by the Respondent for a permanent judicial stay of penalty, at any level of court, should the appeal subsequently be allowed and a penalty imposed.

31. The Respondent has requested that the Crown fund the Respondent before this court which the Crown has declined to do. The Respondent is a retired workman who did not qualify for legal aid due to the minor nature of the charge. The Comeau decision, however, has become a case of wide and far reaching public importance with commensurate financial implications to government, enterprises and individual Canadians. The lawyers for the Respondent have collectively donated over $200,000.00 in time to provide the Respondent's defence, to the detriment of the practices of those lawyers, and are unable to assist further without payment.

---

[38] 1990 CarswellBC 283 [*Morguard*].

32. For its part, the Canadian Constitutional Foundation has done its best to fund-raise for the appeal to the Court but to date has received only enough to fund disbursements and pay half rates for preparation of this response, to a limit of $30,000.00.

33. Mr. Blue, Mr. Schwisberg and M. Bernard continuing to represent the Respondent is integral to explaining how the Comeau interpretation can workably fit into the Constitution. If the Court decides to hear this appeal, it can expect requests to intervene from provincial Attorneys General, provincial liquor boards and other interests for the *status quo*. There needs to be a strong defence of the Comeau interpretation in order for the Court to see all corners of the issues.

PART V - ORDERS SOUGHT

34. For all these reasons, the Respondent requests that Leave to Appeal be granted with costs to the Respondent for the application and if leave is granted, the appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Ian a-Blue

Ian Blue
Counsel for the Respondent

IAB For: Arnold B Schwisberg

Arnold B Schwisberg
Counsel for the Respondent

IAB For: Mikael H. H. Bernard

Mikael H.H. Bernard
Counsel for the Respondent

PART VI - TABLE OF AUTHORITIES

	Description	**PARA**
	Air Canada v. Ontario, [1997] 2 SCR 581	10
	Alberta (Attorney General) v. Moloney, [2015] 3 S.C.R. 327	10
	B(R) v. Children's Aid Society of Metropolitan Toronto, [1995] 1 SCR 315	13
	Brown v. Board of Education of Topeka (1954), 347 U.S. 483	9
	Canadian Western Bank v. Alberta, [2007] 2 S.C.R. 3	10
	Caron v. Alberta, [2015] 3 SCR 5	23,13
	Consolidated Fastfrate Inc. v Western Canada Council of Teamsters, [2009] 3 SCR 407	13
	Gold Seal Ltd. v. Alberta (Attorney General) (1921), 62 S.C.R. 424)	2,3,7,13
	Marine Services International Ltd. v. Ryan Estate, [2013] 3 SCR 53	10
	Murphy v CPR, [1958] SCR 626 at 642	8
	Ontario v. Canadian Pacific Ltd (1993), 13 O.R. (3d) 389 at p. 398; affirmed [1995] 2 S.C.R. 1028;	10
	Plessy v. Ferguson (1896), 163 U.S. 537	9
	Quebec (Attorney General) v. Canadian Owners and Pilots Association, [2010] 2 S.C.R. 536	10
	Reference re Employment Insurance Act (Can.), ss. 22 and 23, [2005] 2 SCR 669	13
	Reference re Securities Act, [2011] 3 S.C.R. 837	11
BOOKS		
	Asher Honickman, A Marriage Made in Britain: Section 121 and the Division of Powers:	10
	Brian Lee Crowley, Robert Knox & John Robson, "Citizen of One, Citizen of the Whole: How Ottawa Can Strengthen our Nation by Eliminating Provincial Trade Barriers with a Charter of Economic Rights", MacDonald-Laurier Institute, True North in Canadian Public Policy 1:2 (June 2010) 4 at 8-9	7
	Ian Blue, "On the Rocks? Section 121 of the Constitution Act, 1867, and the Constitutionality of the Importation of Intoxicating Liquors Act" (2009), 35 Adv. Q. 306	7,16
	Ian Blue, On The Rocks; The Gold Seal Case: A Surprising Second Look, (2010), 36 Adv. Q. 363.	16
	Ian Blue, Q.C., Free Trade within Canada: Say Goodbye to Gold Seal, Macdonald-Laurier Institute, May 2011	16

	Description	PARA
	Malcolm Lavoie, R. v. Comeau and Section 121 of the Constitution Act, 1867: Freeing the Beer and Fortifying the Economic Union (October 16, 2016). Dalhousie Law Journal, Forthcoming.	9
	Michael Marin, University of New Brunswick, Speaking notes on R. V. Comeau, Runnymede Society Discussion Panel, Fredericton, November 9, 2016	8
	Ian A. Blue (Blue), Long Overdue: A Reappraisal of Section 121 Of the Constitution Act, 18 67, (2010), 33 Dal. L.J. No 2 161	16

PART VII – STATUTES, REGULATIONS, RULES, ETC.

	Description
	Canadian Wheat Board Act, RSC 1985, c. C-24
	Constitution Acts, 1867 to 1982
	Farm Products Agencies Act, RSC 1985, c. F-4
	Importation of Intoxicating Liquors Act, RSC 1985, c. I-3

Constitution Act, 1867

121. 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.

121. Tous articles du crû, de la provenance ou manufacture d'aucune des provinces seront, à dater de l'union, admis en franchise dans chacune des autres provinces.

Liquor Control Act RSNB 1973, c. L-10

134.Except as provided by this Act or the regulations, no person, within the Province, by himself, his clerk, employee, servant or agent shall
(a) attempt to purchase, or directly or indirectly or upon any pretence, or upon any device, purchase liquor, nor
(b) have or keep liquor, not purchased from the Corporation.

134. Sauf dans les cas prévus par la présente loi et les règlements, nul ne doit, dans la province, soit personnellement, soit par l’entremise de son commis, employé, préposé ou représentant,
a) essayer d’acheter ni acheter, directement ou indirectement, sous quelque prétexte que ce soit ou par quelque moyen que ce soit, des boissons alcooliques, ni
b) avoir ou garder des boissons alcooliques