

## 41. INTER-PROVINCIAL TRADE BARRIER REFORM: BEER AND WINE MANAGEMENT

### Issue statement

Inter-provincial barriers in Canada prohibit growth and limit consumer choice in too many businesses and industries. A prime example of an industry still hampered by antiquated inter-provincial trade barriers is the wine, beer and spirits industry. Recently, our federal government liberalized inter-provincial trade in liquor by allowing individuals to import wine, beer and spirits for personal consumption, and a few provinces (including British Columbia) have made their own regulations congruent with this federal exemption. Unfortunately, in most Canadian provinces inter-provincial trade in liquor remains restricted by a patchwork of regulations. British Columbia must encourage other provinces to modernize their liquor laws to allow freer interprovincial trade in wine, beer and spirits.

### Background

Until recently, the Federal *Importation of Intoxicating Liquors Act* criminalized the interprovincial importation of liquor by individuals. In 2012, the *Act* was amended to allow individuals to import wine across provincial borders for personal consumption. In June 2014 further amendments to the *Act* extended this personal use exemption to include interprovincial shipment of beer and spirits.

Regrettably, the federal government's action to liberalize and modernize interprovincial trade in liquor has been largely frustrated by protectionist measures enacted by several provinces and territories. With few laudable exception (notably British Columbia), it remains largely illegal for individuals to import wine, beer and spirits for personal use from out of province.

It is key to note that first TILMA and then the NWPTA can take precedence in interprovincial trade matters.<sup>1</sup> The spirit, it seems of first TILMA, and now, NWPTA is being eroded: the current climate of cross-provincial borders retaliatory legislation, verbiage, and potentially, tariff-like penalties is completely counter to the spirit of economic health and resident benefit envisioned by the NWPTA. A positive outcome of *R v Comeau*, April 2018, may be to discourage cross-border provincial punitive legislation from taking effect.<sup>2</sup>

The effect of these protectionist measures is most keenly felt by British Columbia's small and mid-sized producers, who commonly lack the volume and financial resources to sell to provincial liquor boards. As a result, many British Columbia liquor producers are limited in their ability to establish demand for their products in a national domestic market, which makes competition against large international producers more challenging. Interprovincial protectionist measures are also a drag on all producers who would

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1 Building upon the TILMA (Trade, Industry and Labour Mobility Agreement, the New West Partnership (NWPTA) continues to take precedence in inter-provincial trade through its many exemptions. The NWPTA created Canada's largest interprovincial free trade zone. It is a ground-breaking economic partnership between the Governments of British Columbia, Alberta, and Saskatchewan. The Agreement has a number of benefits for the three provinces, which include:

- Reduced costs for businesses, governments, and consumers.
- Streamlined regulations through mutually recognizing or otherwise reconciling unnecessary differences in standards and regulations.
- An enforceable dispute mechanism to ensure that each province lives up to its commitments.
- Enhanced competitiveness through the free flow of goods, services, investment, and workers.

The Agreement came into effect on July 1, 2010 and has been fully implemented since July 1, 2013. The Second Protocol of Amendment came into force on December 31, 2015.

2 <https://biv.com/article/2018/04/comeau-loses-case-judgment-good-news-bc-wine>

benefit from internet-based sales and direct-to-consumer buying programs that provide better margins and enable more efficient supply management.

Perhaps most importantly, barriers to individual important of wine, beer and spirits are a hindrance to our tourism industry. Many out-of-province Canadian tourists now cannot bring British Columbia's fine wines home to share with their friends and are unable to participate in the wine clubs operated by many of British Columbia's enterprising wineries. Wineries lose because they are challenged to build long-term, loyal relationships with out-of-province customers. Consumers lose because their favourite British Columbia wine is not available to them at home.

As they do in all other industries, barriers to inter-provincial trade in wine, beer and spirits restrict opportunity, stunt growth, and limit consumer choice. Freer interprovincial liquor trade will allow British Columbia's liquor producers to gain access to the national domestic market, improve financial stability of our liquor industry, and help British Columbia companies compete against imported products that have dominated sales in the past. British Columbia's government must take action to ensure that all Canada's provinces follow our lead in allowing individuals to import beer, wine and spirits inter-provincially for personal consumption.

Wineries, free-traders and chambers of commerce, among others, held their collective breath from December 7, 2017 to April 19, 2018 while the Supreme Court debated R v Comeau. The opportunity in front of the court was to open up provincial borders to a wide variety of supply chains, including alcohol, cannabis, agricultural products and much more. Instead, the decision essentially maintained the status quo – and Mr Comeau is still looking for reimbursement for his seized beer bought in Quebec six years ago – taken away without compensation when he crossed back into New Brunswick.

“Section 121,” said the Court, does not impose absolute free trade across Canada. We further conclude that section 121 prohibits governments from levying tariffs or tariff-like measures (measures that in essence and purpose burden the passage of goods across a provincial border); but, s. 121 does not prohibit governments from adopting laws and regulatory schemes directed to other goals that have incidental effects on the passage of goods across provincial borders.”

#### THE CHAMBER RECOMMENDS

That the Provincial Government:

1. Continue to be at the forefront leading the charge to abolish barriers to inter-provincial trade in wine, beer and spirits; and
2. Continue to persuade and assist other provinces and the Federal government to remove barriers to inter-provincial trade in wine, beer and spirits.

**Submitted by the Kelowna Chamber of Commerce**

**Supported by the Greater Westside Board of Trade**

**The Policy Review Committee supports this resolution.**