



Margarine Mayhem

This past fall the Quebec Court of Appeal refused to overturn a lower Court decision that upheld Quebec's anti-margarine regulations. The decision is being appealed to the Supreme Court of Canada by Unilever Canada, the maker of Imperial, Fleischmann's and Becel margarine. What most Canadians don't know is that this litigation carries on a 118-year tradition in what must be one of the longest and strangest stories of lobbying and litigation in Canadian legal history.

The story begins in France when Napoleon III offers a prize for the invention of a satisfactory substitute for butter because the Franco-Prussian War has created a shortage of butter for the French troops. Hippolyte Mège-Mouriez wins the prize in 1879, and calls his invention oleomargarine.

Immediately, this "glaring fraud on the public" is seen as a threat by the Canadian dairy industry and the government of Sir John A. Macdonald imposes prohibitive import duties. But this is not enough. The threat of domestic production causes Charles Hickey, M.D., the member of Parliament for Dundas County in the heart of eastern Ontario's butter belt, to promote legislation to ban the product. The cause is taken up by the Toronto *Globe* which argues in its editorial of May 13, 1886 that a ban on this "bare counterfeit of butter" is justified to protect the dairy industry from competition, to protect the consumer from fraud and to protect public health from "a compound of the most villainous character, which is often poisonous." Within a matter of days, Parliament passes "An Act to Prohibit the Manufacture and Sale of Certain Substitutes for Butter" which outlawed margarine in Canada for the next 60 years, except for a brief interlude, from 1917 to 1924, when wartime pressures briefly required the use of all food resources.

During the '30s the margarine lobby finally gets organized. With butter wholesaling in Toronto for 53 cents a pound and margarine for 37 cents, the campaign to legalize margarine gets growing support from war veterans, labour councils and women's groups, especially the powerful Women's Christian Temperance Union. But Canada continues to be the only country in the world with an outright ban.

After the Second World War, the growing pressure for legalization forces the federal government to take decisive

action: it appoints a Royal Commission to study the problem. After the Commission reports, the William Lyon Mackenzie King government still wants to avoid choosing between 40,000 dairy farmers and 13 million consumers and so it follows the time-honoured tradition of referring the whole mess to the Supreme Court of Canada to determine if the ban is constitutional (does this sound familiar?). The decision is handed down in December of 1948, pushing aside news of the civil war in China and the Berlin blockade. In the famous *Reference Re Margarine Case* [1949] 1 D.L.R., by a 5 – 2 decision, the ban was considered *ultra vires* of the federal parliament being essentially a matter of property and civil rights, a provincial matter of jurisdiction. But the butter lobby is not giving up without a further legal fight. At that time, you could still appeal decisions of the Supreme Court of Canada to something called the Judicial Committee of the Privy Council in London, England, and that is what the dairy industry prepares to do.

Like in all good soap operas, the story line now takes a sudden and dramatic turn. But this time it is outside of the country, in Newfoundland. Negotiations for that country to join Canada are going well until they come up against the butter/margarine war. Canada insists on a ban. Newfoundlanders make it clear that if they have to choose between giving up margarine or joining Canada, they'll choose to keep their margarine, since they'd been spreading it on their bread since the 19th century, apparently without any ill effects. The largest margarine manufacturer is the Newfoundland Butter Company, which in its long history never made an ounce of butter (I'm not making this up), and is owned by the powerful (you guessed it!) Crosbie family. Founded by Sir John Crosbie himself, the company lobbies hard and negotiations break down.

Will the British Law Lords overturn the decision of the Supreme Court of Canada? Can margarine be yellow? Will Newfoundland be able to join Canada? The story continues next month.

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