

Will Canada Finally See a National Securities Regulator?

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On November 9, 2018, the Supreme Court of Canada (SCC), in [a unanimous ruling](#), held that the Constitution of Canada does not restrict the federal government from establishing a national securities regulator.

The SCC noted that the federal draft legislation concerning Canada-wide oversight of activities associated with securities falls within the scope of the federal government's powers regarding trade and commerce, and that establishing a national securities regulator would not "improperly fetter the legislatures' sovereignty."

Currently, Canada is an anomaly in that the division of constitutional powers between the federal government and the provinces and territories has led to inconsistencies amongst the provincial securities regulators. Supporters of a national securities regulator believe that the presence of a national regulator will eliminate duplication, reduce "red tape", promote consistent enforcement practices, and improve investor protection.

We note however, that there have been prior [attempts to implement a national securities regulator](#). In 2011, the SCC found that a draft bill which sought to create a national regulator "strayed beyond federal jurisdiction." The SCC justified its position by stating that the Constitution places the authority over securities regulation in the hands of the provinces and territories.

In September 2014, Ontario, British Columbia, Saskatchewan, New Brunswick, Prince Edward Island, Yukon, and the federal government signed a memorandum of agreement to create a new securities regulatory system, the [Cooperative Capital Markets Regulatory System](#) (CCMR). The CCMR contemplated the inclusion of:

- a national regulator;
- a council of ministers who would act in a supervisory capacity;

- standard laws that provinces and territories could pass; and
- federal legislation that would aid in managing systematic risk, provide for data collection and help address any criminal matters.

In July 2015, Quebec’s government made an inquiry with the province’s Court of Appeal (the “Court”) regarding the constitutional validity of the CCMR. The Court held that the creation of a national securities regulator would violate Sections 76 to 79 of the Constitution and flagged concerns with certain aspects of the CCMR, specifically the role and powers of the council of ministers.

The November 9, 2018 SCC decision, effectively overturned the ruling of the Court and has reopened the doors for the establishment of a national securities regulator. We will continue to monitor the situation. For more information please contact [Andrew Elbaz](#), [Sasha Toten](#), or [Alexander Katznelson](#) in our [Securities and Capital Markets Group](#).*

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