

Constitutional Law – Practice Question and Answer

Session: Basic Concepts

Topic: Interjurisdictional Immunity

Recommended time: 1 hour 45 minutes

Score: 100 Marks

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QUESTION

The Clair-Fort Kent Bridge used to be a steel truss bridge which crosses the Saint John River and connects the town of Clair in New Brunswick with Fort Kent in Maine, USA. As at last year, the bridge handled approximately 301,221 vehicle crossings per year. Being an international bridge, the Canadian portion is the responsibility of the provincial government.

Two years ago, the provincial Department of Transportation and Infrastructure awarded a contract to Bridges & Stones Ltd for the construction of a new bridge to replace the current one. This project would involve the construction of an eight-span, steel beam bridge which translates to a substantial expansion of the existing bridge. At the end of the construction, three tolling points were installed on the crossing and on roads adjacent the crossing to be operated by the province under the New Brunswick Highway Corporation Act. An existing highway was then converted to the exclusive use of the bridge users while a new one was constructed in replacement.

The Clair-Fort Kent Bridge Operational Regulations (the Regulations) was enacted pursuant to the Highway Corporation Act. Under section 35.1 of the Regulations, one of the tolling points was to be installed on the new highway to connect the crossing. Fifteen properties were affected by the construction of this new highway in that it brings them within the boundary of the tolling area, and this means that users of these properties would have to pay tolls to enter and exit. Additionally, users of these fifteen properties were required to obtain a yearly special permit

under the Regulations to allow them have exclusive use of the highway without being subject to the same closing and opening hours of the crossings. One of these properties is owned by Steamie Solid Ground Inc. (SSG), a federally incorporated company which operates terminals for storage of liquefied natural gas on the bank of the Saint John River from where it is then transhipped to the United States.

SSG has filed an application arguing that, by virtue of the federal powers over federal public property, international transportation, and of navigation and shipping, the Regulations is inapplicable to it because it is on federal land. SSG contends that it already adopted a land-use plan in line with the requirements of the Canada Marine Act which was enacted pursuant to the federal power in relation to navigation and shipping in s. 91(10) of the Constitution Act, 1867. To this end, the provisions of section 35.1 of the Regulations, especially the requirement to pay toll and obtain the special permit trenches on the operations of the federal Marine Act. The company complains that, in effect, the requirement of the Regulations to pay tolls for entering and exiting through the tolling point will substantially and adversely impact the major aspect of its operations as it will amount to a restriction on its business activities and that of its customers.

The New Brunswick Department of Transportation and Infrastructure (DTI) argues to the contrary that the provision of s. 35.1 of the Regulations should apply to SSG because it carries on its business within the province and is subject to provincial taxes and rates. That the challenged Regulation does not affect the business activities of SSG as it only seeks to ensure that the relevant tolls and rates are paid; and even if it does, it is only minimal. In any event, the province argues that there is no decisive constitutional jurisprudence which declares tolling on highways inapplicable to federal undertakings operating in the field of navigation and shipping. Therefore, SSG is subject to all statutory enactments made by the province.

This application is pending at the Court of Queen's Bench.

You are an articling student at the Office of the Attorney General of New Brunswick. Your principal informed you yesterday that the Attorney General proposes to intervene in the pending application in support of the argument advanced by DTI. In the Attorney General's opinion, the Regulations should apply to SSG notwithstanding that it is a federal undertaking closely integrated with navigation and shipping. Your principal has requested you to prepare a brief argument in support of this stand. She said you are to assume that there are constitutional

precedents on the same subject, but you need not consider the paramountcy argument since another articling student is already taking care of that.

Prepare a memo of your argument.