

Update on the interprovincial shipment of liquor:

Ontario restricts importation of out-of-province liquor; British Columbia permits personal importation of liquor.

In June 2019, Parliament passed amendments to the *Importation of Intoxicating Liquor Act* that remove all federal restrictions on the interprovincial shipping of liquor. The provinces are still entitled to enact constitutional laws that govern liquor within the province, but they cannot directly regulate interprovincial shipping of liquor, as that is a federal matter. They are, however, entitled to govern the supply of liquor within the province, which may have incidental effects on interprovincial shipping. Several provinces have now responded to this change in the federal liquor-shipping framework.

In July 2019, British Columbia announced a new policy that permits individuals to import both domestic and international liquor from another province on their person and for personal use. This makes it legal for individuals to physically shop at retail outlets in Alberta and bring their purchases back into the province of British Columbia. The new policy does not, however, permit interprovincial e-commerce shipments.

Shortly after the federal changes, Ontario promulgated new regulations focused entirely on the importation of liquor into the province. While Ontario previously governed importation of liquor into the province via policy, there is now a new regulation called "Importation of Liquor Into Ontario", Ontario Regulation 198/19 (amending Regulation 718 of the Revised

Regulations of Ontario, 1990), that has been designed to address liquor importation. The new regulation is promulgated under the *Ontario Liquor Licence Act* to clarify the meaning of s. 33.1(1)(c) of that act, which states that no person shall possess liquor in Ontario unless, *inter alia*, the liquor was imported into Ontario in accordance with the regulations. The [new regulation](#) provides the circumstances that permit the importation of liquor into Ontario. The most important restriction for the domestic liquor industry is found in s. 3.1(2), which states that liquor may be imported into Ontario if "[t]he liquor is imported into Ontario from another province or territory of Canada by the Liquor Control Board of Ontario, or under its authority." This section explicitly restricts interprovincial shipment of liquor.

The Ontario regulation is governed by the framework for liquor regulation established in *R. v. Comeau*, 2018 SCC 15, and *Air Canada v. Ontario* (Liquor Control Board), [1997] 2 S.C.R. 581. Those cases provide that a law of general application that regulates the supply of liquor within the province is both *intra vires* the province and does not offend s. 121 of the *Constitution Act, 1867*, which prohibits laws with the primary purpose of imposing tariff-like restrictions on interprovincial trade.

There are some important differences between Ontario's regulation and the law at issue in *Comeau*, which was a New Brunswick law that prohibited a person from possessing liquor in the province unless it was purchased from the provincial liquor corporation. That law applied to both domestic and imported products. Additionally, the New Brunswick law was not enacted in the context of domestic provincial laws that permit intraprovincial shipment of liquor that is not consigned to or authorized by the provincial monopoly. In Ontario, domestic wineries do not have to sell liquor through the LCBO and can ship directly to consumers. Moreover, the new Ontario regulation directly regulates interprovincial shipping rather than being a law of general application.

This new regulation is particularly important to liquor manufacturers in British Columbia and Alberta, many of whom may already be selling—or have had plans to sell—into Ontario. Following the promulgation of the new Ontario regulation, selling directly to consumers in Ontario, and not through the LCBO, constitutes a regulatory offence, which can lead to fines of up to CA\$250,000 for corporations and CA\$100,000 (and possible prison time) for individuals.

Most Canadian manufacturers recognize that requiring out-of-province Canadian liquor manufacturers to import wine through the LCBO results in significant costs being imposed on those manufacturers, as well as additional markups that often result in those manufacturers' products being unmarketable in Ontario. Domestic Ontario wineries and breweries are not subject to these LCBO restrictions in the

same manner, and the province has given them a competitive advantage by the imposition of this new regulation. At the same time, Ontario wineries have had much greater difficulty reaching their internal provincial market than have, for example, British Columbia wineries within British Columbia, which has many more sales channels available.

Interestingly, the Ontario regulation repeals the s. 3.1(2) restriction on interprovincial shipping, which will take effect on January 1, 2020, suggesting this regulation is an intermediary plan while the Ontario government works on something more comprehensive and nuanced. The Ontario Chamber of Commerce has recommended loosening these restrictions, and Ontario may create a more open framework that generates new sales channels for out-of-province manufacturers. For now, however, the new regulation puts a significant damper on efforts by BC wineries and Alberta breweries to ship their products into Ontario, and makes it illegal for these out-of-province manufacturers to do so.

For more information on this matter or other commercial or regulatory issues arising in the liquor or cannabis industries, please contact Shea Coulson.

KEY CONTACTS



Shea Coulson
Vancouver
D +1 604 691 6420
shea.coulson@dentons.com