

SUPREME COURT OF CANADA



Case in Brief: *R. v. Comeau*

2018 SCC 15 | Judgment of April 19, 2018 | On appeal from the Court of Appeal of New Brunswick

A law preventing residents of New Brunswick from stocking up on alcohol from another province is constitutional, the Supreme Court has ruled. Provinces have flexibility to make laws to address particular conditions and priorities within their borders. They can do this even if those laws may incidentally restrict the movement of goods across their borders.

The Court unanimously allowed the Crown's appeal in a case of a New Brunswick man who bought alcohol from neighbouring Quebec.

Section 134(b) of the New Brunswick's *Liquor Control Act* forbids residents from possessing large amounts of alcohol not purchased from the New Brunswick Liquor Corporation—for example, purchased from other provinces. The RCMP was watching New Brunswick residents who crossed the border into Quebec to buy cheaper alcohol. On October 6, 2012, Gerard Comeau drove to Quebec from his home in New Brunswick to stock up. When he returned to New Brunswick, Mr. Comeau was stopped by the RCMP with large amounts of beer and some spirits he bought in Quebec. He was fined \$240, plus fees.

Mr. Comeau fought the fine. He said that section 121 of the *Constitution Act, 1867* guarantees free trade across provincial borders. The Crown disagreed. It argued that section 121 was only meant to prevent provinces from charging tariffs or similar costs at the border. The Crown said the provision did not apply in Mr. Comeau's situation. The trial judge, breaking with longstanding Supreme Court precedent, agreed with Mr. Comeau and dismissed the charge.

The New Brunswick Court of Appeal dismissed the Crown's request for permission to appeal. The Crown appealed to the Supreme Court.

The Supreme Court held that while section 121 prohibits laws whose *main* purpose is to prevent the movement of goods across provincial borders, it does not prohibit legislation that has *incidental* effects on trade. While the New Brunswick law Mr. Comeau challenged restricted the movement of alcohol across the provincial border, this was not its main purpose. Its main purpose was to manage the supply and demand of liquor in New Brunswick. Therefore, the law is constitutional.

This case turned on the meaning of section 121 of the *Constitution Act, 1867*. To understand its meaning, the Court looked at the wording, history, and position of the provision within the Constitution. It also looked at the legal principles that guide how courts understand the Constitution. The Court concluded that section 121 prohibits laws restricting inter-provincial trade, but only where restricting trade is the laws' main purpose. If section 121 were understood to guarantee free inter-provincial trade, it would have far-reaching effects on agricultural supply management, public health prohibitions, environmental controls, and similar schemes. Section 121 lets provinces enact these types of measures, as long as their main purpose is not simply to prevent the importation of goods from other provinces.

For more information (case no. 37398):

- [Reasons for judgment](#)
- [Case information](#)
- [Webcast of hearing](#)

Breakdown of reasons:

- The Court (unanimous): [McLachlin](#) C.J. and [Abella](#), [Moldaver](#), [Karakatsanis](#) [Wagner](#), [Gascon](#), [Côté](#), [Brown](#) and [Rowe](#) JJ.

Lower court rulings:

- Court of Appeal of New Brunswick ([denial of leave](#))
- Provincial Court of New Brunswick ([trial judgment](#))

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