Constitutional Implications of the Implementation in Canada of a Trade-in-Services Agreement

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1. INTRODUCTION

The negotiation and implementation of international agreements governing trade in services creates a constitutional challenge for Canada. Developing new international rules for services trade analogous to the rules under the General Agreement on Tariffs and Trade (GATT) for merchandise trade will have significant legal, economic and political implications for many countries. However, the challenge for Canada is particularly acute because of the unique nature of Canadian federalism. Under Canadian constitutional law, authority to implement the subject matter of an agreement devolves upon either the federal Parliament or the provincial legislatures based on the division of powers in the Constitution Act, 1867.

Previous Canadian participation in international agreements involving trade in services has been limited. Canada has participated in consultative arrangements under the auspices of the Organization for Economic Cooperation and Development. Also, Canada has participated in sectoral agreements, such as the International Civil Aircraft Organization and International Telecommunications Union, but most of these agreements are confined largely to areas of federal jurisdiction.

This paper examines the constitutional implications for Canada of the negotiation and implementation of an international agreement involving trade in services. In the Canadian federal system the question of who may negotiate an international agreement on behalf of Canada is simple. Constitutionally, the Government of Canada has the power to negotiate, sign and ratify agreements with other sovereign governments as part of the external affairs power vested in the Crown-in-Right-of-Canada. The provinces do not have the authority to deal with matters relating to Canada's external relations.

Unlike U.S. law, Canadian constitutional law does not recognize a treaty or an international agreement as part of the domestic law of Canada. An international agreement which affects individual rights, requires a change in existing law or requires the expenditure of public monies must be implemented by the enactment of legislation.

The question of who has the authority to implement the provisions of an international agreement requiring legislation is complex under Canadian constitutional law. Where the subject matter of an international agreement is a matter within the Crown prerogative, then the federal government may take all steps necessary for its implementation without involving Parliament or the provinces. Where the implementation of an

international agreement requires the enactment of legislation or the expenditure of public monies, jurisdiction is divided between the federal and provincial governments according to the classification under sections 91 and 92 of the Constitution Act, 1867 (the "Constitution Act") of the subject matters contained in the agreement.

Under the Constitution Act, distribution of legislative powers is divided between the federal and provincial governments based on classes of subjects enumerated in sections 91 and 92. In theory, the heads of power allocated to the federal Parliament and the provincial legislatures are exclusive. In practice, however, the subject matter of legislation often relates to both federal and provincial classes of subjects. In such cases, the courts will look to the "pith and substance" or the fundamental purpose and effect of the legislation. If legislation is fundamentally related to banking, for instance, and only incidentally affects local transactions in a province, it will fall within the federal power over banking. Where the subject matter of legislation may properly be classified under both federal and provincial heads of power and neither appears dominant, the federal and provincial legislatures may be said to have concurrent powers. In such a case, where federal and provincial laws do not conflict, they may exist independently. If they conflict, federal legislation is deemed to be paramount.

Where the implementation of a treaty or international agreement requires legislation, either the federal Parliament or provincial legislatures, or both, may have the powers to enact such legislation depending upon the classification under sections 91 and 92 of the subjects dealt with in the treaty. If, for instance, the subject of an international agreement relates to a matter within the exclusive jurisdiction of the federal Parliament under section 91 of the Constitution Act, then only Parliament would have the power to enact legislation to implement its terms. On the other hand, if the subject of an international agreement relates to a matter within the exclusive jurisdiction of the provincial legislatures under section 92, then the provincial legislatures would have the authority to enact appropriate legislation.

Insofar as a bilateral or multilateral trade-in-services agreement would require legislation, much of the required implementation could be effected by the federal Parliament. Parliament has exclusive jurisdiction with respect to matters relating to international or interprovincial trade and commerce. As well, Canadian courts have recently begun to accept the view that the federal trade and commerce power extends to matters relating to the general regulation of trade affecting the whole country. Federal legislation, carefully drafted to reflect the principles enunciated in recent constitutional decisions involving the trade and commerce

power, would likely be found to be within the competence of the federal Parliament, but it would have to be drafted carefully so that it would not extend into areas clearly within exclusive provincial jurisdiction.

Specifically, the federal Parliament could enact an omnibus enabling statute which established a broad regulatory scheme implementing general principles negotiated in a framework trade-in-services agreement affecting all service sectors across Canada. However, Parliament would not have the authority to enact specific legislation relating only to a particular service sector which does not fall within an enumerated federal head of power. Parliament may, of course, always legislate with respect to matters affecting service sectors that are within exclusive federal jurisdiction, such as banking, copyrights, patents, aeronautics, interprovincial communications and shipping.

2. TREATY MAKING

It is generally understood that any international agreement which is binding upon the parties in international law is a treaty.[1] An international agreement may take the form of a treaty, a convention, a declaration, a protocol, an executive agreement, a proces-verbal, a memorandum of understanding or an exchange of notes or letters. It may

consist of a single formal instrument or of several instruments, such as an exchange of notes or letters.[2] Whatever form it takes, if an international agreement is binding upon the parties in international law it is a treaty. In Canada, as in England, treaty making or the negotiation, signing and ratification of an international agreement lies within the prerogative of the federal Crown. The federal Parliament plays no formal role in the making of treaties. Treaty making, furthermore, is beyond the powers of the provincial legislatures.

It is generally accepted that executive powers concerning the conduct of external affairs were formally given to the Crown-in-Right-of-Canada in the office of the Governor General by letters patent in 1947 issued under the Great Seal of Canada.[3] In the Newfoundland Offshore Reference case, decided in 1984, the Supreme Court of Canada affirmed the view that only a governmental entity which enjoys external sovereignty may operate in the international arena. The issue in that case was whether the government of Newfoundland or the government of Canada had jurisdiction to legislate with respect to the territory known as the Hibernia Oil Field off the coast of Newfoundland. The Court found that the question of legislative jurisdiction was tied to the question of who had "sovereign rights to explore and exploit" the seabed of the Continental Shelf. The provinces, affirmed the Court, are not

capable of legislating beyond their provincial boundaries. In this case, the Court held that "legislative jurisdiction falls to Canada under the peace, order and good government power in its residual capacity."[4]

The Newfoundland Offshore Reference case confirmed the existence of an external affairs power vesting exclusively in the Crown-in-Right-of-Canada and the federal Parliament. By analogy, matters involving negotiation and conclusion of a treaty are beyond the constitutional capacities of the provinces because they require the exercise of extraterritorial jurisdiction available only to the government of Canada which alone enjoys external sovereignty and may operate in the international arena.

3. TREATY IMPLEMENTATION

In Canadian law, treaties are not self-executing, that is, they are not effective as domestic law immediately upon signing and ratification by the executive. Some treaty obligations may be discharged by the federal executive as an exercise of the prerogative powers of the Crown.[5] In Francis v. the Queen, Mr. Justice Rand J. of the Supreme Court of Canada stated:

> Speaking generally, provisions that give recognition to incidents of sovereignty or deal with matters in exclusively sovereign aspects, do not require legislative confirmation: for example, the recognition of independence, the establishment of boundaries and, in a treaty of peace, the transfer of sovereignty over property, are deemed executed and the treaty becomes the muniment or evidence of the political or proprietary title.... Except as to diplomatic status and certain immunities and to belligerent rights, treaty provisions affecting matters within the scope of municipal law, that is, which purport to change existing law or restrict the future action of the Legislature, including, under our Constitution, the participation of the Crown, and in the absence of a constitutional provision declaring the treaty itself to be the law of the state, as in the United States, must be supplemented by statutory action.[6]

Where performance of a treaty affects individual rights, requires a change in existing domestic law or involves the expenditure of public monies, legislation is necessary to give it full force and effect. Without such legislation making the provisions of a treaty effective as domestic law, Canadian courts will not enforce the treaty.

The Constitution Act, as originally conceived, contained a provision which gave the federal Parliament constitutional authority to implement any treaty. Section 132 of the Constitution Act, gave the federal Parliament power to enact legislation to implement treaties between the British Empire and foreign countries. It provides specifically that:

> The Parliament and government of Canada shall have all powers necessary or proper for performing the obligations of Canada or of any province thereof, as part of the British Empire, towards foreign countries, arising under treaties between the Empire and such foreign countries.

After 1947, when Canada attained full authority to sign treaties on its own behalf, section 132 became obsolete. In 1937, the Judicial Committee of the Privy Council found that section 132 did not authorize the government of Canada to implement treaty obligations which arose under treaties between Canada and foreign countries if they touch on exclusive provincial jurisdiction. Lord Atkin wrote the Privy Council's decision in the Labour Conventions case which has confounded treaty implementation in Canada ever since. In response to the question who has the power to implement Canada's international obligations obtained under treaties, Lord Atkin responded:

> For the purposes of ss. 91 and 92, i.e., the distribution of legislative powers between the Dominion and the Provinces there is no such thing as treaty legislation as such. The distribution is based on classes of subjects; and as a treaty deals with a particular class of subjects so will the legislative power of performing it be ascertained.[7]

It was in the Labour Conventions case that Lord Atkin first enunciated his famous "watertight compartments" analogy:

> while the ship of state now sails on larger ventures and into foreign waters she still retains the watertight compartments which are an essential part of her original structure.[8]

The legacy of the Labour Conventions case is that we are left with the conundrum, as expressed by R. St. J. Macdonald, that:

> Although the federal executive might bind Canada internationally, it might or might not be able to fulfil that commitment depending upon the nature of the subject matter of the international agreement.[9]

4. IMPLEMENTATION OF A TRADE-IN-SERVICES AGREEMENT

Consideration of the question whether the federal Parliament or the provincial legislatures have the power to implement the subject matter of an international trade-in-services agreement is dependent ultimately on the exact terms of the agreement and the types of services transactions which are covered by it. What is required, first of all, is a precise delineation of the terms of a bilateral or multilateral trade-in-services agreement and an understanding of the types of services transactions that may be thereby affected.

To begin with first principles, any trade-in-services agreement will presumably concern only trade in services. The first question for analysis then is: what is a traded service? Ronald Shelp, in one of the first comprehensive studies of global trade in services, provided the following definitions:

1. investment-related services such as banking, professional services, employment services, advertising, leasing, hotel and motel services;
2. trade-related services such as air and maritime transportation;
3. trade- and investment-related services such as insurance, communications, computer services,

education and health services, motion pictures, construction and engineering, and franchising.[10]

Janette Mark, of the North-South Institute, has characterized internationally performed services as follows:

1. services embodied in goods, e.g. films, computer tapes and musical recordings;
2. services complementary to trade in goods, e.g. transportation;
3. services substituting for trade in goods, e.g. franchising, leasing and rentals; and
4. services not necessarily related to trade in goods, e.g. banking, insurance, telecommunications, and professional services.[11]

Helena Stalson has divided internationally traded services into two categories:

1. investment-related services that bring the producer to the user; and
2. true exports which include services that bring the user to the producer and those which actually cross a border.[12]

Whatever characterization one accepts, a foreign or international aspect is fundamental to a traded service transaction. Similarly, if one accepts the view that any agreement directed at liberalization of trade in services will

have as its primary purpose reducing or eliminating existing barriers to trade and preventing new barriers from being created, then a primary effect of such an agreement would be to eliminate any existing federal or provincial laws or regulations that discriminate explicitly against foreign-sourced services. With respect to services such as transportation, banking, insurance, telecommunications and professional services, it is difficult to conceive of a traded service transaction that is not international in character. By its very definition, a traded service is necessarily international in character. It is only in discussions of investment policy that one could argue that policies which discriminate against foreigners are primarily a local or provincial matter if they also serve a valid domestic policy purpose such as environmental protection.

Traditionally, in judicial interpretations of the division of powers under sections 91 and 92 of the Constitution Act, certain services have been characterized as generally speaking within federal authority; others have been characterized as generally speaking within provincial authority; and still others have been found to be within both. Banking; aeronautics; shipping; interprovincial transportation, including railways, trucking and bus lines; interprovincial communications including telecommunications, broadcasting, cable and satellite services; regulation of

foreign insurance and trust companies; patents and copyrights generally speaking have been found to be exclusively within federal jurisdiction. On the other hand, health care; education; professions and occupations such as pharmacy, accounting, construction, engineering and law; exhibition of motion pictures; tourism and employment services generally speaking have been found to be exclusively within provincial jurisdiction under section 92(13), "Property and Civil Rights in the Province." In certain services areas both the federal Parliament and provincial legislatures have jurisdiction: the provinces with respect to intraprovincial transactions and Parliament with respect to interprovincial or international transactions.

5. THE FEDERAL TRADE AND COMMERCE POWER

If the main features of a trade-in-services agreement are transparency, national treatment and reasonable market access for foreign services firms, then a strong case can be made that the subject matter of any such agreement would be exclusively within federal jurisdiction under section 91(2), the federal trade and commerce power. The federal power over "The Regulation of Trade and Commerce" has had a tortuous history. The Parsons case, an 1881 decision of the Judicial Committee of the Privy Council, established two branches of the

federal trade and commerce power. The first branch, which has received a great deal of judicial attention in Canada, is the federal jurisdiction over international and interprovincial trade. The second, which has only received judicial consideration within the last five years, is called the general power and includes the general regulation of trade affecting the whole Dominion.[13]

The theory behind the first branch of Parsons was that the federal Parliament had jurisdiction to regulate the movement of goods across provincial and national boundaries. However, the courts have used a "specific transaction analysis" to examine the question of jurisdiction on a case by case basis. Parliament has the authority to regulate the "flow of commerce", the courts have found, only when the primary purpose of the legislation is to regulate a transaction that reaches across a provincial or national boundary. Regulatory schemes that deal primarily with the production of a particular commodity have been found to be local in nature even where the principal object of the legislation was to protect international trade in that commodity. For instance, in The King v. Eastern Terminal Elevator Company, a 1925 decision of the Supreme Court of Canada, Justice Duff found that a federal regulatory scheme directed at regulating Canadian production of wheat was ultra vires Parliament even though "(i)t (was) undeniable that one principal object of (the impugned legislation) (was) to protect the external trade in grain."[14]

More recently, courts have demonstrated a willingness to allow federal regulation of local matters where the legislative scheme is designed primarily to regulate international or interprovincial trade in a commodity. In the 1971 case, Caloil Inc. v. Attorney Gengeral for Canada,[15] the Supreme Court of Canada upheld a regulation of the National Energy Board that prohibited sales of imported oil west of the Ottawa Valley without a licence from the National Energy Board. Similarly, the regulatory activities of the Canadian Wheat Board have been upheld on the justification that the wheat was destined for extraprovincial markets.[16]

With respect to trade in goods, where a federal regulatory scheme is directed primarily at local production of a particular commodity in the province, the courts have found that Parliament lacks jurisdiction. On the other hand, where a federal regulatory scheme is directed primarily at extraprovincial transactions or where the control of production relates entirely to an extraprovincial market, courts have been more willing to find a basis for federal jurisdiction. In Re Saskatchewan Power Corp. et al and TransCanada Pipelines Ltd. et al[17], the Supreme Court of Canada upheld the provisions of the National Energy Board Act which regulate interprovincial undertakings engaged in the purchase and sale of gas.

Although the courts have demonstrated a reluctance to permit the federal Parliament to establish an extraprovincial

marketing scheme involving a particular commodity or service, they have drawn the line at provincial attempts to regulate the pricing of imports or exports of commodities. It was clearly established in the CIGOL[18] and Central Potash[19] cases, both attempts by the government of Saskatchewan to establish schemes to regulate the production and pricing of resource commodities sold primarily in the international market, that the regulation of export prices is ultra vires provincial powers. Similarly, the Supreme Court of Canada has disallowed regulation of imports by provincial legislatures. In two recent Supreme Court of Canada cases, Manitoba Egg[20] and Burns Foods[21], provincial marketing schemes which applied to imports as well as to locally produced goods were struck down. The Supreme Court of Canada has held consistently that transborder trade in goods belongs exclusively within federal jurisdiction.

As international services transactions usually reach across provincial or national boundaries, the provincial legislatures clearly do not have jurisdiction to legislate with respect to matters outside their boundaries. Having said this, however, provincial legislation which affects interprovincial or international transactions only incidentally has been found to be valid. For instance, the Quebec Securities Act has been held applicable to a broker in the province whose business involved customers outside the province. The Manitoba Securities Act also has been held applicable to a broker

outside the province who sold stocks to customers inside the province.[22]

The problem in many services areas is that although the federal government has certain subject matters allocated to it under section 91, such as banking, copyrights, patents, interprovincial transportation and communications undertakings, shipping and aeronautics, many other subject areas have in practice devolved upon the provincial legislatures under section 92(13), the power over "Property and Civil Rights in the Province." Under this heading, services such as securities, tourism, professions, occupations, and near-banks traditionally have been regulated by the provinces. Although it is arguable that the federal Parliament has jurisdiction over interprovincial and international securities transactions, the federal government has not as yet utilized its authority in this area. With respect to financial institutions, federal legislation regulating foreign insurance and trust companies has been upheld as within federal power. In practice, the federal government has not attempted to regulate specific professions, occupations or trades in any significant manner.

Where both the federal Parliament and the provincial legislatures have enacted similar legislation with respect to a particular matter, the courts recently have demonstrated an inclination to allow the federal and provincial legislation to co-exist where there is no apparent conflict. The recent

Supreme Court of Canada case, Multiple Access Ltd. v. McCutcheon et al[23], upheld insider trading provisions of the Canada Corporations Act applicable to federally incorporated companies which were similar to the insider trading provisions of the Ontario Securities Act. Mr. Justice Dickson, as he then was, writing for the majority, found the federal provisions, which established civil liability and accountability for insider trading, valid under the federal peace, order and good government clause as an enactment by Parliament in discharge of its company law power over federally incorporated companies. The Court here applied the double aspect doctrine to validate both federal and provincial legislation. In this case, where the contrast between the relative importance of the federal and provincial laws was not sharp, and neither appeared to dominate the other, the Court allowed essentially similar federal and provincial legislation to co-exist. This case signifies a new trend in the Supreme Court of Canada to recognize that both the federal Parliament and a provincial legislature may legislate with respect to the same matter if it falls equally within federal and provincial heads of power and neither governmental interest appears to dominate. The Court in this case found it unnecessary to invoke the federal paramountcy doctrine. Mr. Justice Dickson stated that federal paramountcy only applies where actual conflict arises between the federal and provincial legislation. Federal paramountcy will not apply where

otherwise valid provincial legislation merely duplicates federal law without actual conflict or contradiction.[23]

The second branch of the Parsons case, which is only beginning to receive judicial recognition, provides an interesting potential justification for federal jurisdiction with respect to national implementation of an international trade-in-services accord. That branch of Parsons, it will be recalled, suggests that the federal power with respect to "regulation of trade and commerce" may extend to "general regulation of trade affecting the whole Dominion."[24]

The power of Parliament to legislate with respect to the economy as a whole was recognized and applied for the first time in 1983 in the CN Transportation case. In that decision, Mr. Justice Dickson, as he then was, in a concurring judgment held that the provisions of the Combines Investigation Act creating the offence of conspiracy to lessen competition unduly were valid federal legislation under both the criminal law power and the trade and commerce power. He established the following criteria for recognizing a valid federal exercise of the general trade and commerce power:

1. the presence of a national regulatory scheme;
2. the oversight of a regulatory agency;
3. a concern with trade in general as opposed to a particular industry or business;
4. that the provinces jointly or separately would be constitutionally incapable of passing such an enactment; and

5. that failure to include one or more provinces or localities would jeopardize the successful operation in other parts of the country.[25]

Although Mr. Justice Dickson, stated that the above list should not be treated as exhaustive or decisive, he suggested that the presence of such factors "does at least make it far more probable that what is being addressed in the federal enactment is genuinely a national economic concern and not just a collection of local ones."[26]

His decision was followed in recent Federal Court of Appeal cases involving other provisions of the Combines Investigation Act. In BBM Bureau of Measurement[27], the Federal Court of Appeal found that the provisions of Part IV of the Combines Investigation Act empowering the Restrictive Trade Practices Commission to review anti-competitive practices, such as tied selling, are valid federal legislation under the trade and commerce power. Following the approach formulated by Mr. Justice Dickson, in the CN Transportation case, the Court found in BBM Measurement that the tied selling provisions of the Combines Investigation Act are an integral part of a complex regulatory scheme, not aimed at a particular business or industry but at the regulation of trade and commerce throughout Canada for the benefit of Canadians in general. The Court found, furthermore, that the valid existence of this provision does not encroach upon the authority of provinces to enact legislation to regulate unfair business practices for the

protection of consumers. The Court held that the federal Parliament had jurisdiction to regulate in a general manner to ensure that competition is allowed to flourish throughout the country. This, however, affirmed the Court, does not prevent the provincial legislatures from enacting legislation specifically designed to protect consumers from sharp, unethical business practices in their dealings with individual businesses or industries.

In the Rocois Construction case, currently under appeal to the Supreme Court of Canada, the Federal Court of Appeal found that section 31.1 of the Combines Investigation Act which provides a civil remedy for damages caused by conduct contrary to certain provisions of the Act was valid legislation under the federal trade and commerce power. The Court held, following CN Transportation and BBM Measurement, that section 31.1 is within the jurisdiction of the federal Parliament as having a rational, functional connection with the overall federal economic plan manifested in the Combines Investigation Act in relation to competition. Although only four of Mr. Justice Dickson's five indicia were present (the oversight of the regulatory agency was less complete here than in the other cases), the Court found a valid exercise of the federal trade and commerce power. Mr. Justice MacGuigan, stated that:

> There is no more a fixed domain of trade and commerce...What is thought necessary in the light of a interventionist conception of the economy will be different from what is deemed necessary in relation to

> a free market conception. The necessity of the means is relative to the end sought...
>
> ...such a civil remedy must be genuinely and bona fide integral with the overall plan of supervision. The precise balance of governmental regulation and private enforcement is, then, a matter of policy for Parliament. For a Court to interfere with Parliament's legitimate discretion would be an unwarranted extension of judicial control into the political domain....
>
> Within the reasonable limits indicated, Parliament must be free to adopt and even to experiment with various approaches to the regulation of the economy.[28]

6. CONCLUSION

Although there have been cases too numerous to mention in which the regulation of specific services sectors has been found to be within provincial jurisdiction under section 92(13) of the Constitution Act, federal legislation implementing an international trade-in-services agreement, if drafted correctly, could be upheld as valid federal legislation under the federal trade and commerce power.

Federal legislation implementing an international trade-in-services agreement should be upheld, first of all, as an exercise of Parliament's exclusive jurisdiction over international and interprovincial trade and commerce. The object of an international agreement concerning trade in services is to remove existing barriers to international services transactions and to ensure that no new barriers are

created. As such, implementing legislation should be viewed as legislation relating in its pith and substance to the regulation of international services trade and having only incidental effects on local transactions. Thus, the federal legislation should be upheld as its primary purpose and effect is to regulate international and interprovincial services transactions even where it may require the repudiation of certain provincial regulations that discriminate against foreign commerce.

Alternatively, the federal implementing legislation could also be upheld under Parliament's general trade and commerce power because it would create a regulatory scheme designed to apply to the Canadian economy as a whole. The general power of Parliament to regulate with respect to the national economy is probably the better argument for federal jurisdiction. To be upheld as an exercise of the general trade and commerce power, the legislation implementing a trade-in-services agreement should be drafted carefully to ensure that it complies with all of the indicia set out in the judgment of Mr. Justice Dickson, in the CN Transportation case.

Specifically, the legislation should be designed to create a national regulatory scheme which would include the creation of a national supervisory or administrative agency charged with enforcing the provisions of the legislation. It should deal with services trade in general and not with

specific regulations directed at particular industries or trades. Furthermore, it should be clear that the provinces jointly or separately could not constitutionally enact such treaty legislation and that failure to include one or more of the provinces or localities would jeopardize the successful operation of the legislation in other parts of the country. To achieve the latter purpose, it should be explicitly stated in the enabling statute that the purpose of the legislation is to implement an international treaty with the United States or with other GATT signatories and that the signatories had requested that Canada must be capable of enforcing the treaty with respect to all sub-national governments. The provinces clearly would not have the constitutional authority to implement the provisions of such an international treaty as provincial authority does not extend to matters beyond provincial boundaries. Failure of a province to abide by the terms of such a treaty, furthermore, would jeopardize the benefits of the whole treaty for Canada as a whole.

I do not mean to suggest in this paper that federal authority to legislate with respect to the implementation of an international trade-in-services agreement is by all means assured or conclusive. There remains the fundamental problem that in Canada treaty implementation devolves upon the federal Parliament and/or provincial legislatures depending upon the classification of the subject matter dealt with in the

treaty. There have been numerous cases over the years that have found provincial legislation relating to service sectors such as provincially incorporated insurance and trust companies, advertising, securities, tourism, the regulation of professions and other occupations, employment services, health and education services to be a valid exercise of provincial authority under section 92(13), the property and civil rights power. On the other hand, the courts have found that regulation of financial institutions such as banks, foreign insurance companies and trust companies, interprovincial communications undertakings, interprovincial transportation undertakings, copyrights, patents, shipping and aeronautics to be within federal power.

A determination by the courts that the federal Parliament has the authority to enact legislation implementing an international trade-in-services agreement will require a bold, liberal interpretation of the federal trade and commerce power. Recent cases, beginning with the CN Transportation case in 1983, have laid the groundwork for recognition of a federal power to regulate with respect to a broad range of services and investment matters on behalf of Canada in compliance with our international obligations. A bold, new vision is required if Canada is to meet its international obligations in an increasingly more complex, trade dependent world.

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18. Canadian Industrial Gas and Oil Ltd. v. Government of Saskatchewan, [1978] 2 S.C.R. 545, 80 D.L.R. (3d) 449.

19. Central Canada Potash Co. v. Government of Saskatchewan, [1979] 1 S.C.R. 42, 88 D.L.R. (3d) 609.

20. A. G. Manitoba v. Manitoba Egg and Poultry Association, [1971] S.C.R. 689, 19 D.L.R. (3d) 169.

21. Burns Foods v. A. G. Manitoba, [1975] 1 S.C.R. 494, 40 D.L.R. (3d) 731.

22. Gregory & Co. v. Quebec Securities Commission, [1961] S.C.R. 584, R. v. W. McKenzie Securities Ltd. (1966), 56 D.L.R. (2d) 56 (Man. C.A.).

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