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Curry sees "very dramatic shift" in handling of paramountcy law

Tom Curry and Andrew Parley were quoted in The Lawyers Weekly on November 27, 2015.

Counsel say the Supreme Court has made it easier for federal laws to trump overlapping provincial ones — possibly tilting the delicate balance of co-operative federalism a bit toward Ottawa in some cases.

"They breathed new life into that branch," Curry said. "It had previously been extremely limited in its application…I think it's a very dramatic shift, and it's likely to have significant impact on future constitutional cases concerning paramountcy.

Added Curry's co-counsel, Andrew Parley, "I think lawyers who are looking at provincial legislation that is, for whatever reason, inconvenient to their client may now have another tool at their disposal to argue that those provincial laws are not constitutional and should be read down, or held inoperative, to the extent that they are in conflict with federal statutes. Previously that was a difficult argument to put forward because of the narrow reading that the Supreme Court had placed on that aspect of the test. Now it's going to be easier, and that will be something I think we're going to see a lot more of in the future."

Curry said the court previously set the test for the first branch very clearly. One statute had to say ‘yes' and the other statute had to say ‘no' on their face — literally, he explained. But "the focus is now on the effect of the provincial law. And to understand the effect of the provincial law you look at the [law's] substance, not the form. And previously the review was really as to the express language — in other words the form. So I think it's a very significant change in the paramountcy analysis."

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