

**IN THE SUPREME COURT OF CANADA**  
(ON APPEAL FROM THE COURT OF APPEAL FOR QUÉBEC)

BETWEEN:

JANICK MURRAY-HALL

Appellants  
(Respondent)

– and –

ATTORNEY GENERAL OF QUÉBEC

Respondent  
(Appellant)

and

ATTORNEY GENERAL OF ONTARIO, ATTORNEY GENERAL OF MANITOBA,  
ATTORNEY GENERAL OF BRITISH COLUMBIA, ATTORNEY GENERAL OF  
SASKATCHEWAN, ATTORNEY GENERAL OF ALBERTA, CANADIAN ASSOCIATION  
FOR PROGRESS IN JUSTICE, CANADIAN CANCER SOCIETY,  
CANNABIS AMNESTY, CANNABIS COUNCIL OF CANADA and  
QUEBEC CANNABIS INDUSTRY ASSOCIATION

Interveners

---

**FACTUM OF THE INTERVENER,  
ATTORNEY GENERAL OF ONTARIO**

(Pursuant to Rules 37 and 42 of the *Rules of the Supreme Court of Canada*, S.O.R./2002-156)

---

**Attorney General of Ontario**

Constitutional Law Branch  
720 Bay Street, 4th Floor  
Toronto, ON M7A 2S9

**Borden Ladner Gervais LLP**

World Exchange Plaza  
130 - 100 Queen Street  
Ottawa, ON K1P 1J9

**S. Zachary Green**

**Hera Evans**

Tel: 416.992-2327 | 437.770.6626  
Fax: 416.326-4015  
Email: [zachary.green@ontario.ca](mailto:zachary.green@ontario.ca)  
[hera.evans@ontario.ca](mailto:hera.evans@ontario.ca)

**Nadia Effendi**

Tel: 613.787.3562  
Fax: 613.230.8842  
Email: [neffendi@blg.com](mailto:neffendi@blg.com)

Counsel for the Intervener,  
Attorney General of Ontario

Agent for the Intervener,  
Attorney General of Ontario

ORIGINAL TO: **Registrar**  
Supreme Court of Canada  
301 Wellington Street  
Ottawa, ON K1A 0J1

COPY TO:

**Sarailis Avocats**  
686 Grande-Alle Est  
Quebec, QC G1R 2K5

**Maxime Guerin | Christian Sarailis**  
Tel: 418.780.3880  
Fax: 418-780.3880  
Email: [maxime.guerin@sarailis.ca](mailto:maxime.guerin@sarailis.ca)

Counsel for the Appellant,  
Janick Murray-Hall

**Lavoie, Rousseau Justice Québec**  
300 boul. Jean-Lesage, bureau 1.03  
Quebec, QC G1K 8K6

**Patricia Blair | Romy Daigle |  
Frederic Perreault**  
Tel: 418.649.3524 ext. 42635  
Fax: 418.646.1656  
Email: [lavoie-rousseau@justice.gouv.gc.ca](mailto:lavoie-rousseau@justice.gouv.gc.ca)

Counsel for Respondent,  
Attorney General of Québec

**Attorney General of Manitoba**  
Constitutional Law  
1230 – 405 Broadway  
Winnipeg, MB R3C 3L6

**Michael Conner | Kathryn Hart**  
Tel: 204.391.0767  
Fax: 204.945.0053  
Email: [michael.connor@gov.mb.ca](mailto:michael.connor@gov.mb.ca)

Counsel for the Intervener,  
Attorney General of Manitoba

**Noel Et Associes, S.E.N.C.R.L**  
225 Montee Paiement, 2e etage  
Gatineau, QC J8P 6M7

**Pierre Landry**  
Tel: 819.503.2178  
Fax: 819.771.5397  
Email: [p.landry@noelassocies.com](mailto:p.landry@noelassocies.com)

Agent for Respondent,  
Attorney General of Québec

**Gowling WLG (Canada) LLP**  
2600 – 160 Elgin Street  
Ottawa, ON K1P 1C3

**D. Lynne Watt**  
Tel: 613.786.8695  
Fax: 613.788.3509  
Email: [lynne.watt@gowlingwlg.com](mailto:lynne.watt@gowlingwlg.com)

Agent for the Intervener,  
Attorney General of Manitoba

**Attorney General of British Columbia**  
 Legal Services Branch  
 1001 Douglas Street 6<sup>th</sup> Floor  
 Vancouver, BC V8W 9J7

**Jonathan G. Penner | Robert Danay**  
 Tel: 250.952.0122  
 Fax: 250.456.9154  
 Email: [jonathan.penner@gov.bc.ca](mailto:jonathan.penner@gov.bc.ca)

Counsel for the Intervener,  
 Attorney General of British Columbia

**Ministry Of Justice and Attorney General**  
 Government of Saskatchewan  
 820 – 1874 Scarth Street  
 Regina, SK S4P 4B3

**Thomson Irvine, Q.C. | Noah Wernikowski**  
 Tel: 306.787.6307  
 Fax: 306.787.9111  
 Email: [tom.irvine@gov.sk.ca](mailto:tom.irvine@gov.sk.ca)

Counsel for the Intervener,  
 Attorney General of Saskatchewan

**Attorney General of Alberta**  
 10th Floor, 102A  
 10025 – 102A Avenue  
 Edmonton, AB T5J 2Z2

**David N. Kamal | Nate Gartke**  
 Tel: 780.427.4418  
 Fax: 780.643.0852  
 Email: [david.kamal@gov.bc.ca](mailto:david.kamal@gov.bc.ca)

Counsel for the Intervener,  
 Attorney General of Alberta

**Olthuis Van Ert**  
 65 Lisgar Street  
 Ottawa, ON K2P 0C1

**Dahlia Shuhaibar**  
 Tel: 613.501.5350  
 Fax: 613.651.0304  
 Email: [dahlia@ovcounsel.com](mailto:dahlia@ovcounsel.com)

Agent for the Intervener,  
 Attorney General of British Columbia

**Gowling WLG (Canada) LLP**  
 2600 – 160 Elgin Street  
 Ottawa, ON K1P 1C3

**D. Lynne Watt**  
 Tel: 613.786.8695  
 Fax: 613.788.3509  
 Email: [lynne.watt@gowlingwlg.com](mailto:lynne.watt@gowlingwlg.com)

Agent for the Intervener,  
 Attorney General of Saskatchewan

**Gowling WLG (Canada) LLP**  
 2600 – 160 Elgin Street  
 Ottawa, ON K1P 1C3

**D. Lynne Watt**  
 Tel: 613.786.8695  
 Fax: 613.788.3509  
 Email: [lynne.watt@gowlingwlg.com](mailto:lynne.watt@gowlingwlg.com)

Agent for the Intervener,  
 Attorney General of Alberta

**IMK LLP**

Place Alexis Nihon, Tower 2  
140 – 3500 De Maisonneuve Blvd. West  
Montréal, QC H3Z 3C1

**Olga Redko | Ryan D.W. Dalziel, Q.C.**

Tel: 514.934.7742  
Fax: 514.934.7742  
Email: [oredko@imk.ca](mailto:oredko@imk.ca)

Counsel for the Intervener,  
Canadian Association for Progress in Justice

**Canadian Cancer Society**

500 – 116 Albert Street  
Ottawa, ON K1P 5G3

**Robert Cunningham**

Tel: 613.726.4624  
Fax: n/a  
Email: [somer@nccm.ca](mailto:somer@nccm.ca)

Counsel for the Intervener,  
Canadian Cancer Society

**Paliare Roland Rosenberg Rothstein LLP**

155 Wellington Street West, 35<sup>th</sup> Floor  
Toronto, ON M5V 3H1

**Ren Bucholz**

Tel: 416.646.6303  
Fax: 416.646.4301  
Email: [ren.bucholoz@paliareoland.com](mailto:ren.bucholoz@paliareoland.com)

Counsel for the Intervener,  
Cannabis Amnesty

**Fasken Martineau DuMoulin LLP**

1300 – 55 Rue Metcalfe  
Ottawa, ON K1P 6L5

**Sophie Arseneault**

Tel: 613.696.6904  
Fax: 613.230.6423  
Email: [sarseneault@fasken.com](mailto:sarseneault@fasken.com)

Agent for the Intervener,  
Canadian Cancer Society

**Power Law**

701 – 99 Bank Street  
Ottawa, ON K1P 6B9

**Jonathan Laxer**

Tel: 613.907.5652  
Fax: 613.907.5652  
Email: [jcameron@ravenlaw.com](mailto:jcameron@ravenlaw.com)

Agent for the Intervener,  
Cannabis Amnesty

**McCarthy Tétrault LLP**

Suite 5300, Toronto Dominion Bank Tower  
Toronto, ON M5K 1E6

**Adam Goldenberg | Holly Kallmeyer |**

**Simon Bouthillier**

Tel: 604.681.4146

Fax: 416.868.0673

Email: [elin@mandellpinder.com](mailto:elin@mandellpinder.com)

Counsel for the Interveners,  
Cannabis Council of Canada and  
Quebec Cannabis Industry Association

## Table of Contents

	<b>Page</b>
PART I – OVERVIEW AND FACTS.....	1
A.    Overview .....	1
B.    Facts.....	1
i.    Ontario’s Cannabis Regulation .....	1
PART II – STATEMENT OF POSITION .....	3
PART III – ARGUMENT.....	3
A.    Provinces may validly regulate the possession and cultivation of cannabis .....	3
B.    No conflict arises where Provincial law prohibits conduct Parliament declined to prohibit.....	5
C.    Parliament has not occupied the field of cannabis regulation.....	7
D.    Provincial law frequently prohibits conduct not subject to a criminal prohibition.....	8
PART IV – COSTS.....	9
PART V – ORDER.....	10
PART VI – SUBMISSIONS ON PUBLICATION .....	10
PART VII – AUTHORITIES .....	11
Caselaw .....	11
Statutes, Regulations, Rules, etc. ....	12
PART VII – STATUTES, REGULATIONS, ETC. ....	14

## **PART I – OVERVIEW AND FACTS**

### **A. Overview**

1. Cannabis is not a matter of exclusively federal concern. There is room in our constitutional order for Provinces to restrict the possession of cannabis for their own provincial purposes, including economic regulation, the protection of health and safety, and the suppression of conditions conducive to crime. Provincial regulation of cannabis for these purposes is grounded in provincial authority over property and civil rights and matters of a merely local or private nature under ss. 92(13) and 92(16) of the *Constitution Act, 1867*.

2. In regulating the possession of cannabis, the Provinces may not permit what Parliament has validly prohibited. It does not follow, however, that the Provinces may not prohibit what Parliament has declined to prohibit. Within the space left unprohibited by the criminal law, the Provinces are free to enact cannabis legislation to respond to their own local needs and priorities, including enacting prohibitions in circumstances where cannabis possession or cultivation is inimical to valid provincial purposes.

3. Section 91(27) of the *Constitution Act, 1867* gives Parliament the power to prohibit cannabis, not the power to prohibit Provinces from legislating in relation to cannabis.

### **B. Facts**

#### **i. Ontario's Cannabis Regulation**

4. In Ontario, the possession of cannabis for recreational purposes is regulated under the Cannabis Control Act, 2017, S.O. 2017, c. 26, Sch. 1 (CCA). Ontario's statute does not prohibit the home cultivation of cannabis or the possession of a cannabis plant by persons aged 19 or older. Accordingly, the precise prohibitions impugned in this appeal are not present in Ontario. Nevertheless, Ontario's statute does prohibit the possession of cannabis in some circumstances that are not prohibited under the federal Cannabis Act (CA). As a result, Ontario's cannabis legislation may be directly affected by this Court's analysis and decision in this appeal.

5. The prohibitions included in Ontario's CCA were enacted for the purposes of protecting public health and safety, protecting youth and restricting their access to cannabis, and ensuring the sale of cannabis in Ontario occurs in accordance with the regulatory regime established under the

*CCA* and other Ontario legislation.<sup>1</sup> The *CCA* also has the purposes of deterring illicit activities in relation to cannabis through appropriate enforcement and sanctions, and to provide for youth education or prevention programs, including culturally appropriate programs for Indigenous youth, as an alternative to enforcement and sanctions.<sup>2</sup>

6. In Ontario, the *CCA* prohibits activities that are not prohibited under the federal *Cannabis Act*. These prohibitions include:

- a. The distribution of cannabis to a person under 19 years of age.<sup>3</sup> In contrast, the *CA* prohibits distribution of cannabis to a person who is under 18 years of age.<sup>4</sup>
- b. The sale or distribution of cannabis to a person who is or appears to be intoxicated.<sup>5</sup>
- c. The possession, consumption, attempt to purchase, purchase or distribution of cannabis by a person under 19 years of age.<sup>6</sup> In contrast, the federal *CA* prohibits the possession of illicit cannabis, certain quantities of cannabis or cannabis plants, or possession by an organization.<sup>7</sup> Ontario's *CCA* may be particularly contrasted with the approach to possession by young persons. While the *CCA* prohibits possession of cannabis by a person under the age of 19 outright, under the federal regime only the possession by a young person (defined as a person over 12 but under 18 years of age) of more than 5 g of dried cannabis, or its equivalent, is prohibited.<sup>8</sup>

---

<sup>1</sup> See *Cannabis Control Act, 2017*, SO 2017, c 26, Schedule 1, [s 1\(a\)](#) [*CCA*]; *Ontario Cannabis Retail Corporation Act, 2017*, SO 2017, c 26, Schedule 2; See also *Cannabis Licence Act, 2018*, SO 2018, c 12, Schedule 2 (which address the creation of and wholesale of cannabis by the Ontario Cannabis Retail Corporation, and the licensing of cannabis retail stores, respectively).

<sup>2</sup> *CCA*, *ibid*, [s 1\(b\)](#), [\(c\)](#).

<sup>3</sup> *CCA*, *ibid*, [s 7\(1\)](#).

<sup>4</sup> *Cannabis Act*, SC 2018, c 16, [s 9\(1\)\(a\)\(ii\)](#) [*CA*].

<sup>5</sup> *CCA*, *supra* note 1, [s 8](#).

<sup>6</sup> *CCA*, *supra* note 1, [s 10\(1\)](#).

<sup>7</sup> *CA*, *supra* note 4, [s 8\(1\)\(a\)-\(f\)](#).

<sup>8</sup> *CA*, *supra* note 4, [s 8\(1\)\(c\)](#).



- d. The cultivation, propagation or harvesting, or any offer to do so, by a person under 19 years of age.<sup>9</sup> In contrast, the *CA* prohibits cultivation, propagation or harvesting of any cannabis plant by a young person, that is a person over 12 but under 18 years of age.<sup>10</sup>
- e. The transportation of cannabis in a vehicle or boat, except where it is in its original packaging and has not been opened, or where it is not accessibly to any person in the vehicle or boat.<sup>11</sup>

7. Except for the prohibition on transportation of cannabis under s. 12 of the *CCA*, the prohibitions in Ontario's legislation do not apply in relation to cannabis for medical purposes in accordance the federal *Cannabis Regulations*.<sup>12</sup>

8. Ontario's approach to the regulation of recreational cannabis differs from the one adopted by Quebec in that it permits home cultivation by individuals aged 19 and over and authorizes the sale of cannabis by licenced retailers. Nonetheless, Ontario's statute prohibits some conduct that Parliament has declined to prohibit, particularly possession and cultivation of cannabis by persons under the age of 19.

## PART II – STATEMENT OF POSITION

9. The Attorney General of Ontario submits that the Québec Court of Appeal did not err in holding that sections 5 and 10 of the *Cannabis Regulation Act*, CQLR c C-5.3, are constitutionally valid and operative.

## PART III – ARGUMENT

### A. Provinces may validly regulate the possession and cultivation of cannabis

10. The possession of cannabis is a subject-matter with both a federal and a provincial aspect.

---

<sup>9</sup> *CCA*, *supra* note 1, [s 10\(2\)](#).

<sup>10</sup> *CA*, *supra* note 4, [s 12\(6\)\(a\)](#).

<sup>11</sup> *CCA*, *supra* note 1, [s 12\(1\)](#).

<sup>12</sup> *CCA*, *supra* note 1, [s 5\(1\)](#).

As such, constitutional review of legislation restricting the possession of cannabis must place “emphasis on the legitimate interplay between federal and provincial powers” and “should favour, where possible, the ordinary operation of statutes enacted by *both* levels of government.”<sup>13</sup>

11. In its federal aspect, the possession of cannabis is a legitimate subject-matter for the criminal law. This Court has recognized that “Parliament has for long exercised extensive control over such matters as food and drugs by prohibitions grounded in the criminal law power”<sup>14</sup> and that prohibitions on cannabis possession in particular are “a proper subject matter for the exercise of the criminal law power.”<sup>15</sup> It is also well-established that “Parliament may determine what is not criminal as well as what is, and may hence introduce dispensations or exemptions in its criminal legislation.”<sup>16</sup>

12. But the possession of cannabis also presents a provincial aspect that is the legitimate subject of provincial regulation. Where a Province elects to establish a government monopoly on retail cannabis sales, as Québec has done, a prohibition on cultivation is part of a scheme of economic regulation that is not different in kind from state monopolies on alcohol or car insurance, both of which have long been recognized as falling within provincial legislative competence.<sup>17</sup> Where a Province elects to restrict cannabis possession for the protection of the health and safety of the public and of young persons in particular, as both Québec and Ontario have done, such restrictions fall within the Province’s plenary authority over public health, the protection of young persons and the suppression of conditions conducive to crime and other offences.<sup>18</sup> Such purposes have long been held to fall within provincial competence over property

---

<sup>13</sup> *Canadian Western Bank v Alberta*, 2007 SCC 22 at [paras 36-37](#), emphasis in original [*Canadian Western Bank*]

<sup>14</sup> *R v Hydro-Québec*, 1997 CanLII 318 (SCC), [1997] 3 SCR 213 at [para 131](#); *Canada (Attorney General) v PHS Community Services Society*, 2011 SCC 44 at [para 52](#).

<sup>15</sup> *R v Malmo-Levine*, 2003 SCC 74 at [paras 77-78](#).

<sup>16</sup> *R v Hydro-Québec*, 1997 CanLII 318 (SCC), [1997] 3 SCR 213 at [para 151](#); *RJR-MacDonald Inc. v Canada (Attorney General)*, 1995 CanLII 64 (SCC), [1995] 3 SCR 199 at [paras 53-54](#).

<sup>17</sup> *Air Canada v Ontario (Liquor Control Board)*, 1997 CanLII 361 (SCC), [1997] 2 SCR 581 at [para 54](#); *Canadian Indemnity Co. et al. v A.G. of British Columbia*, [1976 CanLII 195 \(SCC\)](#), [1977] 2 SCR 504.

<sup>18</sup> *Reference re Genetic Non-Discrimination Act*, 2020 SCC 17 at [paras 93-94](#); *Club Pro Adult Entertainment Inc. v Ontario (Attorney General)*, 2008 ONCA 158 at [paras 11-13](#), leave to appeal to SCC refused, 32612 (18 September 2008); *Montréal v Arcade Amusements Inc.*, 1985 CanLII 97 (SCC), [1985] 1 SCR 368 at [420-421](#); *Reference Re Authority to Perform Functions Vested by*

and civil rights and matters of a merely local or private nature. Moreover, the Provinces are expressly empowered by s. 92(15) of the *Constitution Act, 1867* to impose “Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province” that is authorized by s. 92.

13. Provincial prohibitions on the possession and cultivation of cannabis are distinguishable from the rare occasions on which this Court has found provincial legislation to be criminally colourable. In one such case, *Westendorp v. The Queen*, municipal legislation prohibiting anyone from being on the street for the purposes of prostitution was found to be *ultra vires* because the prohibition was so singularly an attempt to control prostitution, a clearly federal subject matter, that it could not fit into the otherwise valid provincial scheme to control the use of the streets.<sup>19</sup> Unlike the provision controlling prostitution in *Westendorp*, cannabis is not an indisputably federal subject matter. Instead, the prohibitions at issue in this appeal have clear provincial purposes and are grounded in provincial heads of power.

**B. No conflict arises where Provincial law prohibits conduct Parliament declined to prohibit**

14. Although cooperative federalism dictates that courts ought to take a “restrained approach”<sup>20</sup> to the paramountcy analysis, the doctrine of federal paramountcy will still apply to render a provincial law inoperative where provincial and federal legislation conflict, either by way of: “(1) an *operational conflict*, where compliance with both the federal and provincial law is impossible; and (2) *frustration of purpose*, where the provincial law thwarts the purpose of the federal law.”<sup>21</sup>

15. While his primary argument is that the impugned provisions are, in pith and substance, incursions on the federal criminal law power, the Appellant argues in the alternative that if this Court finds the regulation of cannabis to have both provincial and federal aspects, the federal *CA*

---

*Adoption Act, The Children of Unmarried Parents Act, The Deserted Wives' and Children's Maintenance Act of Ontario*, 1938 CanLII 2 (SCC), [1938] SCR 398 at [402](#), [418-419](#); *Chatterjee v Ontario (Attorney General)*, 2009 SCC 19 at [paras 28, 41](#).

<sup>19</sup> *Westendorp v The Queen*, 1983 CanLII 1 (SCC), [1983] 1 SCR 43 at [51-52](#).

<sup>20</sup> *Reference re Securities Act*, 2011 SCC 66 at [para 60](#); *Saskatchewan (Attorney General) v Lemare Lake Logging Ltd.*, 2015 SCC 53 at [para 21](#) [*Lemare Lake*].

<sup>21</sup> *Lemare Lake*, *supra* note 20 at [para 17](#), emphasis in original.

must take precedence.<sup>22</sup> With respect, this argument must fail. The Provinces may validly prohibit conduct that Parliament declines to prohibit. In doing so, the Provinces do not cause either an operational conflict or frustration of a federal purpose.

16. This Court has long upheld the validity of provincial statutes that go further than the criminal law in prohibiting certain conduct:

As the criminal law power is essentially prohibitory in character, provisions enacted pursuant to it...do not ordinarily create freestanding rights that limit the ability of the provinces to legislate in the area more strictly than Parliament. This limited reach of s. 91(27) is well understood: see, for example, *O’Grady v. Sparling*, [1960] S.C.R. 804; *Ross v. Registrar of Motor Vehicles*, [1975] 1 S.C.R. 5; and *Spraytech [114957 Canada Ltée (Spraytech, Société d’arrosage) v. Hudson (Town)*, [2001] 2 S.C.R. 241.<sup>23</sup>

17. The articulation in *Rothmans* of the essential character of the criminal law power is consistent with both prior and subsequent division of powers jurisprudence from this Court. Because criminal law is prohibitory in nature, Parliament’s decision not to prohibit certain conduct cannot be said to create a positive entitlement or “freestanding right”<sup>24</sup> to engage in that conduct. Instead, conduct which is left unprohibited by the criminal law can be regulated by the Provinces within their areas of competency.

18. In *Spraytech*, the appellants argued that since certain pesticide products were not prohibited under the applicable federal legislation, a municipal bylaw which restricted their use conflicted with the federal law and was inoperative by virtue of the doctrine of paramountcy. This Court dismissed the appeal, noting that the federal legislation was “permissive, rather than exhaustive” and that there was no operational conflict because it was possible to comply with both regulatory regimes.<sup>25</sup> This Court further noted that municipalities routinely impose restrictions in addition to those imposed by federal law in other areas, and that “[a]s a general principle, the mere existence of provincial (or federal) legislation in a given field does not oust municipal prerogatives to regulate the subject matter.”<sup>26</sup>

---

<sup>22</sup> Appellant’s Factum at paras 14-15.

<sup>23</sup> *Rothmans, Benson & Hedges Inc. v Saskatchewan*, 2005 SCC 13 at [para 19](#) [*Rothmans*].

<sup>24</sup> *Rothmans*, *ibid*.

<sup>25</sup> *114957 Canada Ltée (Spraytech, Société d’arrosage) v Hudson (Town)*, 2001 SCC 40 at [para 35](#) [*Spraytech*].

<sup>26</sup> *Spraytech*, *ibid* at [paras 35, 39](#).

19. Consistent with *Spraytech*, this Court has held that “a provincial law may in principle add requirements that supplement the requirements of federal legislation.”<sup>27</sup> The fact that a provincial law is more restrictive than its federal counterpart is simply not enough to meet the high standard imposed by this Court’s paramountcy jurisprudence.<sup>28</sup> It is well established that more restrictive provincial legislation does not result in an operational conflict,<sup>29</sup> and that “permissive federal legislation, without more, will not establish that a federal purpose is frustrated when provincial legislation restricts the scope of the federal permission.”<sup>30</sup>

20. Provincial prohibitions or additional restrictions on the possession or cultivation of cannabis are no different from those this Court has upheld in relation to the use of pesticides,<sup>31</sup> the promotion of insurance products,<sup>32</sup> automatic roadside prohibitions<sup>33</sup> or licence suspensions<sup>34</sup> in relation to impaired driving, or the waiting period before a creditor can enforce its security interest against farm land.<sup>35</sup>

### **C. Parliament has not occupied the field of cannabis regulation**

21. Even if the criminal law power permitted Parliament to occupy the field of cannabis regulation, which is denied, no such intention to occupy the field is present in the federal *Cannabis Act*.

22. In *Rothmans*, this Court rejected the argument that in prohibiting the promotion of tobacco products and brand elements under certain circumstances in the *Tobacco Act*, Parliament had created a positive entitlement to display tobacco products, subject only to its own regulations.<sup>36</sup>

---

<sup>27</sup> *Canadian Western Bank*, *supra* note 13 at [para 72](#).

<sup>28</sup> *Lemare Lake*, *supra* note 20 at [paras 25-26](#).

<sup>29</sup> *Alberta (Attorney General) v Moloney*, 2015 SCC 51 at [para 26](#).

<sup>30</sup> *Quebec (Attorney General) v Canadian Owners and Pilots Association*, 2010 SCC 39 at [para 66](#).

<sup>31</sup> *Spraytech*, *supra* note 25.

<sup>32</sup> *Canadian Western Bank*, *supra* note 13.

<sup>33</sup> *Goodwin v British Columbia (Superintendent of Motor Vehicles)*, 2015 SCC 46 at [paras 32-34](#) [*Goodwin*].

<sup>34</sup> *Ross v Registrar of Motor Vehicles et al.*, 1973 CanLII 176 (SCC), [1975] 1 SCR 5 at [12-13](#) [*Ross*]; see also *Provincial Secretary of Prince Edward Island v Egan*, 1941 CanLII 1 (SCC), [1941] SCR 396 at [415-416](#).

<sup>35</sup> *Lemare Lake*, *supra* note 20.

<sup>36</sup> *Rothmans*, *supra* note 23 at [paras 19-21](#).

I do not accept the respondent’s argument that Parliament...intended to make the retail display of tobacco products subject only to its own regulations. In my view, to impute to Parliament such an intention to “occup[y] the field” in the absence of very clear statutory language to that effect would be to stray from the path of judicial restraint in questions of paramountcy that this Court has taken since at least *O’Grady*.<sup>37</sup>

23. In its decisions since *Rothmans*, this Court has reiterated that “[t]he fact that Parliament has legislated in respect of a matter does not lead to the presumption that in so doing it intended to rule out any possible provincial action in respect of that subject.”<sup>38</sup> The *CA* does not contain the express language that would be necessary to conclude that Parliament’s intent was to occupy the field of cannabis regulation. On the contrary, and as was the case in *Spraytech*, the *CA* contemplates concurrent provincial regulation of the possession of cannabis.<sup>39</sup> As a result, this Court “should not presume that Parliament intended to ‘occupy the field’ and render inoperative provincial legislation in relation to the subject,” in this case, the possession and cultivation of cannabis.<sup>40</sup>

#### **D. Provincial law frequently prohibits conduct not subject to a criminal prohibition**

24. The above principle is illustrated by the numerous areas in which the provincial laws add prohibitions or restrictions of their own to conduct that may also be subject to prohibitions found in the *Criminal Code*. In this way, the Provinces do not seek to alter or add to the criminal law, but to regulate the same conduct from the perspective of provincial areas of competency.

25. Driving offences are a ubiquitous example of an area in which provincial statutes prohibit conduct that is not prohibited by federal criminal law.<sup>41</sup> While s. 320.13(1) of the *Criminal Code* includes the offence of dangerous operation of a motor vehicle,<sup>42</sup> Ontario’s *Highway Traffic Act* prohibits a wide range of other driving offences. The prohibition on driving “a motor vehicle on a

---

<sup>37</sup> *Rothmans*, *ibid* at [para 21](#).

<sup>38</sup> See *Canadian Western Bank*, *supra* note 13 at [para 74](#); See also *Lemare Lake*, *supra* note 20 at [para 27](#).

<sup>39</sup> *CA*, *supra* note 4, [ss 69\(1\), 70\(2\), 72](#); *Spraytech*, *supra* note 25 at [paras 39, 42](#).

<sup>40</sup> *Lemare Lake*, *supra* note 20 at [para 27](#).

<sup>41</sup> See *Goodwin*, *supra* note 33 at [paras 31-34](#), *Canadian Western Bank*, *supra* note 13 at [para 30](#); *Ross*, *supra* note 34.

<sup>42</sup> *Criminal Code*, RSC 1985, c C-46, [s 320.13\(1\)-\(3\)](#).

highway in a race or contest, on a bet or wager or while performing a stunt,” commonly known as stunt driving, in s. 172(1) of the *Highway Traffic Act* is just one of many examples.<sup>43</sup>

26. As another example, the *Criminal Code* prohibits causing a disturbance in a public place while being drunk,<sup>44</sup> whereas Ontario legislation contains a broader prohibition on being intoxicated in a public place, with or without causing a disturbance.<sup>45</sup>

27. Similarly, the *Criminal Code* prohibition on insider trading<sup>46</sup> exists alongside Ontario legislation prohibiting a range of other conduct in relation to securities, such as trading in securities without filing the required prospectuses<sup>47</sup> or knowingly making false or misleading statements that would reasonably be expected to have a significant impact on the value of a security.<sup>48</sup>

28. The interplay between these federal and provincial statutory prohibitions demonstrates a common theme – that is, conduct that remains unprohibited by a criminal prohibition can nonetheless be prohibited in its provincial aspects. There is no material difference between the prohibitions at issue in this appeal and those contained in a myriad of other provincial statutes. In all of these areas, there is room in our constitutional order for action by both federal and provincial governments.

29. For the reasons set out above, the Attorney General of Ontario submits that Quebec’s *Cannabis Regulation Law* validly prohibits that which Parliament declined to prohibit, and, in doing so, neither operationally conflicts with nor frustrates the purpose of the federal *CA*.

#### **PART IV – COSTS**

30. The Attorney General of Ontario does not seek costs and requests that no costs be awarded against it.

---

<sup>43</sup> *Highway Traffic Act*, RSO 1990, c H.8, [s 172\(1\)](#) (“stunt” driving is defined to include a range of conduct including driving 50 km or more over the speed limit where the speed limit is 80 km/h or above, [O Reg 455/07](#), s 3).

<sup>44</sup> *Criminal Code*, *supra* note 41, [s 175\(1\)\(a\)\(ii\)](#).

<sup>45</sup> *Liquor Licence and Control Act, 2019*, SO 2019, c 15, Schedule 22, [s 31\(1\)\(a\)](#).

<sup>46</sup> *Criminal Code*, *supra* note 41, [s 382.1\(1\)](#).

<sup>47</sup> *Securities Act*, RSO 1990, c S.5, [s 53\(1\)](#).

<sup>48</sup> *Securities Act*, *ibid*, [s 126.2\(1\)](#).

**PART V – ORDER**

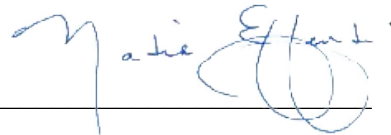
31. The Attorney General of Ontario takes no position on the outcome of this appeal

**PART VI – SUBMISSIONS ON PUBLICATION**

N/A

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of August 2022.

Per:



---

**S. Zachary Green | Hera Evans  
Counsel for the Intervener,  
Attorney General of Ontario**



## PART VII – AUTHORITIES

### Caselaw

12	Authority	Paragraph Reference
1.	<i>114957 Canada Ltée (Spraytech, Société d'arrosage) v Hudson (Town)</i> , <a href="#">2001 SCC 40</a>	18, 20, 23
2.	<i>Air Canada v Ontario (Liquor Control Board)</i> , 1997 CanLII 361 (SCC), <a href="#">[1997] 2 SCR 581</a>	12
3.	<i>Alberta (Attorney General) v Moloney</i> , <a href="#">2015 SCC 51</a>	19
4.	<i>Canada (Attorney General) v PHS Community Services Society</i> , <a href="#">2011 SCC 44</a>	11
5.	<i>Canadian Western Bank v Alberta</i> , <a href="#">2007 SCC 22</a>	10, 19, 20, 23, 25
6.	<i>Canadian Indemnity Co. et al. v A.G. of British Columbia</i> , 1976 CanLII 195 (SCC), <a href="#">[1977] 2 SCR 504</a>	12
7.	<i>Club Pro Adult Entertainment Inc. v Ontario (Attorney General)</i> , <a href="#">2008 ONCA 158</a> , leave to appeal to SCC refused, 32612 (18 September 2008)	12
8.	<i>Chatterjee v Ontario (Attorney General)</i> , <a href="#">2009 SCC 19</a>	12
9.	<i>Goodwin v British Columbia (Superintendent of Motor Vehicles)</i> , <a href="#">2015 SCC 46</a>	20, 25
10.	<i>Montréal v Arcade Amusements Inc.</i> , 1985 CanLII 97 (SCC), <a href="#">[1985] 1 SCR 368</a>	12
11.	<i>Provincial Secretary of Prince Edward Island v Egan</i> , 1941 CanLII 1 (SCC), <a href="#">[1941] SCR 396</a>	20
12.	<i>Quebec (Attorney General) v Canadian Owners and Pilots Association</i> , <a href="#">2010 SCC 39</a>	19
13.	<i>R v Hydro-Québec</i> , 1997 CanLII 318 (SCC), <a href="#">[1997] 3 SCR 213</a>	11
14.	<i>R v Malmö-Levine</i> , <a href="#">2003 SCC 74</a>	11
15.	<i>Reference re Genetic Non-Discrimination Act</i> , <a href="#">2020 SCC 17</a>	12

12	Authority	Paragraph Reference
16.	<i>Reference re Securities Act</i> , <a href="#">2011 SCC 66</a>	14
17.	<i>Ross v Registrar of Motor Vehicles et al.</i> , 1973 CanLII 176 (SCC), <a href="#">[1975] 1 SCR 5</a>	20, 25
18.	<i>RJR-MacDonald Inc. v Canada (Attorney General)</i> , 1995 CanLII 64 (SCC), <a href="#">[1995] 3 SCR 199</a>	11
19.	<i>Rothmans, Benson &amp; Hedges Inc. v Saskatchewan</i> , <a href="#">2005 SCC 13</a>	16, 17, 22
20.	<i>Saskatchewan (Attorney General) v Lemare Lake Logging Ltd.</i> , <a href="#">2015 SCC 53</a>	14, 19, 20, 23
21.	<i>Westendorp v The Queen</i> , 1983 CanLII 1 (SCC), <a href="#">[1983] 1 SCR 43</a>	13

### Statutes, Regulations, Rules, etc.

No.	Statute, Regulation, Rule, etc.	Section, Rule, Etc.
1.	Cannabis Act, SC 2018, c 16	ss <a href="#">8(1)(a)-(f)</a> , <a href="#">8(1)(c)</a> , <a href="#">12(6)(a)</a> , <a href="#">9(1)(a)(ii)</a> , <a href="#">69(1)</a> , <a href="#">70(2)</a> , <a href="#">72</a>
	<i>Loi sur le cannabis</i> , L.C. 2018, ch. 16	arts <a href="#">8(1)(a)-(f)</a> , <a href="#">8(1)(c)</a> , <a href="#">12(6)(a)</a> , <a href="#">9(1)(a)(ii)</a> , <a href="#">69(1)</a> , <a href="#">70(2)</a> , <a href="#">72</a>
2.	<i>Cannabis Control Act, 2017</i> , SO 2017, c 26, Schedule 1	s <a href="#">1(a)-(c)</a> , <a href="#">5(1)</a> , <a href="#">7(1)</a> , <a href="#">8</a> , <a href="#">10(1)</a> , <a href="#">10(2)</a> , <a href="#">12(1)</a>
	<i>Contrôle du cannabis</i> (Loi de 2017 sur le), L.O. 2017, chap. 26, Annexe 1	arts <a href="#">1(a)-(c)</a> , <a href="#">5(1)</a> , <a href="#">7(1)</a> , <a href="#">8</a> , <a href="#">10(1)</a> , <a href="#">10(2)</a> , <a href="#">12(1)</a>
3.	<i>Cannabis Licence Act, 2018</i> , SO 2018, c 12, Schedule 2	Generally
	<i>Licences liées au cannabis</i> (Loi de 2018 sur les), L.O. 2018, chap. 12, Annexe 2	Généralment

No.	Statute, Regulation, Rule, etc.	Section, Rule, Etc.
4.	<i>Criminal Code</i> , RSC 1985, c C-46	ss <a href="#">175(1)(a)(ii)</a> , <a href="#">320.13(1)-(3)</a> , <a href="#">382.1(1)</a>
	<i>Code criminel</i> , L.R.C. (1985), ch. C-46	arts <a href="#">175(1)(a)(ii)</a> , <a href="#">320.13(1)-(3)</a> , <a href="#">382.1(1)</a>
5.	<i>Highway Traffic Act</i> , RSO 1990, c H.8	s <a href="#">172(1)</a>
	<i>Code de la route</i> , L.R.O. 1990, chap. H.8	art <a href="#">172(1)</a>
6.	<i>Liquor Licence and Control Act, 2019</i> , SO 2019, c 15, Schedule 22	s <a href="#">31(1)(a)</a>
	<i>Permis d'alcool et la réglementation des alcools</i> (Loi de 2019 sur les), L.O. 2019, chap. 15, annexe 22	art <a href="#">31(1)(a)</a>
7.	<i>Ontario Cannabis Retail Corporation Act, 2017</i> , SO 2017, c 26, Schedule 2	<a href="#">Generally</a>
	<i>Société ontarienne de vente du cannabis</i> (Loi de 2017 sur la), L.O. 2017, chap. 26, Annexe 2	<a href="#">Généralment</a>
8.	<i>Securities Act</i> , RSO 1990, c S.5	s <a href="#">53(1)</a>
	<i>Loi sur les valeurs mobilières</i> , LRO 1990, c S.5	art <a href="#">53(1)</a>

**PART VII – STATUTES, REGULATIONS, ETC.**

See Part VII above