

# Appendix D

## Case study #3: Division of powers

The division of powers between the federal and provincial governments was established in 1867. The powers are listed in the *Constitution Act 1867*.

The creators of the *Constitution Act* intended for the federal government to have authority over matters of national interest. Matters of regional interest would be given to the provinces.

Of course, not all things that exist today existed in 1867. These include media streaming services, air travel, and the internet. The *Constitution Act* states any new powers should be given to the federal government.

### Did You Know?

The Constitution of Canada can be changed. There is a general formula to revise it. To change the Constitution using the general formula, the change needs to be approved by:

1. the federal Parliament,
2. the Senate, and
3. a minimum number of provincial legislatures. There must be at least seven provinces that approve the change. These provinces must represent at least 50% of Canada's population.

This means that provinces with large populations will typically need to approve a change for the amendment to succeed. However, the change cannot happen without some support from provinces with smaller populations.

In 1982, the *Canadian Charter of Rights and Freedoms* was added to the Constitution, while Canada took control of its Constitution from Britain. The Charter is a bill of rights. This means it lists rights that are protected from the actions of all levels of government. These include certain political rights, legal rights and human rights of people in Canada.

## *Constitution Act, 1867*

### VI. DISTRIBUTION OF LEGISLATIVE POWERS

#### POWERS OF PARLIAMENT

##### Legislative Authority of Parliament of Canada

**91.** It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this *Act* assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this *Act*) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,

1. Repealed.(44)
- 1A. The Public Debt and Property.(45)
2. The Regulation of Trade and Commerce.
- 2A. Unemployment insurance.(46)
3. The raising of Money by any Mode or System of Taxation.
4. The borrowing of Money on the Public Credit.
5. Postal Service.
6. The Census and Statistics.
7. Militia, Military and Naval Service, and Defence.
8. The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada.
9. Beacons, Buoys, Lighthouses, and Sable Island.

## *Constitution Act, 1867*

10. Navigation and Shipping.
11. Quarantine and the Establishment and Maintenance of Marine Hospitals.
12. Sea Coast and Inland Fisheries.
13. Ferries between a Province and any British or Foreign Country or between Two Provinces.
14. Currency and Coinage.
15. Banking, Incorporation of Banks, and the Issue of Paper Money.
16. Savings Banks.
17. Weights and Measures.
18. Bills of Exchange and Promissory Notes.
19. Interest.
20. Legal Tender.
21. Bankruptcy and Insolvency.
22. Patents of Invention and Discovery.
23. Copyrights.
24. Indians, and Lands reserved for the Indians.
25. Naturalization and Aliens.
26. Marriage and Divorce.
27. The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.
28. The Establishment, Maintenance, and Management of Penitentiaries.
29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this *Act* assigned exclusively to the Legislatures of the Provinces.

## *Constitution Act, 1867*

And any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of Subjects by this *Act* assigned exclusively to the Legislatures of the Provinces.(47)

### EXCLUSIVE POWERS OF PROVINCIAL LEGISLATURES

**92.** In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,

1. Repealed.(48)
2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.
3. The borrowing of Money on the sole Credit of the Province.
4. The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.
5. The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.
6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.
7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.
8. Municipal Institutions in the Province.
9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.

## *Constitution Act, 1867*

10. Local Works and Undertakings other than such as are of the following Classes:
  - (a). Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province:
  - (b). Lines of Steam Ships between the Province and any British or Foreign Country:
  - (c). Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.
11. The Incorporation of Companies with Provincial Objects.
12. The Solemnization of Marriage in the Province.
13. Property and Civil Rights in the Province.
14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.
15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.
16. Generally all Matters of a merely local or private Nature in the Province.