

was considered at the Constitutional Conference in Victoria, BC in June 1971, but was not accepted.

Treaty-making powers. The federal government has exclusive responsibility for the conduct of external affairs. The policy of the federal government in discharging this responsibility is to promote the interest of the entire country and of all Canadians.

In matters of specific concern to the provinces, it is the policy of the Canadian government to do its utmost to assist them in achieving their particular aspirations and goals. The attitude of the federal government in this respect was illustrated by the "entente" signed by representatives of Quebec and France in the field of education in February 1965. Provincial and federal authorities co-operated actively in a procedure that enabled Quebec, within the framework of the Constitution and the national policy, to participate in international arrangements in a field of particular interest to that province.

Thus, under existing procedures, once it is determined that what a province wishes to achieve through agreements in the field of provincial jurisdiction falls within the framework of Canadian foreign policy, the provinces may discuss detailed arrangements direct with the competent authorities of the country concerned. When a formal international agreement is to be concluded, however, the federal powers relating to the signature of treaties and the conduct of over-all foreign policy must necessarily come into operation.

2.2 Distribution of federal and provincial powers

Inasmuch as the purpose of the BNA Act was to create a federal system of government, some of the most important provisions of that document deal with the division of powers between the federal and provincial governments. These powers cover the whole area of government in Canada and each level of government is sovereign with respect to the powers it exercises. Hence, provincial governments, when acting within their jurisdiction as set out in the BNA Act, are as sovereign as the federal government when acting within its spheres of power.

The primary scheme of the distribution of powers between the federal and provincial governments was to grant to the federal government jurisdiction over all subjects of general or national concern while giving to provincial legislatures jurisdiction over all matters of a local nature. Section 91 of the BNA Act lists federal powers. It gives the Parliament of Canada a general power to "make laws for the peace, order and good government of Canada" and then gives a list of classes of subjects over which Parliament has exclusive authority which illustrate but do not restrict the general power. The list contains 31 classes of federal powers such as regulation of trade and commerce, defence, currency, raising money by any mode or system of taxation, postal services, navigation and shipping, weights and measures and criminal law. Section 92 assigns specific areas of power to the provinces including the power to legislate regarding direct taxation within the province, the management and sale of public lands and timber belonging to the province, municipal institutions, laws relating to property and civil rights and all matters of a merely local nature. (For details see *1973 Canada Year Book* pp 71-73.) Section 95 of the BNA Act gave the federal government and the provinces concurrent powers over agriculture and immigration but federal law prevails in cases where the laws of both levels of government are in conflict.

The drafters of the BNA Act in 1867 probably thought that such a division of powers was so definite and precise that no future difficulties would arise in deciding what subjects were under federal legislative control and what subjects were under provincial legislative control. However, the powers enumerated in Sections 91 and 92 are not mutually exclusive and sometimes overlap. As a result, the interpretation to be placed on the division of powers between the federal and provincial governments has given rise to innumerable legal disputes, parliamentary discussions, royal commission inquiries and federal-provincial conferences. Often, however, the division of powers has remained unclear.

Difficulty in interpreting the division of powers has also arisen as a result of new social, technological and political conditions that were unforeseen at the time of Confederation. Social welfare legislation, such as unemployment insurance, and legislation concerning modern communication facilities were not contemplated by the drafters of the BNA Act. Nevertheless, power to legislate on these subjects had to be assigned either to the federal or provincial governments by reference to the BNA Act. Canada's emergence into the international community as a completely independent nation, which also was not foreseen in 1867, required