Court File No. 37398

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

BETWEEN

HER MAJESTY THE QUEEN

APPELLANT
(Appellant)

– and –

GERARD COMEAU

RESPONDENT
(Respondents)

– and –

ATTORNEY GENERAL OF CANADA; ATTORNEY GENERAL OF ONTARIO; ATTORNEY GENERAL OF QUEBEC; ATTORNEY GENERAL OF NOVA SCOTIA; ATTORNEY GENERAL OF BRITISH COLUMBIA; ATTORNEY GENERAL OF PRICE EDWARD ISLAND; ATTORNEY GENERAL OF SASKATCHEWAN; ATTORNEY GENERAL OF ALBERTA; ATTORNEY GENERAL OF NEWFOUNDLAND AND LABRADOR; ATTORNEY GENERAL OF NORTHWEST TERRITORIES; GOVERNMENT OF NUNAVUT (AS REPRESENTED BY THE MINISTER OF JUSTICE); LIQUIDITY WINES LTD., PAINTED ROCK ESTATE WINERY LTD., 50TH PARALLEL ESTATE LIMITED PARTNERSHIP, OKANAGAN CRUSH PAD WINERY LTD. and NOBLE RIDGE VINEYARD AND WINERY LIMITED PARTNERSHIP; ARTISAN ALES CONSULTING INC.; MONTREAL ECONOMIC INSTITUTE; FEDERAL EXPRESS CANADA CORPORATION; CANADIAN CHAMBER OF COMMERCE, CANADIAN FEDERATION OF INDEPENDENT BUSINESS; CANNABIS CULTURE; ASSOCIATION OF CANADIAN DISTILLERS, OPERATING AS SPIRITS CANADA; CANADA'S NATIONAL BREWERS; DAIRY FARMERS OF CANADA, EGG FARMERS OF CANADA, CHICKEN FARMERS OF CANADA, TURKEY FARMERS OF CANADA, and CANADIAN HATCHING EGG PRODUCERS; CONSUMER COUNCIL OF CANADA; CANADIAN VINTNERS ASSOCIATION; and ALBERTA SMALL BREWERS ASSOCIATION

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PART I: OVERVIEW OF POSITION AND FACTS

1. No international or interprovincial trading relationship can be usefully described as "free." Free trade is aspirational, relative, and fact-specific. A sesquicentennial apart, in 1867 and 2017, Canada and her provinces work diligently for *freer* trade.

2. This appeal confronts the Court with an approach to constitutional interpretation best described as "originalist," deployed to overturn decisions of this Court and the Judicial Committee in foundational cases on the scope of section 121 and the trade and commerce power.

3. With a substantial body of 20th century study and legal experience in mind, the *Agreement on Internal Trade* ("*AIT*")[1] became the bellwether for economic integration after patriation. The AIT was retired on July 1, 2017 and replaced by the successor *Canadian Free Trade Agreement* ("*CAFTA*").[2] Saskatchewan submits that inter-Canadian trade agreements should be front of mind in this Court's assessment of the constitutional question. By advancing our federal economic union on a theory of mutual and unanimous consent, dispute resolution by arbitration, and prudent exceptions, Canada and her provinces have strengthened the economic basis of our federation without compromising public policy or undermining provincial and federal heads of jurisdiction. It is a uniquely "made in Canada" approach to trade and federalism.

PART II: POSITION OF THE ATTORNEY GENERAL OF SASKATCHEWAN

4. Saskatchewan submits the proper question is as posed by the Appellant:

> Does s. 121 of the *Constitution Act, 1867*, 30 & 31 Vict, c 3 (UK) render unconstitutional s. 134 of the *Liquor Control Act*, RSNB 1973, c L-10, which along with s. 3 of the *Importation of Intoxicating Liquors Act*, RSC 1985, c I-3 establishes a federal-provincial regulatory scheme in respect of intoxicating liquor?

5. The Respondent poses hypothetical, open-ended constitutional questions which were not within the jurisdiction of the trial judge to answer—faced as he was with a simple application pursuant to section 52 of the *Constitution Act, 1982* and not an *ad hoc* reference.

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[1] *Agreement on Internal Trade*, 18 July 1994, online: Internal Trade Secretariat <https://www.cfta-alec.ca/> (expended, no longer in force as of 1 July 2017) [*AIT*].
[2] *Canadian Free Trade Agreement*, 6 April 2017, online: Internal Trade Secretariat <https://www.cfta-alec.ca/> (entered into force 1 July 2017) [*CAFTA*].

PART III: ARGUMENT

A. Vertical *stare decisis*

6. In the words of the trial judge, this Court's decision in *Gold Seal Ltd. v. Alberta (Attorney General)*[3] was "wrongly decided" and its conclusions "unwarranted and unfounded." On the basis of the framework in *Canada (Attorney General) v. Bedford*[4] and with purportedly fresh evidence on the hearts and minds of the framers and a new metaphor of "constitutional moments,"[5] each of *Gold Seal*, *Atlantic Smoke Shops v Conlon*[6] and *Murphy v C.P.R.*[7] were overturned.

7. As *Bedford* confirms, the doctrine of *stare decisis* is foundational to the common law of Canada,[8] and lower courts are only entitled to depart from binding cases in response to developments in the law or evidence that "fundamentally [shift] the parameters of the debate." The trial decision in *Comeau* does not comport with the *Bedford* test, and raises larger questions about how *stare decisis* interacts with "originalist" interpretive notions.

8. While it is clear that doctrine of *stare decisis* is itself subordinate to the Constitution of Canada,[9] vertically binding precedent is notionally determinative of what the Constitution says and means. Lower courts may revisit and critique a problematic precedent but must abide by it,[10]

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[3] *Gold Seal Ltd. v Dominion Express Co* (1921), 62 SCR 424 [*Gold Seal*].
[4] *Canada (Attorney General) v Bedford*, 2013 SCC 72 at 42, [2013] 3 SCR 1101 [*Bedford*].
[5] *R v Comeau*, 2016 NBPC 3, 398 DLR (4th) 123 at paras 22, 52, 55, 19 and 150. The American theory of "constitutional moments" is a framework that identifies "moments" when the U.S. Supreme Court pivoted around new legal principles as a form of "higher lawmaking," famously proposed by Professor David Akerman. Ironically, it has been analogized to Canada's "living tree": Jonathan W. Penny, "Deciding in the Heat of the Constitutional Moment" (2006) 28 Dalhouse Law J 217 at 219.
[6] *Atlantic Smoke Shops Limited v Conlon*, [1943] 4 DLR 81 at 92-93 [*Conlon*] (*per* Viscount Simon for the Board).
[7] *Murphy v C.P.R.*, [1958] SCR 626 at 633-34 [*Murphy*] (*per* Locke J. for the majority).
[8] *Bedford* at paras 38 and 44; *Canada (Attorney General) v Confédération des syndicats nationaux*, [2014] 2 SCR 477, 2014 SCC 49 at 45.
[9] *Bedford* at para 43.
[10] *Craig v R*, 2012 SCC 43 at 21, [2012] 2 SCR 489 [*Craig*].

subject to *Bedford* and a narrow exception for decisions rendered *per incuriam*.[11] For horizontal precedent, revisiting past decisions of the same court in "compelling circumstances" balances correctness with certainty[12] and protects the Court from perpetuating errors.

9. A simple disagreement with this Court on the meaning of a constitutional provision is not a basis to avoid binding precedent on an "anticipatory" basis.[13] This approach to *stare decisis* and historical evidence of "original intent" was inappropriate, for three reasons.

i. A lack of evidence

10. The first issue is factual. The use of historical evidence to "interpret" constitutional provisions is not straightforward. Early case law disapproved of the exercise entirely, applying the usual exclusionary rules reserved for ordinary statutes.[14] The practice has evolved and admitting extrinsic evidence is now *de rigeur* for constitutional cases,[15] particularly references.[16] Despite its admissibility, extrinsic evidence is merely one factor among many that must be considered in the interpretive exercise, and in many cases it is assigned fairly minimal weight.[17]

11. But historic extrinsic evidence of this nature is not "evidence" in the *Bedford* sense. The Respondent proffered legislative history,[18] useful only to augur the lawmaker's intent or to explore the social mischief surrounding an enactment. Historical facts germane to the drafting history of a provision do not form the *lis*, nor do they affect the orbiting social facts.[19] This is

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[11] Debra Parkes, "Precedent Unbound? Contemporary Approaches to Precedent in Canada" (2008) 32 Man L J 134 at 142. The exception for *per incuriam* decisions is not relevant here, unless each of *Gold Seal*, *Conlon*, and *Murphy* were so rendered.

[12] *Craig* at paras 25-27.

[13] Parkes at 145-46, citing *R v Buchinsky*, [1983] 1 SCR 481 at 485. See also *Black v Owen*, 2017 ONCA 397 at 42-46, 27 ETR (4th) 163.

[14] Peter W. Hogg, "Legislative History in Constitutional Cases" in Robert J. Sharpe, ed, *Charter Litigation* (Butterworths: Toronto and Vancouver) at 146.

[15] Frederick Vaughan, "The Use of History in Canadian Constitutional Adjudication" (1989-90) 12 Dalhousie L J 59 at 72-73; *Re B.C. Motor Vehicle Act*, [1985] 2 SCR 486 at para 46.

[16] Peter W Hogg, *Constitutional Law of Canada*, 5th ed (Supp), Vol 2 (Carswell: Toronto, 2007) at 60-16 to 60-17.

[17] *Re BC Motor Vehicle Act*, at para 52; Sharpe at 135 and 157 (by Hogg).

[18] Sharpe at 131-32 (by Hogg).

[19] Adopting here the dichotomy from *Bedford*, at para 52.

different from the species of "historic" evidence described elsewhere, particularly in Aboriginal or separate school cases,[20] where the historical facts are the subject of the litigation and contested by the parties. By contrast, legislative history is frequently a matter of public record and judicially noticed[21] and has no clear standard of proof.[22]

12. Hansard and other speeches, drafting history, and pre-existing legal texts are used to discover the law—that is, the meaning of the Constitution—and are not facts to which the law is applied. This mixed approach to fact and law is reflected in the trial decision below: on key points, it is not clear whether the trial judge was or believed he was making legal or factual determinations.[23] The role of the trier of fact, trier of law, and expert witness are confused by this deferential approach to legislative history.

13. The historical records of Canada's confederation are notoriously poor[24] and the quality of the historical evidence levelled against *Gold Seal* reflects this. Other than statesmen speaking quasi-contemporaneously of a general intent for Canada to comprise an economic union, only references to a New Brunswick statute and a pre-existing Anglo-French treaty[25] were offered as grist for the interpretive mill on the meaning of "admitted free". Even with *Bedford* as a fulcrum, this was far too short an evidentiary lever to use against the collective weight of *Gold Seal* and subsequent cases.

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[20] *E.g. Delgamuukw v British Columbia*, [1997] 3 SCR 1010 and *Reference re Bill 30*, [1987] 1 SCR 1148 (decision of Wilson J.), respectively.

[21] Hogg, at 60-3 to 60-4.

[22] Inchoate intent may even be "impossible" to prove: *Re BC Motor Vehicle Act* at 52. On the contrary, where individual documents or facts are judicially noticed they are beyond proof: *R v Spence*, 2005 SCC 71, [2005] 3 SCR 458 at para 55.

[23] *E.g.* compare paragraphs 63 to 69. Are these decisions of fact or law? Contrasting the language of similar enactments is the *sine qua non* of the judicial role and should not require expert pronouncement: Vaughn at 61; Clifford Ian Kyer, "Has History a Role to Play in Constitutional Adjudication: Some Preliminary Considerations" (1981) 15 Law Society Gazette 135 at 140.

[24] Hon. Ian Binnie, "Constitutional Interpretation and Original Intent" in Grant Huscroft and Ian Brodie, eds, Constitutionalism in the Charter Era (Butterworths: LexisNexis, 2004) at 370-72; Kyer at 142, 144-145; Vaughn at 61; Sharpe at 145 (by Hogg).

[25] *Comeau*, at para 61; Appellant's Record, Volume V, Tab 29, page 126.

ii. A lack of certainty

14. The second issue is practical. It may be too glib to say that legislative history does not change and cannot form the basis for a *Bedford* re-examination. In practice, the problem is probably the opposite.

15. As Samuel Butler's protagonist in *Erewhon Revisited* notes: "It has been said that though God cannot alter the past, historians can."[26] Courts cannot be asked to unspool centuries of vertically superior precedent when faced with historians duelling about the intent or context surrounding a constitutional provision. Heavy reliance on extrinsic evidence renders the law inherently uncertain,[27] and new historical evidence (or, more likely, new interpretations or inferences from the same body of pre-existing evidence) could redesign the architecture of our federation in every case.[28] There is a fundamental difference in kind between evolving *Charter* applications in complex fields of health or public policy, as in *Carter*[29] and *Bedford*, and for trial courts to supplant prior interpretations of foundational constitutional documents on the basis of new perspectives of historical intent.

iii. A lack of perspective

16. The final issue is arboreal. Using evidence of "original intent" to unwind case law upturns the living tree entirely, burying the leaves and exposing the roots.

17. The trial judge's approach was, fundamentally, an appeal to original intent. It placed the sparse historical record at the apex of the analysis.[30] Extrinsic historical evidence matters should not be the touchstone for every interpretive exercise related to the *Constitution Act, 1867*. Despite careful appreciation for historic extrinsic evidence, this Court has issued many abjurations against "originalism,"[31] a doctrine which is "flatly inconsistent"[32] with purposive

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[26] Samuel Butler, *Erewhon Revisited* (Grant Richards: London, 1901) at 169.
[27] Sharpe at 140-41, 153 (by Hogg).

[28] See *e.g.* the possible impact of new historical evidence on the "stability" of the law in *Caron v Alberta*, 2015 SCC 56 at 82, [2015] 3 SCR 511 (*per* Cromwell and Karakatsanis JJ.).

[29] *Carter v Canada (Attorney General)*, 2015 SCC 5, [2015] 1 SCR 331 [*Carter*].
[30] Sharpe at 150-151 (by Hogg).
[31] Sharpe at 151-152 (by Hogg); *Reference re Same Sex Marriage*, 2004 SCC 79 at paras 22-23, [2004] 3 SCR 698; Benjamin Oliphant and Leonid Sirota, "Has the Supreme Court of Canada Rejected Originalism" (2016) 42 Queen's L J 107 at 111-112.

interpretations. This practice of appealing to historical intent should carefully examined. Writing in dissent in *Consolidated Fastfrate Inc. v Western Canada Council of Teamsters*, Binnie J. cautioned that the "warp and weave"[33] of today's Canadian economy would be "unrecognizable" to our framers. The Court should be cautious to read section 121, or any provision related to the division of powers, from the perspective of the framers in 1867. This is especially case for a provision like section 121, which expressly circumscribes a legislative "vacuum," normally inimical to federalism.[34]

18. Furthermore, the text of our constitution is not fixed. Important amendments to the economic union were made in 1982 while others were deliberately not made. Both the Courts and the partners of Confederation have tended to the "living tree." This is explored in the next section.

B. A second constitutional moment

19. If Confederation was a constitutional moment, then so was patriation.[35] One component of economic mobility, the mobility of persons and employment, was enshrined in the *Charter*.[36] Before this court entrenches the mobility of goods, it should consider the arc of Canada's attempts at constitutional amendment from 1982 to 1994 and what resulted: the *CAFTA*. It, like the former *AIT*, is a very new institution with a very old pedigree.[37]

20. The Court has sought to construe *Charter* rights in a manner consistent with international instruments governing human rights.[38] While certainly not a *Charter* right *per se*, on the question

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[32] Sharpe at 155 (by Hogg).
[33] *Consolidated Fastfrate Inc. v Western Canada Council of Teamsters*, [2009] 3 SCR 407, 2009 SCC 53 at paras 89-90 (*per* Binnie J. dissenting, joined by McLachlin C.J. and Fish J.).
[34] *Canada (Attorney General) v PHS Community Services Society*, [2011] 3 SCR 134, 2011 SCC 44 at 69.
[35] Hon. Beverly McLachlin, "Defining Moments: The Canadian Constitution" (Brian Dickson Memorial Lecture delivered at the University of Ottawa, 13 February 2014), online: <http://www.scc-csc.ca/judges-juges/spe-dis/bm-2014-02-13-eng.aspx>.
[36] *Canadian Egg Marketing Agency v Richardson*, [1998] 3 SCR 157 at para 65 (per McLachlin C.J., dissenting).
[37] Howard Leeson, "The Agreement on Internal Trade: An Institutional Response to Changing Conceptions, Roles and Functions in Canadian Federalism" (2000) Queen's University Institute of Intergovernmental Relations, online <http://www.queensu.ca/iigr/> at 2.
[38] *Saskatchewan Federation of Labour v. Saskatchewan*, 2015 SCC 4, [2015] 1 SCR 245 at 62-70 (per Abella J.).

of free trade the nexus between international instruments, national instruments, and economic mobility is tightly drawn. Patriation and our failed constitutional accords occurred contemporaneously with the rise of strong international institutions (*e.g.* the World Trade Organization) and agreements (*e.g.* the North American Free Trade Agreement) freeing trade in goods, services, and capital. Canada followed suit.

21. While a live issue after World War II, economic unity came to new prominence in the 1970s.[39] Among other proposals at the time, an important paper by A. E. Safarian in 1974 on the benefits and framework for deeper economic unity suggested amendments to section 121 but noted that "completely unrestricted trade" would unduly curtail provincial and federal powers and policies.[40]

22. Immediately prior to patriation, the important Taskforce on Canadian Unity (the "Pepin-Robarts Report") proposed in 1979 an expansion of section 121 to include services, persons, and capital, as well as government procurement.[41] Following closely, the federal government's 1980 position paper on economic integration put the matter squarely on the constitutional agenda.[42] Drafts and proposals for an updated section 121 were shared throughout 1980[43] but ultimately rejected.[44] Even at this early stage, strengthening the economic union by intergovernmental agreement was proposed.[45]

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[39] Robert H. Knox, "Economic Integration in Canada Through the Agreement on Internal Trade" in Harvey Lazard, ed, *Canada: The State of the Federation 1997* (Queen's University: Kingston, 1997) at 139-140; David Schneiderman, "The Market and the Constitution" (1991-92) 3 Const F 40 at 41-42.

[40] A. E. Safarian, *Canadian Federalism and Economic Integration* (Information Canada: Ottawa, 1974) at 72, 101.

[41] *The Task Force on Canadian Unity: A Future Together* (Minister of Supply and Services Canada: Ottawa, 1979) at 70-71, 123-24.

[42] Lazard at 141 (by Knox).

[43] In addition to the drafts identified in *Richardson Egg*, see Anne F. Bayefsky, ed, Canada's Constitution Act 1982 & Amendments: A Documentary History, Vol II (McGraw-Hill Ryerson: Toronto, 1989) at 580, 586-87, 621, 593, 621*ff*, 691-92, and 736-40.

[44] Michael J. Trebilcock and Rambod Behboodi, "The Canadian Agreement on Internal Trade: Retrospect and Prospects" in Michael J. Trebilcock and Daniel Schwanen, eds, *Getting There: An Assessment of the Agreement on Internal Trade* (C.D. Howe Institute: Toronto, 1995) at 25.

[45] Bayefsky at 593.

23. In 1985 the McDonald Report—an extensive survey of the Canadian Economic union and prospects for economic development—found that there were serious challenges inherent in balancing economic goals against other Canadian values.[46] Therefore, in addition to modest amendments to section 121 the McDonald Report recommended the formation of a "Code of Economic Conduct" which would, *via* a new tribunal, discipline trade barriers by intergovernmental agreement.[47]

24. At Meech Lake and Charlottetown, expansions of section 121 were rejected in favour of broad statements of purpose and, at Charlottetown, a lengthy political accord and the proposed delegation of economic issues to a new tribunal.[48] The extra-constitutional and political nature of that accord allowed it to survive the failure of Charlottetown, at least in spirit.[49] The McDonald Report-style intergovernmental "Code of Conduct" eventually carried the day, and the *AIT* was born in 1995 after intense negotiations.

i. No easy answers

25. Any attempt to expand section 121 will need to contend with the same dilemma faced by Canada during patriation: how can genuine regulatory objectives be respected in the face of a constitutional free trade provision? Sensitively, this means asking what objectives are <u>worth</u> protecting. Attempts at constitutional amendment to section 121 have included extensive derogations for salutary public policies[50] and the *AIT* and *CAFTA* inherited these derogations in one form or another.

26. Foundationally, the *CAFTA* prohibits discriminatory treatment of goods, services, and investments.[51] This basic rule extends across virtually every sector of the Canadian economy,

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[46] Report of the Royal Commission on the Economic Union and Development Prospects for Canada, Vol III (Minister of Supply and Services Canada: Ottawa, 1985) at 136.
[47] *Ibid.* at 137-39.
[48] *Meeting of First Ministers on the Constitution: 1987 Constitutional Accord* (June 3, 1987), s 8; *Consensus Report on the Constitution* (August 28, 1992), s 6.
[49] Knox at 143; Trebilko and Behboodi at 33.
[50] For example, exceptions for "public safety, order, health or morals" (Bayefsky at 692) or very detailed derogations as in Trebilcock and Behboodi at 31-32. The prolix exceptions and counter-exceptions in section 6 of the *Charter* reflect this dilemma.
[51] *CAFTA*, Chapter Two.

with limited general exceptions for tobacco, health services, cannabis, supply-managed agricultural goods, and more.[52] Specific rules for goods, services, and investments expand on the general non-discrimination obligation[53] and detailed codes governing procurement and professional mobility are contained in their own Chapters. Alcoholic beverages are not generally exempted, but many provinces maintain exceptions for specific alcohol policies.[54]

27. The *CAFTA* is not justiciable,[55] but relies on an arbitration-based dispute settlement model. Early concerns about the weak enforceability of the *AIT* have been largely answered by comprehensive reforms to *AIT* dispute resolution[56] and a history of successful arbitrations. The *AIT* also pioneered a revolutionary system of "person-to-government" dispute resolution which allows individuals to prosecute government violations directly.[57] Consistent with failed attempts at constitutional reform since 1980, this means economic questions are kept out of the courts and remain primarily intergovernmental in nature.[58] This, in theory, allows the *CAFTA* to be more potent and extensive than a bald but vague enhanced "free trade" provision in the Constitution.[59]

28. Importantly, signatories may contravene *CAFTA* commitments if a "legitimate objective" test is surmounted,[60] described as an "*Oakes*" test for trade. [61] This allows salutary policies in service of the public good to triumph over trade liberalism on a case-by-case basis, though the test is rigorous and the onus of proof is on the Party defending the measure.[62]

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[52] *CAFTA*, Chapter Eight.
[53] Chapters Three A, B and C, respectively.
[54] Found throughout Part VII, Annexes I and II.
[55] *UL Canada Inc. v Quebec (Attorney General)* (2003), 234 DLR (4th) 398 at paras 72-86 (QCCA), aff'd 2005 SCC 10, [2005] 1 SCR 143; *Northrop Grumman Overseas Services Corp v Canada (Attorney General)*, 2009 SCC 50 at 12, [2009] 3 SCR 309; *CAFTA*, Article 1021.4.
[56] The Seventh (2007), Tenth (2009), and Fourteenth (2015) Protocols of Amendment.
[57] *CAFTA*, Chapter 10, Part B (Person to Government Dispute Resolution).
[58] David Schneiderman, "The Market and the Constitution" (1991-92) 3 Const F 40 at 42-44; Knox at 161 and 163; David Schneiderman, "Economic Citizenship and Deliberative Democracy: An Inquiry into Constitutional Limitations on Economic Regulation" (1995) 21 Queen's L J 125 at 135-36; Bayefsky at 657; McDonald Report at 137; Leeson at 6-7.
[59] Michael J. Trebilcock and Tanya Lee, "Economic Mobility and Constitutional Reform" (1987) 37 U Toronto L J 268 at 317.
[60] Article 202; Chapter Thirteen, definition of "legitimate objective".
[61] Trebilcock and Bahboodi at 44.
[62] *CAFTA*, Article 1208.7.

29. Regulatory differences that give rise to *de facto* barriers are disciplined by the rule against discrimination[63] and new articles specifically designed to rationalize technical barriers and sanitary and phytosanitary measures,[64] modeled closely after international obligations. New obligations in service of regulatory harmonization can compel signatories to work together to solve problems created by needless distinctions between jurisdictions.[65]

30. Left to their own devices, Canada and her provinces and territories repeatedly rejected constitutional entrenchment of "free" trade, and instead developed freer trade between provinces by unanimous and mutual consent. Any reinterpretation of section 121 needs to be sensitive to how Canada has conceived of its own economic union since patriation.

PART IV: COSTS

31. Saskatchewan does not seek costs and submits it should not be liable for costs.

PART V: REQUEST FOR ORDER

32. In light of the October 10, 2017 order of Moldaver J., Saskatchewan makes no further requests.

ALL OF WHICH is respectfully submitted.

DATED at Regina, Saskatchewan, this 11 day of October, 2017.

Theodore J. C. Litowski
Crown Counsel

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[63] *E.g. Report of the Article 1704 Panel Concerning the Dispute Between Alberta / British Columbia and Ontario Regarding Ontario's Measures Governing Dairy Analogs and Dairy Blends* (2004) (Panel Report) online: Internal Trade Secretariat <http://www.ait-aci.ca/>.
[64] *CAFTA*, Articles 302 and 303.
[65] *CAFTA*, Chapter Four.

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