



The Constitution allows the federal, provincial and territorial governments to work together to regulate securities trading under a single, unified system, the Supreme Court has ruled.

Securities are stocks, bonds, and other financial products. They are often traded on stock markets by investors. Canada is one of the only developed countries that doesn't have a *national* (that is, a Canada-wide) regulator to oversee securities trading. This is mostly because of how the Constitution is written, with powers divided between the provincial and federal governments. Courts have read the Constitution as saying that only provinces and territories can make laws about securities trading within their borders. The federal government can't make these kinds of laws, but it has other general powers over trade and commerce. So, in Canada, each province and territory has its own securities regulator.

The federal government thought financial markets were so important to the Canadian economy that they should be overseen by a single regulator. In 2011, it asked the Supreme Court whether Parliament would be allowed to pass a federal law to do that. The Court said no, because under the Constitution, the provinces and territories have power over most aspects of securities regulation. The federal government can't make laws on issues that belong to the provinces and territories. The Court said, though, that a *cooperative* approach could be constitutional. In a cooperative approach, provinces and territories would deal with aspects of securities regulation within their power, and the federal government would deal with aspects within its power.

Based on this advice, the governments of Canada, Ontario, B.C., Saskatchewan, New Brunswick, P.E.I., and Yukon proposed a "Cooperative System" to oversee securities markets across the country. It was made up of a "draft law" that the federal Parliament could pass, a "model law" that provincial and territorial legislatures could pass, and a national securities regulator. The system was set out in an agreement between executive levels of government (that is, the Prime Minister and Premiers, and their cabinets).

Quebec, Alberta, and Manitoba had concerns about the proposal. In 2015, Quebec asked its Court of Appeal to answer two questions about it. The first was whether the proposed Cooperative System would be permitted by the Constitution. The second was whether the draft federal law overstepped the federal government's general trade and commerce powers. The Court of Appeal answered no to both questions.

The Supreme Court unanimously answered yes to the first question, and no to the second question. While the proposal is constitutional, the Court said that each province and territory has to decide for itself whether it is a good idea to join. This is a policy choice, not a legal one.

On the first question, the Court said the Cooperative System is constitutional because it doesn't interfere with "parliamentary sovereignty." Parliamentary sovereignty is an important constitutional principle. It means that the legislature (and *only* the legislature) can pass, change, and get rid of any laws that it chooses to. Some provinces argued that the Cooperative System would force provincial and territorial legislatures to pass the model law, and any changes made to it at a later date (which would go against parliamentary sovereignty). But the Court disagreed, and said that any legislature remains free to reject the model law, or any of its changes, if it wants to. Even though a "Council of Ministers" would be in charge of approving changes to the Cooperative System, they wouldn't have the power to change any actual laws. If a legislature disagrees with the Cooperative System or any changes, it could always reject them.

For the second question, the Court said the draft federal law falls within Parliament's general powers to regulate trade and commerce, which it has under the Constitution. But Parliament can only use this power to make laws dealing with truly national issues, which are issues that provinces and territories can't deal with on their own. In this case, the draft federal law was written very carefully. It focuses on "systemic risk" that could hurt Canada's economy, and doesn't go beyond that. It is meant to work together with provinces' and territories' laws, and doesn't interfere with their role in securities regulation.

Finally, and related to the second question, the Court said it is fine for the federal government to give the Council of Ministers the power to make federal regulations on its behalf. Regulations are “secondary rules” made by people or groups that are given rule-making powers by the legislature. Some of the provinces saw a problem with Parliament letting a group like the Council of Ministers, made up mostly of *provincial* representatives, be involved in making *federal* regulations. But the Court doesn’t see a problem with this. Parliament can choose to delegate power to make federal regulations to other people or groups, including provincial groups, if it wants to. It can also take that power away, if it wants to.

This case came to the Supreme Court as an appeal from a provincial “reference.” References are questions that governments ask courts for their opinion on. (In law, an “opinion” isn’t just a belief or point of view. It is a formal explanation of the law.) The federal government can ask the Supreme Court for a legal opinion on an issue, like it did with the *Securities Act Reference* in 2011. Provincial and territorial governments can ask their Courts of Appeal for opinions, too. These opinions can be appealed to the Supreme Court. This case began as a reference to the Quebec Court of Appeal by the Quebec government.

Breakdown of the Decision: *Unanimous*: The Court (Chief Justice [Wagner](#) and Justices [Abella](#), [Moldaver](#), [Karakatsanis](#), [Gascon](#), [Côté](#), [Brown](#), [Rowe](#), and [Martin](#) in agreement)

More information (case # 37613): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

Lower court ruling: [Court of Appeal of Quebec](#)

Previous Supreme Court reference: [Reference re Securities Act, 2011](#)
