



The Hammer comes down:
Whining about wine in Canada

Description

Laws governing interprovincial wine transportation need revisiting

By **Linda Hammerschmid**

Perhaps you have heard about interprovincial wine transportation either on the news, in the media, or from fellow oenophiles.

In the not too distant past the shipping of any alcohol interprovincially was prohibited by Federal Law. We were all subjugated to the vestiges of the Prohibition era when the Government enacted the Importation of Intoxicating Liquors Act (IILA).

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Certain jurists profess that this law is unconstitutional, and the Federal Government did amend the legislation in 2012 to provide for an exemption nationally for personal use – of wine (note that specific rules of the Provinces also apply).

While our Canadian Constitution guarantees that the entire country is a free trade zone (Section 121) for Canadian produced products, the Importation Act referred to above provides for prison if a person is convicted of violating it (carrying one bottle from Hawkesbury for example into Quebec). How ridiculous and most likely an infringement of our Charter rights to liberty and mobility.

In New Brunswick, in 2016, one enlightened Judge threw out all charges against an accused who had imported 14 cases of beer and some liquor from Quebec (a tad hypocritical that Quebec who prohibits such shipments surely pocketed the purchase price and taxes – usually GST only depending on how shipment was made – from the buyer!), based on the exact same argument that the Constitution implements free trade.

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imported 14 cases of beer and some liquor from Quebec... based on the exact same argument that the Constitution implements free trade.'

Sadly, while the New Brunswick Appeal Court refused to hear the case, the Provincial Prosecutors appealed to the Supreme Court who, in April of this year, in their esteemed unanimous wisdom, overturned the Lower Court ruling returning New Brunswick, and by extension the rest of us, to the dark ages.

The reasoning: That the Province's ability to exercise oversight over liquor supplies would be undermined if non Crown Corporation "liquor boards" freely flowed! Further, the objective is not to restrict trade across Provincial boundaries – it is to "enable" public supervision of the production, sale, and use of alcohol; and S.121 only prohibits laws whose purpose is to prevent movement of goods across borders, it is not to prohibit legislation that has "incidental" effects on trade. Wow!

The law was again amended in 2014 to allow the exemption to encompass as well beer and spirits – always subject to personal use. Some regressive Provinces have nonetheless put up roadblocks to hinder shipping these products directly to the alcohol consummator!

Those reactionary Provinces are Newfoundland and Quebec, lest their liquor boards' profits are adversely affected no doubt. Regulations in Quebec do allow for importation from other Provinces but only nine litres and only if personally brought in by the imbiber. How one interprets "importation" to include or exclude direct shipping is obviously important.

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Manitoba is the only free spirit (pun intended) in our country as it allows for direct shipments inside the Province – again for personal use – without quantity specific quotas. However, it stands from studying the other Provincial rules that shipments can only be made directly within the Province but not from the other Provinces.

The P.E.I. Government, while also permitting in-Province personal and direct shipments, has stated that only in-person transport is allowed, not shipments from wineries etc., thereby effectively contradicting its own rules.

That certain Provinces prohibit Canadian wineries from shipping their wines to Canadians is not only improper but also insulting. Hopefully, if a group of pan-Canadian wineries banded together to challenge this situation, consumers would be the winners – unless of course, Quebec fell back on that old standard "notwithstanding clause".

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There are other practical implications for the Governments in dropping these archaic Provincial bans, such as enforcement. Do taxpayers really want their taxes squandered, even more, in cases of one Province taking action against another in attempts to insist that Provincial regulators take action against wineries?

Newfoundland went so far as to go after FedEx for shipping wine from a British Columbia winery to a Newfoundlander but the case was dropped once FedEx's lawyer argued brilliantly that Newfoundland's laws do not apply to Federal couriers. Maybe a useful loophole?!

Eugene Meehan Q.C., who heads Supreme Advocacy (a site which posts all the goings on at our Supreme Court) says that the New Brunswick case "raises issues yet to be resolved; in any case from the Supreme Court, that's an



issue”.

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Finally, and “notwithstanding” the Supreme Court decision, let’s hope the promises made, by certain legislators, that changes to these laws could be coming in fact materialize. Maybe next time the wine merchants and the cannabis sellers could all get their acts together and challenge the laws – again. Perseverance and a good glass of Pinot may eventually prevail.

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