

bringing new concepts such as Canadian citizenship into the BNA Act and assigning responsibility for them to one of the levels of government.

One significant outcome of the allocation of powers under the BNA Act has been that the expenditures of the provincial governments have outstripped their tax resources. In 1867, the provinces were assigned responsibility for social services such as hospitals and schools as well as for municipal institutions. At that time these responsibilities did not involve major expenditures of public funds. However, changing demands of society and the consequent entry of governments into fields of social welfare have led to the expenditure of large sums for these purposes. The provinces have power to levy "direct taxation within the province" while the federal government has a broader authority to levy taxes by "any means of taxation". The federal government has exercised its broad taxing powers and therefore has substantial tax resources. On the other hand, while the provinces have responsibility for public institutions which are costly to operate, they do not have sufficient fiscal resources for these purposes. In order to redress this imbalance, numerous federal-provincial tax-sharing agreements and shared-cost programs have been entered into by the federal and provincial governments. Such agreements were of course not contemplated by the original drafters of the BNA Act. Nevertheless those agreements have resulted in new constitutional arrangements and techniques for dealing with federal-provincial economic relations which have come to be known collectively as "co-operative federalism".

2.3 The legal system

2.3.1 Common law and Quebec civil law

With one exception, in all the provinces as well as in the two territories, the legal system derives from the common law system of England. The exception is Quebec where the system has been influenced by the legal developments of France. Quebec has its own Civil Code and Code of Civil Procedure. Over the years, both Canadian common law and Quebec civil law have developed unique characteristics. The body of law changes as society changes. In many of the provinces there are now Law Reform Commissions which have been charged with the function of inquiring into matters relating to the reform of the law having regard to both the statute law and the common law. A general revision of the Civil Code is taking place in Quebec under the auspices of the Civil Code Revision Office. At the federal level there is the Law Reform Commission of Canada whose purpose is "to study and keep under review on a continuing basis the statutes and other laws comprising the law of Canada with a view to making recommendations for their improvement, modernization and reform".

2.3.2 Criminal law

Criminal law is that branch or division of law which treats of crimes and their punishment. A crime may be described as an act against society, as distinct from a dispute between individuals. It has been defined as any act done in violation of those duties which an individual owes to the community and for the breach of which the law has provided that the offender shall make restitution to the public.

The criminal law of Canada has as its foundation the criminal common law of England built up through the ages and consisting first of customs and usages and later expanded by principles enunciated by generations of judges. There is no statutory declaration of the introduction of English criminal law into those parts of Canada that are now New Brunswick, Nova Scotia and Prince Edward Island. Its introduction there depends upon a principle of the common law itself by which English law was declared to be in force in uninhabited territory discovered and planted by British subjects, except in so far as local conditions made it inapplicable. The same may be said of Newfoundland although the colony dealt with the subject in a statute of 1837. In Quebec, its reception depends upon a Royal Proclamation of 1763 and the Quebec Act of 1774. In each of the other provinces and in the Yukon Territory and Northwest Territories, the matter has been dealt with by statute.

The judicial systems of the provinces as they exist today are based on the British North America Act of 1867. Section 91 of the Act provides that "The exclusive legislative authority of the Parliament of Canada extends to ... the criminal law, except the constitution of courts of criminal jurisdiction but including the procedure in criminal matters". By Section 92(14), the legislature of the province exclusively may make laws in relation to "the Administration of