

FINAL WORD ↔ BY MARNI SOUPCOFF

Bootleggers and Mounties

I don't usually use this space to toot my own horn. I use it to mock bureaucrats and bemoan damaging regulation. But today is special. Today I'd like to use this space to tell you an incredible story that allows me to both toot my own horn *and* mock bureaucrats *and* bemoan damaging regulation. And it comes with a happy ending.

Some background: Canada is really terrible at internal free trade. For example, driving a couple of bottles of wine from the province of Quebec to the province of New Brunswick can land a fellow in jail.

At least it could until a guy named Gerard Comeau made a beer run that will go down in history. Gerard is a retiree who lives in rural New Brunswick. Government liquor stores in his province (and there is no other kind of liquor store in his province) charge roughly double the price for beer, wine, and spirits as private stores in neighboring Quebec. That's why a few years ago he did something many others in his province do regularly: he drove to Quebec, bought some beer, and brought it back home to New Brunswick.

Or at least he tried to, until he became the victim of what Canada's *Globe and Mail* newspaper has rightly described as "likely the lamest police sting operation in Canadian history." Several members of the Royal Canadian Mounted Police were lying in wait for Gerard and others like him. As soon as the officers spotted his New Brunswick license plates, they stealthily tailed him while he shopped for

his booze in Quebec. When he crossed the bridge back into his home province, the Mounties pulled him over, confiscated his alcohol, and fined him almost \$300. Seventeen other New Brunswickers were caught in the same sting that day.

(Full disclosure: The organization I run, the Canadian Constitution Foundation, is supporting Gerard, which makes me a biased source for this story. But honestly, I can't imagine any way to tell this



tale that would make law enforcement officers ambushing a grownup for *taking home beer he purchased legally in his own country* look good.)

In order to protect its high-priced liquor monopoly, New Brunswick has made it an offense for any resident to possess more than 12 pints of beer purchased in Quebec. Or Ontario. Or Timbuktu. Or anywhere else on the planet but a New Brunswick government store. And to be fair, it's not like beer that the New Brunswick government has marked up by 89% and offers in limited varieties and inconvenient sizes is just going to sell itself.

Fortunately, Gerard thought this law was absurd and decided to fight the charges in court rather than pay the fine. For the Canadian Constitution Foundation, it was a perfect opportunity to sup-

port someone who'd been dealt a raw deal. It was also a chance to revive a Canadian constitutional provision that explicitly protects free trade between the provinces, but had lost its power over the past century thanks to a poorly reasoned, politically tainted Prohibition-era Supreme Court decision. (Yes, Canada had federal Prohibition from 1918 to 1920.)

Gerard's constitutional challenge involved a lot of legal wrangling over this particular constitutional provision and whether it had, as the province's lawyers suggested, fallen into "desuetude." That's basically a fancy word for "expired because you didn't use it enough." And that's a disturbing notion because no one had warned us that our constitutional rights were like

airline miles that can be deleted from our account if we don't use them by the end of the calendar year.

Now for the happy ending. This spring, a New Brunswick Provincial Court judge ruled that Gerard and the Canadian Constitution Foundation were right: constitutional protections are

like the knowledge of how to ride a bike: even if you don't use it for years, you can still count on it. The judge also ruled that when it comes time for a court to interpret Canada's Constitution, assuming that the thing means exactly what it says is a pretty decent way to proceed. It took almost a hundred years for our courts to figure that out in the context of our free interprovincial trade provision. But better late than never, right?

The great thing about Gerard's win is that it opens the door for free trade in all goods in all parts of the country. But while this is a wonderful, well-deserved victory for everyone involved in the legal challenge—I told you I'd toot my own horn—I do worry about how the Mounties will fill their Sunday afternoons from now on. I guess every rose has its thorn. R