

How Powers are Divided Between our Federal and Provincial Governments

Many issues in the news these days directly relate to Canada's fundamental structure -- the way legislative powers are allocated by our Constitution. Three examples come immediately to mind: how the federal and provincial governments are co-managing the COVID-19 pandemic; the way some provinces are contesting the Government of Canada's carbon tax; and the application of language rights.

What's behind all of this? Why is it important to English-speaking Quebecers?

Without being aware of it, we interact with various levels of government on a daily basis. Most of the services that citizens expect from government – the day-to-day activities – are the domain of the provincial government, or the municipalities under its jurisdiction. But we also interact with federal laws and regulations, usually without knowing it. Gas pumps? Federally inspected to ensure compliance with national standards (weights and measures); look for the sticker! Send or receive a letter? Canada Post, a federal Crown Corporation....

Canada was a union of British colonies – provinces – which chose “to be federally united into One Dominion.” This new union would work toward the “welfare of the Provinces.” The *Constitution Act, 1867* established a Parliament of Canada. It also laid out its legislative authority, along with the powers of the provincial legislatures.

Section 92 of the Constitution Act, 1867 protected pre-Confederation provincial powers to legislate matters “of a merely local or private nature.” Provinces deal with matters governing health, property and civil rights, education, and municipalities. The federal government's powers are provided under Section 91 of the Constitution. They govern inter-provincial travel and cooperation, national defence, currency, criminal law, and other matters that facilitate the smooth operation of this union of provinces. Some areas of jurisdiction are shared; agriculture and immigration, for instance, are dealt with in Section 95. (See the [complete list](#) of how these powers were distributed in Part VI of the Constitution Act, 1867.)

[This Constitutional structure works best when both levels of government work together for the benefit of citizens.](#)

Whatever could go wrong?

For one thing, constitutional documents are not written in the clearest and most precise language; they are, after all, born out of political compromise. As well, the legislatures are only one branch of government. The Constitution Act, 1867 also established an executive, which continued to be vested in the monarch, with all of its ‘unwritten powers.’ A great deal

of constitutional law deals with these power relationships; who's who in the zoo. Canada is a federal state, with two levels of government – federal and provincial – and regular incursions occur as different levels get involved in each others' backyard. [As the role of government has expanded, the blurring of jurisdictions has become more confusing. But our legislative framework keeps the jurisdictions the same.](#)

Further, while each level of government remains 'restricted' to its own legislative sphere, several examples exist of legislatures encroaching on another jurisdiction. All provinces, including Quebec, conduct themselves in a way that ensures that their "constitutional jurisdiction" is respected. However, Quebec's approach has shifted from this idea of constitutional jurisdiction – matters within the exclusive competence of the Quebec National Assembly defined in the Constitution Act, 1867 – to a *territorial* concept of legislative supremacy. In effect, Quebec is seeking sovereignty over all matters within the province's geographic boundaries. In turn, this prompts the province to negotiate special deals with the federal government or obtain exemptions from certain national programs. This authority is *ultra vires* (beyond the powers) of the constitutional division of powers.

Many provinces have language legislation. Most notable, Quebec has the Charter of the French Language (Bill 101). Other provinces maintain varying degrees of constitutional obligations to Canada's two official languages. The Government of Canada has the Official Languages Act to breathe life into its constitutional obligations toward the use of English and French. Currently, many are preoccupied with language rights because of the imminent release of a federal White Paper on Official Languages, and anticipated changes by the Quebec government to the Charter of the French Language. With the possibility of significant changes on the horizon, we can expect the constitutional implications of these issues to draw attention.

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