

## Canada's Fathers of Confederation Envisioned Internal Free Trade Between Provinces

May 29, 2016

On May 11, 2016, I testified before the Canadian Senate Standing Committee on Banking, Trade and Commerce, which is currently considering internal trade in Canada. My [testimony](#) is posted on the Senate website. In my opening presentation, I discussed the [Comeau decision](#), which is one of the most interesting decisions I have read recently (any Canadian historian should read this case). I recommended that the Senators consider a reference to the Supreme Court of Canada to interpret section 191 of the *Constitution Act, 1867* and the division of power in sections 91 and 92 of the *Constitution Act, 1867* in the context of section 191. If the Supreme Court of Canada agrees with Judge LeBlanc, this could change the course of trade within Canada. Many federal and provincial laws, regulations and practices would be impacted if free trade within Canada and between provinces is the constitutional norm.

The Comeau case is about a man who imported 22 cases of beer from Quebec into New Brunswick. He was stopped by the police when he returned to New Brunswick and was fined. He challenged the imposition of the fine as unconstitutional. — and won. It is my understanding that the Crown is not appealing.

Judge LeBlanc made the following very important findings:

- Subsection 134(b) of the *Liquor Control Act* (NB) constitutes a trade barrier and is unconstitutional re Section 121 of the *Constitution Act, 1867* (See paragraph 193 of *Comeau* decision)
- Section 121 should be interpreted as permitting “free movement of goods among the provinces without barriers, tariff or non-tariff...” (See paragraph 191 of *Comeau* decision)
- “The Fathers of Confederation wanted free trade between respective jurisdictions ... the Union meant free trade, the breaking down of all trade barriers as between provinces forming part of the proposed Dominion of Canada ...” (See paragraph 101 of *Comeau* decision)

Judge LeBlanc was given evidence about the oratory of the Fathers of Confederation. The Fathers of Confederation envisioned internal free trade within Canada as can be read in statements made at the time:

- “... if we wish ... to establish a commercial union, with unrestricted free trade, between people of the five provinces ...” Sir John A. MacDonald, February 6, 1865
- “Union of all Provinces would break down all trade barriers between us” – George Brown, September 12, 1864

- “Now we desire to bring about that same free trade in our own colonies” – Alexander Galt, November 1, 1865
- “Union is free trade among ourselves ...Give us Union and the East shall have free trade with the West.” – Alexander Galt, February 7, 1865
- “... the chief benefits expected to flow from Confederation was the free interchange of the products of the labour of each province” – Alexander Galt, November 23, 1864

During the question and answer period, Senators raised very important and interesting questions. One important question is whether the Fathers of Confederation envisioned free trade in services and goods (or just free trade in goods). This question may also be appropriate for the Supreme Court of Canada.



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