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 **NORTON ROSE FULBRIGHT**

# A challenging wine trade, part 2

Chris Wilson



# External and internal trade challenges

WTO Challenges

B.C., Ontario, Quebec, Nova  
Scotia and Federal  
measures

Comeau  
(Interprovincial trade)

The Hicken Report

# General Agreement on Tariffs and Trade

## Article III:1 (internal taxes)

1. The contracting parties recognize that **internal taxes** and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, **should not be applied to imported or domestic products so as to afford protection to domestic production.**

# General Agreement on Tariffs and Trade

## Article III:4 (national treatment)

The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment **no less favourable than that accorded to like products of national origin** in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use.

# General Agreement on Tariffs and Trade

## Article XVII:1 (state trading enterprises)

Each contracting party undertakes that if it establishes or maintains a **State enterprise**, wherever located, or grants to any enterprise, formally or in effect, exclusive or special privileges,\* such **enterprise shall**, in its purchases or sales involving either imports or exports, **act in a manner consistent with the general principles of non-discriminatory treatment** prescribed in this Agreement for governmental measures affecting imports or exports by private traders.

# General Agreement on Tariffs and Trade

## Article XXIV:12 (regional governments)

Each contracting party shall take such **reasonable measures** as may be available to it to **ensure observance** of the provisions of this Agreement **by the regional and local governments** and authorities within its territories.

## B.C. Grocery Store Model

- **Store within a store**
  - Renovation needed to create physical separation, separate cashiers
  - May include both domestic and imported wine, depending on type of license relocated to grocery store
- **Shelf within a store**
  - No renovation needed
  - Restricted to 100% BC wine



# WTO Challenges, Current Status

- **United States Request for Consultations DS520**
  - filed January 18, 2017
- **Second U.S. Request for Consultations DS531**
  - filed October 2, 2017
  - focused on B.C. Grocery Store model
  - EU, Australia, New Zealand, Argentina filed requests to join
  - Chile, China, India, Israel, Korea, Mexico, Russia, South Africa and Chinese Taipei reserved third party rights
  - May 25, 2018: US requested panel to be established
  - July 20, 2018: panel established
  - Sunday, September 30, 2018: settled
    - USMCA Side Letter on Wine

# USMCA Update: Side Letter on Wine

- Changes to be implemented in BC no later than November 1, 2019
- Specifically, BC to end preferential measures that allow for BC wine to be sold on grocery store shelves while international wine is sold via the “store within a store” model
- US is not to take any further steps with regard to the WTO challenge prior to November 1, 2019
- If BC revises wine measures to be consistent with GATT, Article III:4 then the US and Canada will jointly notify the WTO that they have reached a mutually agreed solution
- To the extent that the US agrees that BC has completed the required revisions, WTO notification will happen no later than 15 days after changes have entered into force
- If BC fails to make the required revisions, the US will be free to resume the outstanding WTO challenge



*B.C. worked closely with the federal government and agreed to amend the measures relating to wine in grocery stores. This policy has been controversial for some time. We knew this was a problem that we were going to have to fix.*

John Horgan, Premier of British Columbia  
Bruce Ralston, B.C. Minister of Jobs, Trade and Technology  
October 1, 2018





*In settling the U.S. WTO case, Canada has finally acknowledged that it must live up to its WTO obligations and that blatantly discriminatory policies cannot be tolerated. We still have much work to do...but this is a significant accomplishment.*

Robert P. Koch  
CEO, California Wine Institute  
October 1, 2018



# USMCA Update: Annex on Alcohol

Divided into the following sections:

- Internal Sale and Distribution of Distilled Spirits, Wine, Beer, or other Alcohol Beverages
  - Largely repeats what was in old NAFTA
- Distinctive Products
  - Bourbon Whiskey, Tennessee Whiskey, Canadian Whiskey, Tequila, and Mezcal
- Wine and Distilled Spirits
  - applies to technical regulations, standards, and conformity assessment procedures that may affect trade in wine and distilled spirits (ex: labelling requirements and restrictions)
  - supplementary labels permitted to conform with national rules
- Other Provisions
  - food allergen labelling, analysis for pathogenic microorganisms, other administrative matters

# Alcohol Annex, cont'd

- **National Treatment**

- Does not apply to non-conforming provisions in existence as of 1989
- Para. 6: Ontario and British Columbia may discriminate in favour of wine of those provinces to a degree no greater than the discrimination required by such measure in existence on January 1, 1989.
- Para. 7: Quebec may still require that any wine sold in grocery stores in Quebec be bottled in Quebec, provided that alternative outlets are provided in Quebec for the sale of international wine.
- Listing decisions by government monopolies must be based on commercial considerations, be transparent, and have an appeal process
- Price mark-ups must conform to national treatment; foreign product accorded no less favourable treatment
  - But may charge actual cost-of-service differential

# WTO Challenges, Current Status

- **Australian Request for Consultations DS537**
  - Filed January 12, 2018 (first Australian WTO dispute against Canada ever)
  - Allegations re: B.C., Ontario, Quebec, Nova Scotia, and Federal taxation
  - Argentina, Chile, EU, New Zealand and US filed requests to join
  - August 13, 2018: Australia requested panel to be established; currently deferred.
  - September 30, 2018: USMCA Side Letter on Wine (Australia not a party)
    - Expect the BC changes to resolve Australia's complaint regarding the B.C. grocery store model
    - Other aspects of Australia's complaint remain outstanding
    - Outlook regarding Ontario is fairly hopeful given that Ontario's new government ran on a platform of expanding liquor sales

# Ontario Grocery Store Model

- **3 year rule**
  - For the first three years of an authorization, the store may only sell wine produced by a small or mid-sized winery using grapes from a single country
- **Product displays**
  - 10% small wineries (20% for first three years)
  - 50% of wines must be from grapes from a single country and either quality assurance wine, small winery, or country with less than 150M litres production
- **Basic tax rate**
  - Reduced for Ontario wine



# Quebec and Nova Scotia

## Quebec

- Grocers permitted to sell “wines bottled in Quebec”
- Grocers permitted to sell wine “delivered by a small-scale production permit holder” (as opposed to SAQ)
- Small-scale production permit holder must make wine from at least 50% of their own grapes and no more than 15% from outside of Quebec

## Nova Scotia

- *“It is the policy of the Corporation that wines from emerging regions as defined below and listed by the NSLC shall receive a **markup rate** that allows them to be competitively priced **to encourage consumer trial and acceptance**”*

*- Nova Scotia Liquor Corporation,  
“Emerging Wine Regions Policy”  
Industry Policy 6.3, December 13, 2017*

# Federal Excise Tax Act

- Excise Tax Act, 2001

- Section 135(1) imposes duty on wine packaged in Canada
- Section 135(2) exempts wine produced in Canada and “composed wholly of ... product grown in Canada” or produced by a wine licensee with less than \$50,000 in sales

## Derogations from national treatment

*Agreement between the European Economic Community and Canada concerning trade and commerce in alcoholic beverages*, 1989 O.J. L 71

- Art. 4: may require private wine store outlets in Ontario to sell only wines produced by Canadian wineries

*Agreement between the European Community and Canada on trade in wines and spirit drinks*, 2003 O.J. L 35/3

- Art. VIII, C: extended to British Columbia

*Comprehensive Economic and Trade Agreement*, in force  
September 21, 2017

- Exclusively domestic private wine stores shall not exceed 292 in Ontario and 60 in British Columbia.

*USMCA – Alcohol Annex*

# R. v. Comeau

- Does “admitted free” mean free from **customs duties**, or free from **all** barriers?
- Supreme Court of Canada reversed April 2018, upheld **Gold Seal** precedent
- Contrast to **Granholm v. Heald**, 544 U.S. 460 (2005)
- *Steam Whistle Brewing Inc v Alberta Gaming and Liquor Commission*, 2018 ABQB 476
  - 2015 mark-up applies to craft beer unless produced in B.C., Alberta, Sask.
  - 2016 mark-up applies to all, but grant equal to mark-up given to B.C., Alberta, Sask. producers
  - Not a tax, nevertheless an unconstitutional trade barrier: *Comeau*

“All Articles of the Growth, Produce, or Manufacture of any one of the Provinces shall, from and after the Union, be admitted free into each of the other Provinces

*Constitution Act, 1867, s. 121*”





When you lose, you appeal.

Rachel Notley  
Premier of Alberta  
July 17, 2018



# Hicken Report, April 30, 2018

- Business Technical Advisory Panel Review
- Recommendations affecting distribution of wine and beer through B.C.'s Liquor Distribution Branch system

“

*I can order fish from Japan on a Saturday and receive it on Tuesday. I am unable to get a case of wine delivered from Richmond to downtown Vancouver in 2 weeks.*

”



In effect, BC now has three distribution systems for liquor: one for those local producers who are allowed to self-distribute their products (direct distribution), one for beer (brewers' distribution), and one for imported product (the LDB distribution system).

Mark Hicken  
Chair – Business Technical Advisory Panel  
April 30, 2018



# Hicken Report

- Distribution System
- Wholesale Data and Reporting
- LDB Governance
- Hospitality and Retail Issues
- Social Responsibility and Health Issues
- Manufacturing and Retail Licensing or Policy Issues
- LCLB Fee Re-structuring and Service Guidelines

## **A CHALLENGING WINE TRADE, PART 2**

**ANOTHER YEAR OF CHALLENGES TO CANADA'S EVOLVING POLICIES ON INTERNAL AND  
EXTERNAL TRADE IN WINE**

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## **INTRODUCTION<sup>1</sup>**

In 2013, the Province of British Columbia announced what many viewed as a much needed overhaul of its liquor control regulations. This included numerous policy recommendations, central among them being the introduction of wine sales in grocery stores. The end result of the implementation, more or less, is that only British Columbia wines are permitted on licensed grocery store shelves. That result has become the subject of an international trade compliance complaint filed in 2017, and, collaterally, has brought to light several issues underlying Canadian liquor policy, the domestic wine industry, and international obligations.

In 2012, on the other side of the country, a consumer was arrested for purchasing liquor from a store across the river—a provincial border with Quebec—from his home town in New Brunswick. The consumer's constitutional challenge to the ban on interprovincial shipping of alcoholic beverages was accepted by the provincial court, with the appeal heard by the Supreme Court of Canada in December 2017.

Thus in Canada in 2018 we had two ongoing challenges to Canada's trade regime: one domestic and one international. The issues arising from these two challenges are highlighted in connection with recent developments in both internal and international trade agreements and jurisprudence, which have revealed the evolution in which Canadian liquor policy is developing.

### **A. Provincial models for wine sales in grocery stores**

#### **(i) British Columbia**

In February 2015, following the completion of a comprehensive liquor policy review,<sup>2</sup> a dominant theme of which was balancing convenience with public health and safety, the provincial government of British Columbia announced plans for two distinct models of wine sales to be permitted in grocery stores. To qualify for either model, the grocery store must have a minimum of 10,000 square feet of space, inclusive of storage space, and must be "primarily engaged in retailing a general line of foods including canned, dry and frozen food, fresh fruits and vegetables,

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<sup>1</sup> The authors gratefully acknowledge the assistance of Lauren Coady, articulated student at Norton Rose Fulbright Canada LLP, for her research and work updating this paper from the version first presented to the International Wine Law Association (AIDV) at its annual meeting in Bordeaux, France in October 2017

<sup>2</sup> See Government of British Columbia, Ministry of Justice, *B.C. Liquor Policy Review: Final Report* (2014).

fresh and prepared meats, fish and poultry, dairy products, baked products and snack foods, and non-liquor beverages.”<sup>3</sup>

In order to be able to sell wine, a grocery store must acquire an appropriate licence. The BC government no longer issues new wine store licences and has frozen the issuance of new licensee retail store (“LRS”) licences until 2022.<sup>4</sup> In 2016, a limited number of “special wine store” licences were made available by auction only.<sup>5</sup> Consequently, outside of the auction process, the only realistic method for a grocery store to obtain a licence for the sale of wine is to arrange for the relocation of an existing licence.

The type of licence restricts the grocery store sales model available and may also be associated with certain geographical restrictions: for example, in order to transfer an LRS licence to a grocery store, the proposed grocery store cannot be located within one kilometer of an existing licensee retail store or government liquor store.<sup>6</sup> Subsequent to the installation of a licence in the grocery store, in order to remain eligible, the grocery store’s revenue from food and non-liquor beverages must amount to at least 70% of non-liquor sales and at least 50% of the total sales revenue.<sup>7</sup>

The two models of wine sales that may exist in a grocery store are the “store within a store” and the “shelf within a store”. Both models may not exist within the same store. Licencing aside, the single characteristic distinguishing which model will be available is the source or origin of the wine being sold.

### **(1) Store within a store**

A wine store licence or LRS licence may relocate to a store within a grocery store. This “store within a store” model requires a physically separate space within the grocery store. The entire perimeter of the area must be identifiable and the majority of the perimeter must be “bounded by a fixed and immovable barrier.”<sup>8</sup> The restrictions permit grocery carts to pass between the grocery store and wine store, but access must be controlled between the two areas. There must be separate cash tills within the wine store area at which all wine store purchases must be made.

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<sup>3</sup> Policy Directive No. 15-01 (February 26, 2015) [“Policy Directive No. 15-01”].

<sup>4</sup> *Liquor Control and Licensing Regulation*, BC Reg. 241/2016, s. 57 [“*LCL Regulation*”].

<sup>5</sup> For more information on the various licences and permits, see British Columbia, Liquor Regulation and Licencing, “Licences & Permits”, online: <<http://www2.gov.bc.ca>>.

<sup>6</sup> *LCL Regulation*, s. 60.

<sup>7</sup> Policy Directive No. 15-01; *LCL Regulation*, s. 56(2).

<sup>8</sup> Policy Directive No. 15-01; Government of British Columbia, “Wine Store Terms and Conditions” (January 2017) at 13.

This model allows for the sale of all types of wine permitted under the terms and conditions of the applicable licence. That is, if the relocating licence permits only the sale of domestic wine, then only domestic wine can be sold in the store-within-a-store. If the relocating licence permits the sale of all types of wine, including both domestic and imported wine, then all types of wine may be sold.

The distance restriction noted above applies to the transfer of an LRS licence to a grocery store. No such restriction applies to the relocation of a wine store licence.<sup>9</sup> In a Policy Directive issued February 25, 2016, it was announced that the then governing regulations had been amended such that independent wine store licence relocations to grocery stores would be limited to this “store within a store” model.<sup>10</sup>

## **(2) Shelf within a store**

Certain wine store licences have been permitted to relocate to a shelf within a grocery store. Under this model, the wine store licensee must actually transfer the licence to the grocery store owner,<sup>11</sup> following which the grocery store will be permitted to sell wine directly off of the grocery store shelves. The government has also distributed, by auction, a limited number of special wine store licences, which allow for the sale of wine off the grocery store’s shelves.<sup>12</sup> Special wine store licences must be issued directly to the grocery store owner.<sup>13</sup>

Where a grocery store acquires a wine store licence or a special wine store licence, the product on display does not have to be confined by an identifiable boundary. It does, however, have to be displayed within one contiguous display area within the grocery store, and it must be capable of being secured and inaccessible to the public during hours when liquor sales are not permitted, even if the grocery store is still open for regular business.<sup>14</sup>

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<sup>9</sup> Government of British Columbia, “Wine Store Terms and Conditions” (January 2017) at 13.

<sup>10</sup> Policy Directive No. 16-05 (February 25, 2016) [“Policy Directive No. 16-05”].

<sup>11</sup> With the exception of BC VQA stores, the licences of which are held by the BC Wine Institute. If these licences are relocated, the BC Wine Institute will continue to hold the licence, but it must apply to appoint the grocery store as a third party operator.

<sup>12</sup> Six such licences were initially awarded to Loblaw Companies Limited through auction, with a further six licences scheduled to be awarded in December 2016, although no information on the result of this auction has yet been published. See Government of British Columbia, “Update on special wine store licence auctions”, online: < <https://news.gov.bc.ca>>.

<sup>13</sup> Government of British Columbia, “Wine Store Terms and Conditions” (January 2017) at 13.

<sup>14</sup> Government of British Columbia, “Wine Store Terms and Conditions” (January 2017) at 13.

Wine displayed on a shelf in a grocery store can be purchased at either specially designated tills, or at regular tills where both grocery and liquor purchases can be made, provided the person operating the till is at least 19 years of age and has the required Serving it Right qualification.<sup>15</sup> A single tasting area is permitted, provided it is immediately adjacent to the display area and is defined by a physical barrier. Finally, prior to approval, the proposed licensee must submit a satisfactory security plan demonstrating how, among other things, minors will be prevented from accessing wine and shoplifting will be prevented.<sup>16</sup>

The type of licence dictates the type of product that may be sold off the shelves. If the licence allows for the sale of BC VQA<sup>17</sup> wines only, then the permitted product on shelf will be restricted to BC VQA wine.<sup>18</sup> If the relocated licence allows only the sale of wine made from 100% BC agricultural products, then the product permitted on the shelf will include all wine made from 100% BC agricultural products, including cider, mead and sake.<sup>19</sup> Finally, and critically, if the licence allows for the sale of all types of wine, including both domestic and imported wine, *only 100% BC produced wine may be sold off the shelf*.<sup>20</sup> Again, this includes cider, mead and sake made from 100% BC agricultural products. As discussed below, this model has triggered an international response in the form of a trade complaint under the authority of the World Trade Organization (“WTO”).

## (ii) Ontario

By way of contrast, as of October 2016, the Province of Ontario has permitted the sale of both domestic and imported wine in a limited number of grocery stores, with that number set to rise over the coming years. Ontario had previously allowed the sale of beer in grocery stores, and, in

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<sup>15</sup> BC’s mandatory service of alcohol qualification.

<sup>16</sup> Government of British Columbia, “Wine Store Terms and Conditions” (January 2017) at 14.

<sup>17</sup> The BC Vintners Quality Alliance is a semi-voluntary “appellation of origin” system, which guarantees origin and ensures certain minimum quality requirements. For more information, see <http://www.bcvqa.ca>.

<sup>18</sup> As of November 3, 2016, 11 grocery stores were selling BC VQA wine under the authority of VQA wine store licences: see Government of British Columbia, “Update on special wine store licence auctions” (3 November 2016), online: <<http://news.gov.bc.ca/releases/>>.

<sup>19</sup> Pursuant to s. 2 of the *LCL Regulations*, the definition of wine is “wine that contains more than 1% alcohol by volume, and includes fortified wine, coolers made with wine, cider and sake that contain more than 1% alcohol by volume.”

<sup>20</sup> This was the position taken by the BC Government when the plan was initially announced. As of February 2016, only BC VQA licences or special wine store licences are available for the shelf-within-a-store model. Rather than restricting the type of wine regardless of what is permitted under the licence, independent wine store licences that are permitted to sell all types of wine are only eligible to relocate to the “store-within-a-store” model: see Policy Directive No. 16-05. The result with respect to what products will be available on grocery store shelves remains the same.

fact, VQA and blended wines, made with at least 25% Canadian grapes, could be sold in grocery stores holding specialized offsite Winery Retail Store licences.<sup>21</sup>

In 2016, new licences were issued, half of which are “universal” and allow the sale of both imported and domestic wines. The other half are “restricted” and allow only the sale of Ontario VQA wine. After three years, all restricted licences automatically convert to universal licences. A second round of new licences are set to be issued in 2019, with the same division between restricted and universal, and the same eventual conversion to entirely universal licences.

Restrictions are in place with respect to standard hours of sale and staff training, and there are limitations on package size, alcohol content and, for wine, minimum pricing. Additional restrictions apply to the offsite Winery Retail Store licences, which may be relocated to a grocery store on a gradual basis, as long as sales are limited to Ontario wines, and are “supplier-neutral”. For these licences, a specified percentage of shelf space must be set aside for the promotion of small wineries.

## **B. WTO challenge to BC’s model**

On January 18, 2017, the United States filed a request for consultation with Canada and the WTO’s Dispute Settlement Body, on the basis that BC’s model for wine sales in grocery stores is inconsistent with Canada’s national treatment obligations pursuant to the General Agreement on Tariffs and Trade (“GATT”). Article III:4 of GATT provides:

The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirement affecting their internal sale, offering for sale, purchase, transportation, distribution or use. ...

Following the initial request, additional requests to join the consultation have been filed by New Zealand, the EU, Argentina and Australia. Canada has accepted these requests, and entered into consultations with all complainants.

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<sup>21</sup> For more information on Ontario’s model, see Government of Ontario, “Beer, wine and cider sales in grocery stores” online: <<http://www.ontario.ca>>; see also Government of Ontario, “Striking the Right Balance: Modernizing Wine and Spirits Retailing and Distribution in Ontario” online: <<http://www.ontario.ca>>.

In its submission, the United States has claimed that BC's initial Policy Directive, as well as legislation, subsequent regulations and other documents permitting and outlining the implementation of the Policy Directive are inconsistent with Canada's WTO obligations, because they "fail to accord products imported into Canada treatment no less favourable than that accorded to like products of Canadian origin."<sup>22</sup> In the requests to join the consultation, New Zealand, the EU, Argentina and Australia all claim to have a substantial trade interest in the proceeding, as exporters of wine to Canada.<sup>23</sup>

The WTO Dispute Settlement Body has previously established the requirements for a violation of Article III.4. In *Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef*,<sup>24</sup> the panel distilled the elements of Article III:4 into the following components:

133. For a violation of Article III:4 to be established, three elements must be satisfied: that the imported and domestic products at issue are "like products"; that the measure at issue is a "law, regulation, or requirement affecting their internal sale, offering for sale, purchase, transportation, distribution, or use"; and that the imported products are accorded "less favourable" treatment than that accorded to like domestic products. ...

In addition to the US challenge, on January 12, 2018, Australia filed its own request for consultations with WTO<sup>25</sup>. The Australian challenge addresses many of the same concerns as the US challenge with respect to British Columbia's "store within a store" model and the potential contravention of Article III:4 of GATT. The Australian challenge, however, broadens the scope of the complaint. The challenge includes additional language regarding British Columbia's separate distribution system for imported wine and draws attention to the fact that B.C. wineries have the benefit of "direct delivery" to consumers. It should also be noted that Australia has challenged provincial legislation of Ontario, Quebec and Nova Scotia relating to liquor distribution and product mark-up measures. Lastly, Australia has included the Government of Canada in the challenge for its failure to take reasonable measures to ensure observance of the provisions of GATT 1994.

A consultation between Canada, and Australia was held in March with the goal of resolving this dispute.<sup>26</sup> These talks were unsuccessful, and the informal discussions which took place over the

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<sup>22</sup> World Trade Organization WT/DS520/1.

<sup>23</sup> World Trade Organization WT/DS520/1; WT/DS520/2; WT/DS520/3; WT/DS520/4; WT/DS520/5

<sup>24</sup> World Trade Organization WT/DS161

<sup>25</sup> World Trade Organization WT/DS537/1

<sup>26</sup> World Trade Organization WT/DS537/8.

following months followed likewise.<sup>27</sup> On August 13, 2018, Australia's Federal Trade Minister, Steven Ciobo, requested that the WTO convene a panel to determine the matter.<sup>28</sup> He has, however, maintained that Australia is open to working with Canada to come to a resolution.<sup>29</sup> Canada voiced their objection to the request, citing concerns about deficiencies in Australia's initial request for consultations.<sup>30</sup>

It remains to be seen how these disputes will be resolved. As of July, a panel has been approved for the US challenge, but it has not yet been composed.<sup>31</sup> It is likely an Australian panel will also be approved in September<sup>32</sup>, and it is possible the same panel will hear both matters together. Since the initial US request for consultation was commenced, both BC and Ontario have elected new provincial governments, with one of the Ontario's Conservative party's platform promises being the expansion of sales of wine into corner stores and grocery stores.<sup>33</sup> It is yet to be seen if these governments will be more receptive to resolving the dispute through negotiation than their predecessors were.

#### **(i) Previous WTO challenges**

This is not the first time that alcoholic beverages have been the subject of a WTO dispute involving Canada. The following is a brief review of previous disputes and the manner in which they were resolved or dealt with.

##### **(1) *European Communities/Canada challenge DS354***

In 2006, the European Communities brought a challenge over Canada's proposed repeal of excise taxes against beer brewed in Canada and wine made from domestically-grown grapes, while continuing to tax imported products. In that instance, in addition to an alleged violation of the national treatment obligations under Article III:4, the European Communities also cited a violation of GATT Article III:2. For full context, the relevant paragraphs of GATT provide:

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<sup>27</sup> World Trade Organization DS537

<sup>28</sup> Kotsios, Natalie, "Australia up the ante with WTO action against Canada over wine" *The Weekly Times* (August 14, 2018), online: <<https://www.weeklytimesnow.com.au/news/national/australia-up-the-ante-with-wto-action-against-canada-over-wine/news-story/e83191d1749aa79dc361291454507338>> .

<sup>29</sup> *Ibid.*

<sup>30</sup> World Trade Organization DS537

<sup>31</sup> World Trade Organization DS531

<sup>32</sup> Nuthall, Keith, "Canada's wine row with Australia rumbles on as disputes panel demand goes unheard" *Just Drinks* (August 31, 2018), online: < [https://www.just-drinks.com/news/canadas-wine-row-with-australia-rumbles-on-as-disputes-panel-demand-goes-unheard\\_id126661.aspx](https://www.just-drinks.com/news/canadas-wine-row-with-australia-rumbles-on-as-disputes-panel-demand-goes-unheard_id126661.aspx)>.

<sup>33</sup> Ontario Progressive Conservatives, "For the People: A Plan for Ontario", online: < [https://www.ontariopc.ca/plan\\_for\\_the\\_people](https://www.ontariopc.ca/plan_for_the_people)>.

1. The contracting parties recognize that internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production.

2. The products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Moreover, no contracting party shall otherwise apply internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1.

The European Communities and Canada eventually reached a Mutually Agreed Solution, under which Canada removed or reduced applied customs duties to specified imported products on a most favoured nation basis.<sup>34</sup>

## **(2) Provincial Marketing Agencies decisions**

In the late 1980s and early 1990s, Canada's provincial liquor boards (the agencies tasked with marketing alcoholic beverages) were the subject of dispute in two challenges under the pre-WTO GATT dispute resolution panel.<sup>35</sup> The first challenge was brought by the European Communities, while the second was brought by the United States.

In the European Communities challenge, the Panel reviewed the role of Canada's provincial liquor boards; in essence, all boards are created by provincial statutes and have control over the supply and distribution of alcoholic beverages within the province, pursuant to the constitutional powers granted to the provinces. The importation of liquor from outside of Canada, however, is governed by federal legislation. The federal government has prohibited the importation of alcoholic beverages except by "any board, commission, officer or other governmental agency that, by the law of the province, is vested with the right of selling intoxicating liquor".<sup>36</sup> This has effectively

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<sup>34</sup> Along with National Treatment, the principle of the "Most Favoured Nation" is central to GATT, and requires that "any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties." The particulars of the settlement reached can be found in WT/DS354/2.

<sup>35</sup> *Panel on Import, Distribution and Sale of Alcoholic Drinks by Canadian Provincial Marketing Agencies*, L/6304 – 35S/37; *Canada – Import, Distribution and Sale of Certain Alcoholic Drinks by Provincial Marketing Agencies*, DS17/R – 39S/27.

<sup>36</sup> *Importation of Intoxicating Liquors Act*, R.S.C. 1985, c. I-3, s. 3.

provided the provincial liquor boards with a monopoly over the importation of alcoholic beverages.<sup>37</sup>

The European Communities argued that Canada's provincial marketing agencies applied discriminatory mark-ups and other restrictions in a manner inconsistent with Canada's GATT obligations. Further, and of particular interest considering the current dispute, the European Communities argued that Canada's federal government had the authority "to remove the inconsistency of provincial and federal measures affecting the importation of alcoholic beverages with Canada's GATT commitments."<sup>38</sup>

The Panel ultimately determined that certain measures adopted by the provincial liquor boards were in violation of GATT, but the monopolies granted to those provincial liquor boards were not questioned. In a somewhat lacklustre conclusion, the Panel recommended that GATT contracting parties request that Canada "take such reasonable measures as may be available to it to ensure observance of the provisions of Articles II and XI of the General Agreement by the provincial liquor boards in Canada."<sup>39</sup>

Four years later, essentially the same issues were before the same Panel. This time the challenge had been launched by the United States, specifically with respect to the importation of beer. The United States argued that Canada had failed to bring the provincial liquor boards into conformity with GATT following the previous Panel report, and highlighted particular allegedly discriminatory practices "relating to listing, mark-ups and points of sale."<sup>40</sup> The allegations included: that all Canadian provinces continued to subject imported beer to more onerous conditions and formalities with regard to listing and delisting than those applied to domestic beer; that domestic products in most provinces (with the exception of New Brunswick and Prince Edward Island) benefited from the availability of points of sale additional to those available for the sale of imported beer; and that some provincial liquor boards continued to apply discriminatory mark-ups despite the findings made in the earlier European Communities challenge (and that some other provinces had replaced discriminatory mark-ups with discriminatory "cost-of-service" charges).

The Panel found numerous specific violations of GATT and concluded that Canada's "failure to make serious, persistent and convincing efforts to ensure observance" of the provisions of GATT,

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<sup>37</sup> L/6304 – 35S/37 at para. 2.2.

<sup>38</sup> L/6304 – 35S/37 at para. 3.1.

<sup>39</sup> L/6304 – 35S/37 at para. 4.36.

<sup>40</sup> DS17/R – 39S/27 at para. 3.1.

in spite of the findings in the earlier Panel decision “constituted a violation of Canada’s obligations under Article XXIV:12 and consequently a prima facie nullification or impairment of benefits accruing to the United States” under GATT.<sup>41</sup> As a result, the Panel recommended that GATT members request Canada:

(a) in respect of access to points of sale and differential mark-ups, to take such further reasonable measures as may be available to it to ensure observance of the provisions of the General Agreement by the liquor boards in its provinces;

(b) in respect of the other measures found to be inconsistent with the General Agreement, to take such reasonable measures as may be available to it to ensure observance of the provisions of the General Agreement by the liquor boards in its provinces; ...

These reports demonstrate both a strong history of efforts to benefit the domestic wine and beer industries in Canada and, arguably, a reluctance to comply with Panel recommendations in the area. Whether these previous examples of practices implemented by provincial liquor boards and Canada’s consequent involvement in international disputes will have any bearing on the present challenge remains to be seen.

## **(ii) Free trade agreements**

Free trade agreements fill out the picture with respect to the efforts states have gone to in order to protect domestic wine producers. An example of the exemptions created for wine is on display in the text of the Comprehensive Economic and Trade Agreement (“CETA”) between Canada and the EU, most of which was brought into force on September 21, 2017 pursuant to the *CETA Implementation Act*.<sup>42</sup>

Although CETA is designed to eliminate trade barriers between Canada and the EU, it has carved out a limited exception with respect to wine retailers in BC and in Ontario. The development of CETA in this direction highlights the history of Canada’s attempts to protect its domestic wine industry.

Under previous Canada-European Community agreements, Canada was permitted to favour domestically-produced wine in certain limited circumstances. Article 4 of the initial 1989 Agreement<sup>43</sup> provided that Canada shall extend national treatment principles to wine that is the

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<sup>41</sup> DS17/R – 39S/27 at para. 6.2.

<sup>42</sup> *Canada-European Union Comprehensive Economic and Trade Agreement Implementation Act*, S.C. 2017, c. 6

<sup>43</sup> *Agreement between the European Economic Community and Canada concerning trade and commerce in alcoholic beverages*, 1989 O.J. L 71.

product of the European Community, but that, notwithstanding this obligation, the appropriate Canadian competent authority may “require private wine store outlets in Ontario to sell only wines produced by Canadian wineries.”<sup>44</sup>

This was amended in Annex VIII, Article C of the 2003 Agreement,<sup>45</sup> which extended the exception to BC. The relevant portion of this amendment provided:

Canadian competent authorities shall accord national treatment and most-favoured-nation treatment to alcoholic beverages that are the product of the Community in accordance with the WTO Agreement. With respect to a province, national treatment and most-favoured-nation treatment shall mean treatment no less favourable than the most favourable treatment accorded by such province to any like goods that are the product of Canada or of any other third country.

2. By way of derogation from paragraph 1, Canadian competent authorities may maintain a measure within their respective jurisdictions provided it is implemented in a manner compatible with Canadian law:

(a) limiting sales by a distillery or a winery on its premises to distilled spirits or wines produced there at prices no lower than those of the same distilled spirits or wines sold through outlets available for product of the Community;

(b) requiring private wine store outlets in Ontario and British Columbia to sell only wines produced by Canadian wineries;

...

Presently, under the final text of CETA, Article 2.2(b) of the Agreement as amended will again be replaced. The new provision maintains the exception, but imposes a limitation on the overall number of retailers:

(b) requiring off site private wine store outlets in Ontario and British Columbia to sell only wines produced by Canadian wineries. The number of these off site private wine store outlets authorised to sell only wines produced by Canadian wineries in these provinces shall not exceed 292 in Ontario and 60 in British Columbia.

Interestingly, Annex 30-C of CETA specifically provides:

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<sup>44</sup> *Ibid* at Article 4.

<sup>45</sup> *Agreement between the European Community and Canada on trade in wines and spirit drinks*, 2003 O.J. L 35/3.

The Parties acknowledge the effort and progress that has been made on Wines and Spirits in the context of the negotiations of this Agreement. These efforts have led to mutually agreed solutions on a number of issues of high importance.

The Parties agree to discuss through the appropriate mechanisms, without delay and in view to find mutually agreed solutions, any other issue of concern related to Wines and Spirits, and notably the desire of the European Union to seek the elimination of the differentiation of provincial mark-ups applied on domestic wines and wines bottled in Canada in private wine outlets.

At the end of the fifth year following the entry into force of this Agreement, the Parties agree to review the progress made on the elimination of the differentiation referred to in the previous paragraph, based on the examination of all developments in the sector, including the consequences of any granting to third countries of a more favourable treatment in the framework of other trade negotiations involving Canada.

In addition to CETA, Canada has a new internal trade agreement, the Canadian Free Trade Agreement (“CFTA”), which came into force on July 1, 2017. Although CFTA is equally wide-ranging, trade in alcoholic beverages has also been specifically excluded from its provisions. Instead, all provinces and the federal government have committed to establishing a working group that will, within the first year of CFTA, submit a report to the Committee on Internal Trade which “identifies specific opportunities and recommends initiatives to further enhance trade in wine, beer and spirits within Canada.”<sup>46</sup>

NAFTA also contains provisions that allow for discrimination in favour of BC and Ontario wine, in those provinces, sold in wine stores with particular licences in existence prior to October 4, 1987. Given the precarious position of NAFTA, it will be interesting to see if wine sales factor into the ongoing renegotiation.

## **C. The contrast in federal and provincial obligations and interests**

### **(i) *R. v. Comeau*<sup>47</sup> update**

A 2016 decision of the New Brunswick Provincial Court has shifted the landscape and shone a light on the interprovincial movement of alcoholic beverages in Canada.

In 2012, Gérard Comeau travelled from his home in New Brunswick across the border to Quebec, where he purchased a significant quantity of beer and spirits. Unknown to Mr. Comeau, he was

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<sup>46</sup> Canadian Free Trade Agreement, “Timelines Backgrounder” (April 7, 2017).

<sup>47</sup> 2016 NBPC 3.

under surveillance by Quebec RCMP while he made his purchases. He then drove back across the bridge to New Brunswick, where he was stopped by local police, who had been alerted to the contents of his vehicle by the Quebec RCMP. Mr. Comeau was issued a ticket for having or keeping liquor not purchased from the New Brunswick Liquor Corporation, pursuant to the provincial legislation.<sup>48</sup> In his defence, Mr. Comeau submitted that the provincial legislation was unenforceable, as it was in contravention of s. 121 of the *Constitution Act, 1867*,<sup>49</sup> which provides that “All Articles of the Growth, Produce, or Manufacture of any one of the Provinces shall, from and after the Union, be admitted free into each of the other Provinces” [emphasis added].

The resulting reasons for judgment provide a comprehensive history of Canadian confederation, as well as of s. 121 itself. Provincial Court Judge LeBlanc reviewed speeches and writings of the “Fathers of Confederation”; previous drafts of what eventually became s. 121; the historical context, including the fallout from the rescission of free trade between British North America and the United States; and jurisprudence stemming from s. 121. He included a thorough assessment of the “constitutional moment” (which stretched from June 1864 to March 1867) and of a revelatory, unsigned letter drafted in 1924, the contents of which purported to question the independence of the judiciary and cast a shadow on the behaviour and workings of Canada’s highest court.

Central among the issues was a 1921 decision of the Supreme Court of Canada: *Gold Seal Ltd. v. Alberta (Attorney General)*.<sup>50</sup> In that case, although the consideration was fairly cursory, the Supreme Court held that the effect of s. 121 was to require that products of one province be admitted free *from customs duties or charges* into other provinces; there was no requirement that trade be free of all *indirect* barriers. Subsequent cases followed this principle without further analysis.

In the end, Provincial Court Judge LeBlanc determined that new evidence, in the form of the wealth of expert evidence he heard respecting the historical context and the intentions of the Father of Confederation, was sufficient to depart from the almost 100 year old authority contained in *Gold Seal*. He ultimately concluded that the intention in s. 121, contrary to *Gold Seal*, was to prohibit *both* direct and indirect trade barriers. Consequently, s. 134(b) of New Brunswick’s *Liquor*

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<sup>48</sup> *Liquor Control Act*, R.S.N.B. 1973, c. L-10.

<sup>49</sup> 30 & 31 Vict., c. 3.

<sup>50</sup> [1921] S.C.J. No. 43.

*Control Act* amounted to a trade barrier which violated s. 121 of the *Constitution Act, 1867*, and was therefore of no force or effect.

Following the Provincial Court decision, the prosecution sought leave to appeal directly to the New Brunswick Court of Appeal. The Appellate Court declined to hear the case. The prosecution then sought leave to appeal to the Supreme Court of Canada, which was granted on May 4, 2017.<sup>51</sup>

Numerous interveners appeared before the Supreme Court, many of whom argued for a limitation on provincial restrictions on interprovincial trade. The court ultimately dismissed Comeau's argument, and the various pleas for increased interprovincial trade on the basis that doing so would be contrary to established precedent.

The decision clarified the situations in which section 121 would limit provincial laws affecting trade. The Supreme Court determined that application of section 121 depended on the "primary purpose" of the impugned provincial legislation.

The starting point of the analysis is an understanding that provinces have the power to pass laws to achieve outcomes within the scope of their jurisdiction from section 92 of the Constitution Act. The restriction on transport of extraprovincial wine and beer into New Brunswick (and presumably equivalent restrictions in other provinces) does not offend section 121 as its primary goal is "to prohibit holding excessive quantities of liquor from supplies not managed by the province". The fact that passage of alcohol across borders is impeded by the legislation is merely an "incidental effect".

With respect to precedent, lawyers and constitutional scholars will note the Supreme Court's discussion regarding vertical stare decisis. The decision elaborates on the "new evidence" standard required to overturning precedent, and how such evidence must "fundamentally shift the parameters of the debate". The court concludes that no such evidence of a societal shift with respect to restrictions on the transport of alcohol across provincial borders had been adduced. As a result, the New Brunswick provincial court was going outside the boundaries of stare decisis in disregarding established precedent.

Some may find this to be a somewhat surprising rationale, particularly from a court which has recently overturned precedents on much shorter timeframes than the nearly 100-year gap

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<sup>51</sup> [2017] S.C.C.A. No. 25.

between the Gold Seal and Comeau decisions. Prior to the decision, it was not unreasonable to think that the Supreme Court might find evidence of a societal shift in the views of the public between present day and 1921 (the year of the Gold Seal decision, shortly after prohibition ended) regarding the transport and consumption of alcohol.

Upholding the New Brunswick provincial court decision would have been a boost for small and medium wineries. Prior to the Supreme Court's decision, the hope remained that the courts could challenge the provincial monopolies and begin modernizing Canada's liquor control regimes. Unfortunately, the decision means that the wine industry, both as producers and consumers, must deal with trade across provincial borders on a case-by-case basis. We will continue to see a patchwork of rules across provinces with respect to trade limiting direct-to-consumer sales and personal consumption quantities. Moreover, as a result of the Supreme Court's reliance on stare decisis, the wine industry must look to a political solution to the problem.

Provincial governments will need to be leaders in redressing the harm caused by interprovincial trade and shipping restrictions, and consumers, as constituents and voters, will need to use political means to make clear their desire for increased access.

**(ii) *Granholm v. Heald***

The Supreme Court of Canada in *R. v. Comeau* can be contrasted with the US Supreme Court decision in *Granholm v. Heald*.<sup>52</sup>

After a series of conflicting circuit court decisions, the US Supreme Court heard two such cases together. In one, a New York state law permitted in-state wineries to ship wine directly to customers. An out-of-state winery could also ship its product directly to in-state customers, but only if it first established an in-state factory, office or storeroom. Further, even if an out-of-state winery went to these lengths, it still would not be eligible for the same type of licence available to in-state wineries.

In the second, the issue was a Michigan state law which allowed in-state wineries to acquire licences that permitted them to ship their product directly to in-state customers, while out-of-state wineries could, at best, pay for a licence that only permitted them to sell their product to in-state

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<sup>52</sup> 125 S. Ct. 1885 (2005).

wholesalers. The overarching effect of this restriction was that out-of-state wineries could not sell directly to in-state consumers.

A majority of the US Supreme Court found that these policies were in violation of the antidiscrimination principle of the “Dormant” Commerce Clause.<sup>53</sup> The majority then found that the discrimination identified was not permitted by the Twenty-First Amendment.<sup>54</sup> The policies were clearly discriminatory, contrary to the Commerce Clause: Michigan’s model banned out-of-state wineries from shipping directly to customers, while New York’s model, despite not being an absolute prohibition, was so prohibitive that not one out-of-state winery had attempted to meet the requirements that would allow it to ship directly to customers. The Court also embarked on a thorough review of the Twenty-First Amendment, as well as the history of legislation connected with it, before rejecting the states’ position that the Amendment gave individual states the power to regulate the transportation of liquor, even via discriminatory means. To this end, the Court found that the passage of the Twenty-First Amendment, which abolished prohibition under the Eighteenth Amendment, effectively restored the rights granted under pre-existing legislation.<sup>55</sup> While concluding that the individual states have broad power to regulate liquor pursuant to the Twenty-First Amendment, this power “does not allow States to ban, or severely limit, the direct shipment of out-of-state wine while simultaneously authorizing direct shipment by in-state producers. If a State chooses to allow direct shipment of wine, it must do so on evenhanded terms.”<sup>56</sup>

This decision has effectively left each state with a choice between allowing direct shipment of wine from all sources, or banning it altogether. The response has been largely divided, with some states gradually moving towards the former, while others opt for the latter.

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<sup>53</sup> This is an American constitutional principle inferred from the Commerce Clause contained in the U.S. Constitution. The Commerce Clause grants Congress the power to regulate commerce both internally and internationally. The Dormant Commerce Clause is the other side of that coin; it arises where Congress passes legislation which is silent respecting a point of international or inter-state commerce, and permits a state to pass legislation on those matters, provided it does not improperly discriminate against interstate commerce.

<sup>54</sup> The Twenty-First Amendment repealed the Eighteenth Amendment, which mandated nationwide prohibition on alcohol. Instead, the Twenty-First Amendment prohibits the transportation or importation of intoxicating liquors into any State, Territory, or possession of the United States “in violation of the law thereof.”

<sup>55</sup> This legislation allowed states to regulate the resale of imported liquor and to prohibit the shipping of liquor to consumers for personal use, as long as in-state and out-of-state liquor was treated on the same terms.

<sup>56</sup> 125 S. Ct. 1885 (2005) at 493.

#### D. The Hicken Report

Shortly after the final decision on *R. v. Comeau* was issued, Liquor Policy Advisor Mark Hicken presented the government of British Columbia with a report in April 2018<sup>57</sup>. Hicken was appointed to this role to advise on possible law and policy reforms for the government to implement. In his capacity as Liquor Policy Advisor he chaired a panel of industry representatives who met with stakeholders, read submissions and deliberated over findings. Hicken also worked with health agencies and labour representatives to obtain their viewpoints. Ultimately, the report includes 24 recommendations that seek to make the liquor industry more efficient, especially with regard to the interactions between government and industry<sup>58</sup>.

The categories under which the recommendations fall are: (1) Liquor Distribution Branch (“LDB”) Wholesale; (2) Wholesale Data and Reporting; (3) LDB Governance; (4) Hospitality and Retail Issues; (5) Social Responsibility and Health Issues; (6) Manufacturing & Retail Licensing or Policy Issues; and (7) LCLB Fee Re-structuring & Service Guidelines. The recommendations of greatest importance to importers of international wine fall under the second and third categories.

Prior to changes made in 2015, the LDB’s wholesale division published reports providing information on the marketplace in BC, including annual reports, quarterly market reviews, sale reports, and price lists and schedules.<sup>59</sup> The report advises that the policy of providing this data for free was recently changed, and the information is now only available for purchase. Hicken astutely notes that, as a monopoly, the LDB is likely to have comprehensive market data regarding alcohol sales as well as industry trends. This information is incredibly useful for importers of wine, and can help provide valuable support in order to plan and react to market changes.<sup>60</sup>

The report proposes that LDB Wholesale’s default position with respect to market data should be transparency, given that it is a taxpayer-owned government monopoly.<sup>61</sup> The level of data sharing and reporting that existed prior to the 2015 changes at the least should be reinstated.<sup>62</sup> Looking forward, collection and sharing of data should be expanded so that all industry stakeholders have

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<sup>57</sup> Hicken, Mark, “Business Technical Advisory Panel (Liquor Policy) Report and Recommendations” (April 30, 2018), online: <[https://www2.gov.bc.ca/assets/gov/employment-business-and-economic-development/business-management/liquor-regulation-licensing/documents/business\\_technical\\_advisory\\_panel\\_report\\_and\\_recommendations.pdf](https://www2.gov.bc.ca/assets/gov/employment-business-and-economic-development/business-management/liquor-regulation-licensing/documents/business_technical_advisory_panel_report_and_recommendations.pdf)>.

<sup>58</sup> *Ibid.*, at page 2.

<sup>59</sup> *Ibid.*, at page 8.

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*

equal access to market data.<sup>63</sup> If this recommendation is implemented, importers will be able to optimize their practices and develop policies that are based on comprehensive data, rather than incomplete market research or speculation.

Another recommendation the report puts forward addresses the LDB's mandate to increase its own revenue.<sup>64</sup> It is recommended that rather than being a primary objective, consideration should be given to the consequences and effects of profit-making policies on other parts of industry and upon consumers.<sup>65</sup> Currently the wholesale branch and retail branch of the LDB share a common CEO. The report suggests that creating separate governance would go a long way to resolve some of the underlying structural issues which arise when the dominant retailer is also the only wholesale supplier.<sup>66</sup> This in turn may result in importers and other private industry members being treated on more equal footing.

The other recommendations included in the report deal largely with how the LDB conducts itself, and proposes functional changes so that operations will run more smoothly. The recommendations also focus on making pricing more predictable for wholesale purchasers, and changing regulations around local or craft production and sale of liquor. While these proposed changes may not have a direct impact on importers, opening up the door to conversation on reform may assist in or otherwise lead to resolution of these international disputes. That being said, recommendations to support expansion of local producers selling "direct to consumers" may serve to inflame tensions further.<sup>67</sup>

On June 20, 2018, the Ministry of Attorney General issued an Information Bulletin in response to Hicken's report. In it, the government has announced they will review each recommendation to analyze and consider the potential health, public safety, social, financial and labour impacts of the recommendations.<sup>68</sup> Notably, it also stated the government will ensure that any actions taken are in compliance with British Columbia's trade obligations. It will be interesting to see what, if any bearing, these recommendations will have on the current WTO challenges.

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<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*, at page 15.

<sup>65</sup> *Ibid.*

<sup>66</sup> *Ibid.*, page 10-15.

<sup>67</sup> *Ibid.*, page 25.

<sup>68</sup> British Columbia, Ministry of Attorney General, *Information Bulletin - 2018AG0046-001253* (June 20, 2018), online: <[https://archive.news.gov.bc.ca/releases/news\\_releases\\_2017-2021/2018AG0046-001253.htm](https://archive.news.gov.bc.ca/releases/news_releases_2017-2021/2018AG0046-001253.htm)>

## **CONCLUSION**

Policy and law with respect to wine, and alcoholic beverages in general, have been developing at an accelerating pace in Canada over the past several years, driven at least in part by the 2014 *B.C. Liquor Policy Review: Final Report*. The development has been slowly but largely trending in favour of consumers, but has not been without controversy. BC's wine-sales model is being targeted for impermissibly promoting not only domestic, but specifically BC-grown wine, in contravention of international obligations, while both provincial and federal governments have continued to carve out protections for wine and spirits in international agreements wherever possible.