

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

B E T W E E N :

HER MAJESTY THE QUEEN

APPELLANT
(Appellant)

- and -

GERARD COMEAU

RESPONDENT
(Respondent)

- and -

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PART I. OVERVIEW OF POSITION AND STATEMENT OF FACTS

1. The Consumers Council of Canada (“CCC”) is a non-profit, voluntary organization, working towards an improved marketplace for consumers in Canada. It advocates for strong consumer protections in order to ensure an equitable, efficient and safe marketplace. The CCC offers these submissions from its perspective as Canada’s leading general interest consumer advocacy organization.

2. The balance between freedom of trade and consumer protection is a core concern of the CCC. The CCC supports the jurisdiction of Canada and provinces to legislate for the protection of consumers. Consumer protection is an important policy goal of the modern regulatory state. However, consumer protection legislation must not enact non-tariff barriers to interprovincial trade. Non-tariff barriers to interprovincial trade have a detrimental effect upon the Canadian economy, and Canadian consumers more specifically. These barriers result in higher prices, decreased consumer choice, and misallocation of labour and resources. The court’s clarification of the scope of section 121 should preserve the ability of both levels of government to legislate for consumer protection without breaching the constitutional promise that goods shall “be admitted free into each of the other Provinces.”

3. The CCC submits that section 121 of the *Constitution Act, 1867* was correctly interpreted by Justice Rand in *Murphy v Canadian Pacific Railway*.¹ Section 121 does not preclude federal and provincial governments from regulating all aspects of business activity within their respective spheres of jurisdiction, so long as such regulation is not “in essence and purpose” related to a provincial boundary.² Section 121 does not create “a level of trade activity divested of all regulation.”³ The constitutional validity of a measure that creates a barrier to interprovincial trade should be contingent on whether the measure bears *necessary* relation to a valid, non-protectionist government objective. The CCC proposes a test to determine the validity of such a measure at paragraphs 15-18 below.

¹ [\[1958\] SCR 626](#), 1958 CarswellMan 67 [*Murphy*] at paras 21-45.

² *Ibid* at para 40.

³ *Ibid*.

4. The CCC further submits that Chief Justice Laskin’s elaboration on Rand J.’s formulation in the *Reference re Agricultural Products Marketing* was incorrect to suggest that section 121 applies differently to provinces and the federal government.⁴ Section 121 applies to both the federal and provincial legislatures by precluding them from promulgating laws that in essence and purpose constitute barriers to interprovincial trade. Section 121 permits both levels of government to legislate within their respective spheres of jurisdiction, including the enactment of consumer protection statutes. Federal laws that “restrict or limit the free flow of commerce across the Dominion”⁵—including various “supply management” schemes established by the federal and provincial governments—may breach the provision.

PART II. INTERVENER’S POSITION ON APPELLANT’S QUESTIONS

5. The CCC supports the Respondent’s position that section 3(1) of the *Importation of Intoxicating Liquors Act*, RSC 1985, c I-3 (“*IILA*”) and section 134(b) of the *New Brunswick Liquor Control Act*, RSNB 1973, c L-10 (“*LCA*”) are unconstitutional. Both provisions contravene section 121 of the *Constitution Act, 1867*.

PART III. ARGUMENT

(A) Importance of Consumer Protection in the Modern Regulatory State

6. Consumer protection is a “valid and laudable purpose” and an “important element” of the modern legislative agenda.⁶ It is “at least as important an objective” of government action as business efficacy, “if not more so.”⁷ Consumer protection statutes are to be interpreted “generously in favour of consumers.”⁸

7. Consumers have an interest in various trade reforms and the harmonization of consumer protection measures, and the CCC has a long history of involvement in the debate

⁴ *Reference re Agricultural Products Marketing*, [1978] 2 SCR 1198.

⁵ *Murphy*, *supra* note 1 at para 40 (per Rand J).

⁶ *Québec (Procureur général) v. Drapeau*, [1999] 175 DLR (4th) 656, at paras 38 and 48, 1999 CarswellQue 1777 (CA).

⁷ *Savoie c. René’s Service & Trailer Sales Ltd.*, 2007 NBQB 229 at para 32, 319 NBR (2d) 388.

⁸ *Seidel v. Telus Communications Inc.*, 2011 SCC 15 at para 37, 1 SCR 531.

regarding interprovincial trade barriers. In 2015, the CCC produced a report entitled “Options for a Sustained Institutional Role for Consumer Organizations in Internal Trade Harmonization Initiatives” (the “Trade Report”).⁹ The Trade Report identifies a variety of areas, including the sale of alcoholic beverages, as ones where internal trade barriers affect consumer rights. In each of these areas, the CCC has carefully analyzed the manner in which regulatory and stakeholder interests can be balanced to protect consumers.

8. Consumer protection falls primarily (although not exclusively) within provincial jurisdiction, under sections 92(13) and 92(16) of the *Constitution Act, 1867*. Accordingly, different provinces may choose different regulatory solutions aimed at protecting consumers within their territories. Examples of provincial regulations aimed at consumer protection range widely, and include: motor vehicle safety standards, safety requirements for elevators, restrictions on marketing to children, pharmaceutical labeling requirements, safety and labeling requirements for farm implements, fire safety requirements and many others.¹⁰

9. In today’s globalized economy, even more so than at the time of Confederation, the regulatory choices provinces make are likely to affect businesses located outside their boundaries. Indeed, “all non-uniform provincial regulations can add to the cost of trading across provincial borders, and thus can be construed as non-tariff trade barriers.”¹¹ Differential licensing, production, transportation and marketing standards across provinces all create barriers to trade.¹² It is crucial that provinces’ ability to regulate businesses that operate or market products within their boundaries not be inhibited by an absolutist and inflexible interpretation of section 121. Too robust an interpretation of this section would

⁹ Consumers Council of Canada, *Options for a Sustained Institutional Role for Consumer Organizations in Internal Trade Harmonization Initiatives*, online: Consumers Council of Canada

<https://www.consumerscouncil.com/site/consumers_council_of_canada/assets/pdf/ccc_806787_internal_trade_final_report-web.pdf>.

¹⁰ Rob Cunningham, “*R v Comeau*: Reflections from the Perspective of Health”, CanLII Connects, October 11, 2017 <<http://canliiconnects.org/en/commentaries/46884>>.

¹¹ Malcolm Lavoie, “*R. v. Comeau* and Section 121 of the Constitution Act, 1867: Freeing the Beer and Fortifying the Economic Union” (2017) 40 Dal LJ 189 at 202.

¹² *Ibid.*

“restrict the power of democratic majorities, especially at the provincial level, to set economic policies”¹³ and to legislate for consumer protection.

10. A pragmatic and purposive approach to the interpretation of section 121 would balance impermissibility of trade barriers with a clear recognition of provincial jurisdiction to regulate economic activity within their geographic boundaries for the purpose of consumer protection.

(B) The Interpretation of Section 121 of the *Constitution Act, 1867*

11. A purposive interpretation was offered by Rand J. in a concurring opinion in *Murphy v. Canadian Pacific Railway*.¹⁴ In that case, Rand J. observed:

“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.”¹⁵

12. Rand J.’s purposive interpretation preserves a robust construction of section 121 without infringing upon the provinces’ section 92 powers – the only logical way to reconcile the two provisions. To summarize, Rand J.’s interpretation:

- (i) prohibits the levying of customs duties or charges or imposing any restrictions that fetter or limit the flow of Canadian goods across Canada;
- (ii) prohibits the regulation of free flow of goods, except in subsidiary features; and
- (iii) prohibits the imposition of any obligation on the movement of Canadian goods that is, in essence and purpose, related to a provincial boundary.

¹³ *Ibid* at 204.

¹⁴ *Murphy*, *supra* note 1.

¹⁵ *Ibid* at para 40.

13. This interpretation enables the provinces to continue their legislative and regulatory consumer protection efforts while eliminating protectionist legislation which runs contrary to the scheme of the Constitution. In other words, a purposeful interpretation of section 121 must not prevent appropriate government regulation; it must only prohibit legislative schemes that interfere with a free interprovincial market in order to benefit specific provinces or regions.

14. The interpretation of section 121 of the *Constitution Act, 1867* adopted by Rand J. is not doctrinally absolutist, but rather a practical, purposive one, which accords with *both* the realities of a modern regulatory state and with the desire of the Fathers of Confederation to engender free trade among the provinces.

(C) Test for Breach of Section 121

15. Neither the trial judge, nor Rand J. in *Murphy*, articulated a test for identifying impermissible barriers to free trade that would violate section 121 of the *Constitution Act, 1867*. A framework has been proposed by Professor Lavoie in a recent academic article.¹⁶

16. Building on Rand J.’s interpretation of section 121, and with reference to Professor Lavoie’s work,¹⁷ the CCC proposes a test to determine the constitutional validity of measures that discriminate against interprovincial trade. All measures that discriminate against interprovincial trade either directly by referencing location, or indirectly through the use of proxies for location, should be presumptively invalid. Constitutional justification should be evaluated under a high standard of exacting scrutiny. The Crown should have the onus to

¹⁶ *Supra* note 11.

¹⁷ *Ibid* at 214; see also Asher Honickman, “A Marriage Made in Britain: Section 121 and the Division of Powers”, CanLII Connects, October 24, 2016 <<http://canliiconnects.org/en/commentaries/43804>> where Honickman proposes that, rather than adopting a new test for section 121, division of powers analysis be employed. Under this proposal, a provincial law that regulates interprovincial trade on its face would be struck down unless it is necessarily incidental to an otherwise valid scheme. A law that only incidentally affects interprovincial trade would be upheld.

establish that such measures were enacted based upon these criteria: (i) *necessity* to the achievement of a non-protectionist objective that is validated by a legislative power, and (ii) the infringement upon interprovincial commerce is limited to proportional measures to the extent necessary.

17. The CCC notes that under the second branch of his proposed test, Professor Lavoie suggests a separate and more liberal standard for measures that do not discriminate against interprovincial trade on their face but nonetheless have the effect of burdening such trade. The CCC opposes a distinct framework for analyzing measures of this nature. The distinction between measures that “discriminate” and those that merely “burden” interprovincial trade may not be sufficiently clear to avoid uncertainty. All measures which result in barriers to interprovincial trade should be presumptively invalid and subject to exacting scrutiny.

18. Rigorous enforcement of section 121 cannot operate to restrict valid consumer protection legislation, since such measures are necessary to achieve a valid, non-trade-barrier government objective. For example, under the CCC’s test, a government, motivated by health and safety concerns, will be permitted to enact legislation banning the purchase and sale of unpasteurized cheeses. Such legislation would affect cheese manufacturers both within and outside the province and would be upheld. In contrast, section 121 prohibits a government from legislating for protectionist purposes under the guise of consumer protection. Thus, under the proposed test, a government will be prohibited from limiting the availability of unpasteurized cheese by forbidding its importation from another province in order to reduce competition for the local dairy industry.

(D) Section 121 Applies to Both Levels of Government

19. Internal trade barriers result in Canadian consumers overpaying for a variety of goods and services. Estimates of the cost internal trade barriers place on Canadian economy reach as high as \$130 billion per year.¹⁸ To illustrate the absurdity and cost imposed by internal trade barriers, the Standing Senate Committee on Banking, Trade and Commerce has compiled a list of top 10 “weirdest barriers to trade.” These include:

¹⁸ Standing Senate Committee on Banking, Trade and Commerce, [*Tear Down These Walls: Dismantling Canada’s Internal Trade Barriers*](#) (June 2016) at 3 (Chair: David Tkachuk).

- some truck configurations must be driven at night in British Columbia – and only during the day in neighbouring Alberta;
- Quebec’s unpasteurized cheeses cannot be shipped outside the province;
- beer bottle size standards differ across jurisdictions, forcing some brewers to set up parallel production systems across the country;
- the permitted size of dairy creamers and milk containers differs across jurisdictions, forcing some companies to duplicate production streams; and
- provincial, territorial and federal standards for maple syrup grades differ.

20. Not all barriers to interprovincial trade result from provincial legislation. Some were enacted by the federal government. These include the *IILA*, which restricts the importation of liquor into a province and is the subject of the present appeal, the *Canadian Dairy Commission Act*,¹⁹ which enables the creation of provincial and territorial dairy quota systems, and the *Agricultural Products Marketing Act*,²⁰ which restricts interprovincial sale of agricultural products. Whether section 121 restricts the federal legislative power to the same extent as it does the provinces is the subject of debate among commentators.

21. In *Reference re Agricultural Products Marketing*,²¹ this Court analyzed the validity of an agreement among the federal and provincial governments pursuant to the federal *Farm Products Marketing Agencies Act*.²² In a concurring opinion, Chief Justice Laskin suggested that section 121 may not bind the federal Crown in the same way it does its provincial counterparts:

“It seems to me, however, that the application of s. 121 may be different according to whether it is provincial or federal legislation that is involved because what may amount to a tariff or customs duty under a provincial regulatory statute may not have that character at all under a federal regulatory statute.”²³

¹⁹ *Canadian Dairy Commission Act*, [RSC, 1985, c. C-15](#).

²⁰ *Agricultural Products Marketing Act*, [RSC, 1985, c A-6](#).

²¹ [\[1978\] 2 SCR 1198](#), 84 DLR (3d) 257.

²² 1970-71-72 (Can), c 65.

²³ *Supra* note 21 at para 89.

22. Advancing this line of argument further, two commentators have suggested that section 121 may not apply at all to the federal Parliament.²⁴ Both rely on the “notwithstanding clause” found in section 91 of the *Constitution Act, 1867*.

23. With respect, this position ignores the express language of section 121. If this provision were meant to apply only to provincial legislatures, it would have stated so expressly. There is nothing in the language of section 121 that restricts its application to provincial legislatures. As Viscount Simon noted in *Atlantic Smoke Shops Ltd. v Conlon*, “the meaning of s. 121 cannot vary as it is applied to dominion or to provincial legislation.”²⁵

24. The “notwithstanding” clause contained in section 91, read in its context, refers to the distribution of powers between provincial and federal legislatures, and in particular to any overlap that may arise between the subjects enumerated in section 91 and section 92 of the *Act*. Furthermore, in declaring that subjects, including “the Regulation of Trade and Commerce,” fall within the “exclusive Legislative Authority of the Parliament of Canada,” *Constitution Act, 1867* does not declare such legislative authority to be unlimited.

25. Parliament is allocated the authority to regulate interprovincial trade, but in doing so, it is not permitted to set up barriers to the free entry of goods from one province to another. Any other interpretation sets up an explicit conflict between sections 91(2) and 121, and renders section 121 meaningless.

(E) Section 134 of the LCA is Unconstitutional

26. The test proposed by the CCC provides the additional clarity needed to apply Rand J.’s articulation in practice. Section 134 prohibits all persons within the province from purchasing, “having or keeping” liquor not purchased from New Brunswick Liquor Corporation.

²⁴ Lavoie, *supra* note 11 at 216; Honickman, *supra* note 17 at 10.

²⁵ *Atlantic Smoke Shops Ltd. v. Conlon*, [1943] 4 DLR 81 at 92, 1943 CanLII 372 (UK JCPC).

27. The provision constitutes a “trade regulation that in its essence and purpose is related to a provincial boundary.”²⁶ It discriminates against interprovincial trade, by directly referencing location. This provision is not an attempt to regulate interprovincial trade in alcohol in “subsidiary features,” such as packaging, quality, storage, or labelling. Nor is this provision necessary to safeguard a social objective, such as prevention of alcohol abuse or underage alcohol consumption. Indeed, if the true purpose of the provision were consumer protection, it would have targeted importation, rather than possession (“having or keeping”) of out-of-province liquor.

28. Instead, the provision appears to be a protectionist measure, aimed at ensuring that the New Brunswick government liquor monopoly serves as the only source of liquor acquired in the province. It is precisely the measure that section 121 aimed to prevent – a non-tariff barrier to interprovincial trade that, on its face, discriminates against interprovincial trade on the basis of a provincial boundary.

(F) Section 3(1) of the *IIA* is Unconstitutional

29. Similarly, section 3(1) of *IIA*, which prohibits the importation of intoxicating liquor into any province, unless it has been purchased by the federal or provincial government, violates section 121. Because section 121 applies equally to the federal and provincial governments, *Constitution Act, 1867* prohibits Parliament from setting up barriers to interprovincial trade in liquor that are “in essence and purpose” directed at the provincial boundaries. In contrast to a regulation in “subsidiary matters” such as labeling or food safety, an outright prohibition on the importation of liquor from one province to another, except through a government owned agency, is a breach of section 121.

(G) Conclusion

30. The present case presents a unique opportunity to adopt Rand J.’s analysis in *Murphy*, along with a proposed test for impermissible non-tariff barriers, and thus to clarify the meaning of a constitutional provision that has been misinterpreted for more than 95 years. The interpretation advocated by the CCC would eliminate statutes that in their essence or

²⁶ *Murphy*, *supra* note 1 at para 40.

purpose constitute trade barriers, but will preserve the provinces' ability to enact consumer protection statutes and other features of the modern regulatory state.

PARTS IV & V. SUBMISSIONS CONCERNING COSTS AND NATURE OF ORDER SOUGHT

31. The CCC does not seek costs and asks that no costs be awarded against it.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED
THIS 21ST DAY OF NOVEMBER, 2017.**

Paul J. Bates (LSUC#: 22619D)
Ronald Podolny (LSUC#: 56908C)
Tyler Planeta (LSUC #71029M)

Lawyers for the Intervener

PART VI. TABLE OF AUTHORITIES

<u>Jurisprudence</u>	<u>Reference(s)</u>
1. <i>Atlantic Smoke Shops Ltd. v. Conlon</i> , [1943] 4 DLR 81 , 1943 CanLII 372 (UK JCPC)	23
2. <i>Murphy v. Canadian Pacific Railway</i> , [1958] SCR 626 , 1958 CarswellMan 67	3, 4, 11, 15, 30
3. <i>Québec (Procureur général) v. Drapeau</i> , [1999] 175 DLR (4th) 656 , 1999 CarswellQue 1777 (CA)	6
4. <i>Reference re Agricultural Products Marketing</i> , [1978] 2 SCR 1198	4, 21
5. <i>Savoie c. René's Service & Trailer Sales Ltd.</i> , 2007 NBQB 229 , 319 NBR (2d) 388	6
6. <i>Seidel v. Telus Communications Inc.</i> , 2011 SCC 15 , 1 SCR 531	6
 <u>Secondary Sources</u>	
7. Asher Honickman, “A Marriage Made in Britain: Section 121 and the Division of Powers”, CanLII Connects, October 24, 2016 < http://canliiconnects.org/en/commentaries/43804 >	16, 22
8. Consumers Council of Canada, <i>Options for a Sustained Institutional Role for Consumer Organizations in Internal Trade Harmonization Initiatives</i> , online: Consumers Council of Canada < https://www.consumerscouncil.com/site/consumers_council_of_canada/assets/pdf/ccc_806787_internal_trade_final_report-web.pdf >.	7
9. Malcolm Lavoie, “ R. v. Comeau and Section 121 of the Constitution Act, 1867: Freeing the Beer and Fortifying the Economic Union ” (2017) 40 Dal LJ 189.	9, 15-17, 22
10. Rob Cunningham, “ <i>R v Comeau</i> : Reflections from the Perspective of Health”, CanLII Connects, October 11, 2017 < http://canliiconnects.org/en/commentaries/46884 >.	8
11. Standing Senate Committee on Banking, Trade and Commerce, Tear Down These Walls: Dismantling Canada's Internal Trade Barriers (June 2016) at 3 (Chair: David Tkachuk).	19

PART VII. LEGISLATION RELIED UPON

1. *The Constitution Act, 1867*, [30 & 31 Vict c 3, s. 121](#)

Canadian Manufactures, etc.

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.

Manufactures canadiennes, etc.

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.

2. *Importation of Intoxicating Liquors Act*, [RSC, 1985, c I-3](#)

Prohibitions

3 (1) Notwithstanding any other Act or law, no person shall import, send, take or transport, or cause to be imported, sent, taken or transported, into any province from or out of any place within or outside Canada any intoxicating liquor, except such as has been purchased by or on behalf of, and that is consigned to Her Majesty or the executive government of, the province into which it is being imported, sent, taken or transported, or any board, commission, officer or other governmental agency that, by the law of the province, is vested with the right of selling intoxicating liquor.

Suspension of paragraph (2)(f)

(1.1) The operation of paragraph (2)(f) is suspended during the period in which paragraph (2)(c) is in force.

Exceptions

(2) The provisions of subsection (1) do not apply to

- (a)** the carriage or transportation of intoxicating liquor into and through a province by the producer of the liquor or by a common carrier, if, during the time that the intoxicating liquor is being so carried or transported, its container is not opened or broken or any of the liquor drunk or used;
- (b)** the importation of intoxicating liquor into a province by any person who is a licensed distiller or who is duly licensed by the Government of Canada to carry on the business or trade of a brewer if the liquor
 - (i)** is imported solely for the purpose of being used for blending with or flavouring the products of the business or trade of a distiller or brewer carried on by the person in the province, and
 - (ii)** is kept while in the province

(A) in the case of spirits or wine, in accordance with the *Excise Act, 2001* and the laws of the province, and

(B) in the case of beer, by the person in a place or warehouse that conforms in all respects to the requirements of the law governing those places or warehouses;

(c) the importation of bulk spirits into a province from a NAFTA country by a licensed distiller for the purpose of being packaged by the distiller, if the spirits

- (i)** are entitled to the United States Tariff, the Mexico Tariff or the Mexico—United States Tariff in the List of Tariff Provisions set out in the schedule to the *Customs Tariff*, and
- (ii)** are kept while in the province in accordance with the *Excise Act, 2001* and the laws of the province;

(d) the importation of bulk spirits into a province from Chile by a licensed distiller for the purpose of being packaged by the distiller, if the spirits

- (i)** are entitled to the benefit of the Chile Tariff in the List of Tariff Provisions set out in the schedule to the *Customs Tariff*, and
- (ii)** are kept while in the province in accordance with the *Excise Act, 2001* and the laws of the province;

(e) the importation of bulk spirits into a province from Costa Rica by a licensed distiller for the purpose of being packaged by the distiller, if the spirits

- (i)** are entitled to the benefit of the Costa Rica Tariff in the List of Tariff Provisions set out in the schedule to the *Customs Tariff*, and
- (ii)** are kept while in the province in accordance with the *Excise Act, 2001* and the laws of the province;

(f) the importation of bulk spirits into a province from the United States by a licensed distiller for the purpose of being packaged by the distiller, if the spirits

- (i)** are entitled to the United States Tariff in the List of Tariff Provisions set out in the schedule to the *Customs Tariff*, and
- (ii)** are kept while in the province in accordance with the *Excise Act, 2001* and the laws of the province;

(f.1) the importation of bulk spirits into a province from a country listed in column 1 of the schedule by a licensed distiller for the purpose of being packaged by the distiller, if the spirits

- (i)** are entitled to the benefit of a tariff set out in column 2, and
- (ii)** are kept while in the province in accordance with the *Excise Act, 2001* and the laws of the province; and

(g) the transfer by a licensed distiller of any spirits produced or packaged in accordance with the *Excise Act, 2001* that is permitted by

any Act or regulation or by special permit of the Canada Revenue Agency, if the spirits

- (i) in the case of packaged spirits, are kept in an excise warehouse of a licensed distiller and in accordance with the laws of the province in which they are kept, and
- (ii) in the case of bulk spirits, are kept in accordance with the *Excise Act, 2001* and the laws of the province in which they are kept; and

(h) the importation of wine, beer or spirits from a province by an individual, if the individual brings the wine, beer or spirits or causes them to be brought into another province, in quantities and as permitted by the laws of the other province, for his or her personal consumption, and not for resale or other commercial use.

Interdictions

3 (1) Nonobstant toute autre loi, nul ne peut importer, envoyer, apporter ou transporter, ou faire importer, envoyer, apporter ou transporter dans une province de la boisson enivrante provenant d'un endroit situé au Canada ou à l'étranger, sauf si cette boisson a été achetée par ou pour Sa Majesté ou le gouvernement de la province où elle est importée, envoyée, apportée ou transportée, ou un fonctionnaire ou organisme du gouvernement qui, en vertu du droit de la province, est revêtu du droit de vendre de la boisson enivrante, et si la boisson lui est consignée.

Suspension

(1.1) L'alinéa (2) f) est inopérant tant que l'alinéa (2) c) est en vigueur.

Exceptions

(2) Le paragraphe (1) ne s'applique pas:

- (a) au voiturage ou transport de boisson enivrante dans et à travers une province uniquement par le producteur de la boisson ou un voiturier public, si, pendant que la boisson est ainsi apportée ou transportée, son contenant n'est ni ouvert ni brisé ou la boisson n'est ni bue ni consommée;
- (b) à l'importation de boisson enivrante dans une province par une personne — distillateur agréé ou personne régulièrement autorisée par permis du gouvernement fédéral à exercer l'industrie ou le commerce de brasseur — lorsque la boisson, à la fois :
 - (i) est importée dans le seul but d'être mélangée aux produits de l'industrie ou du commerce de distillateur ou de brasseur exercé par la personne dans la province,
 - (ii) est gardée dans la province :
 - (A) conformément à la Loi de 2001 sur l'accise et aux lois de la province, s'il s'agit de spiritueux ou de vin,

(B) par la personne dans un lieu ou entrepôt en tous points conforme aux prescriptions de la loi régissant ces lieux ou entrepôts, s'il s'agit de bière;

b.01) [Abrogé, 2002, ch. 22, art. 395]

b.02) [Abrogé, 2002, ch. 22, art. 395]

b.03) [Abrogé, 2002, ch. 22, art. 395]

b.1) [Abrogé, 2002, ch. 22, art. 395]

(c) à l'importation de spiritueux en vrac d'un pays ALÉNA dans une province par un distillateur agréé pour emballage par celui-ci, si les spiritueux, à la fois :

(i) bénéficient du tarif des États-Unis, du tarif du Mexique ou du tarif Mexique — États-Unis de la liste des dispositions tarifaires de l'annexe du *Tarif des douanes*,

(ii) sont gardés dans la province conformément à la *Loi de 2001 sur l'accise* et aux lois de la province;

(d) à l'importation de spiritueux en vrac du Chili dans une province par un distillateur agréé pour emballage par celui-ci, si les spiritueux, à la fois :

(i) bénéficient du tarif du Chili de la liste des dispositions tarifaires de l'annexe du *Tarif des douanes*,

(ii) sont gardés dans la province conformément à la *Loi de 2001 sur l'accise* et aux lois de la province;

(e) à l'importation de spiritueux en vrac du Costa Rica dans une province par un distillateur agréé pour emballage par celui-ci, si les spiritueux, à la fois :

(i) bénéficient du tarif du Costa Rica de la liste des dispositions tarifaires de l'annexe du *Tarif des douanes*,

(ii) sont gardés dans la province conformément à la *Loi de 2001 sur l'accise* et aux lois de la province;

(f) à l'importation de spiritueux en vrac des États-Unis dans une province par un distillateur agréé pour emballage par celui-ci, si les spiritueux, à la fois :

(i) bénéficient du tarif des États-Unis de la liste des dispositions tarifaires de l'annexe du *Tarif des douanes*,

- (ii) sont gardés dans la province conformément à la Loi de 2001 sur l'accise et aux lois de la province;
- f.1) à l'importation de spiritueux en vrac d'un pays mentionné à la colonne 1 de l'annexe dans une province par un distillateur agréé pour emballage par celui-ci, si les spiritueux, à la fois :
 - (i) bénéficient du tarif prévu à la colonne 2,
 - (ii) sont gardés dans la province conformément à la Loi de 2001 sur l'accise et aux lois de la province;
- (g) au transfert, par un distillateur agréé, de spiritueux produits ou emballés conformément à la *Loi de 2001 sur l'accise* qui est permis par une loi ou un règlement ou par une autorisation spéciale de l'Agence du revenu du Canada, si les spiritueux :
 - (i) sont gardés dans l'entrepôt d'accise d'un distillateur agréé conformément aux lois de la province où ils sont gardés, s'il s'agit de spiritueux emballés,
 - (ii) sont gardés conformément à la Loi de 2001 sur l'accise et aux lois de la province où ils sont gardés, s'il s'agit de spiritueux en vrac;
- (h) à l'importation de vin, de bière ou de spiritueux d'une province à une autre province par un particulier, si celui-ci les apporte ou les fait apporter selon les quantités et les modalités permises par les lois de cette dernière, pour sa consommation personnelle et non pour la revente ou autre usage commercial.

(3) [Abrogé, 2002, ch. 22, art. 411]

3. *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.

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

achetées ailleurs qu'à la Société.