

within the framework of the constitution and national policy, to participate in international arrangements. Once it is determined that what a province wishes to achieve in the field of provincial jurisdiction falls within the framework of Canadian foreign policy, the provinces may discuss arrangements with the authorities of the country concerned. For a formal international agreement the federal signature of treaties and conduct of overall foreign policy must come into operation.

Distribution of federal and provincial powers

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Since the purpose of the BNA Act was to create a federal system of government, important provisions of that document deal with the division of powers between the federal and provincial governments. Each level of government is virtually sovereign with respect to the powers it exercises. While the federal government under the BNA Act has the power to disallow provincial legislation, this power has not been exercised in recent years.

Section 91 of the BNA Act gives the Parliament of Canada a general power to "make laws for the peace, order and good government of Canada" and 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 to the provinces 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 or private nature. (For details see *Canada Year Book 1973* pp 71-73.) Section 95 of the BNA Act gives 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. Similar concurrent powers exist in respect of old age pensions and supplementary benefits, including survivors and disability benefits, but no federal legislation affects the operation of provincial laws in this field if a conflict occurs with provincial legislation.

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 or provincial legislative control. However, the powers enumerated in Sections 91 and 92 are not mutually exclusive and sometimes overlap. Interpretation on the division of powers has given rise to many legal disputes, parliamentary discussions, royal commission inquiries and federal-provincial conferences.

Difficulty in interpreting the division of powers has also resulted from new social, technological and political conditions, 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. But 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 an independent nation, also not foreseen in 1867, required an allocation of responsibility for aviation, broadcasting and citizenship between the two levels of government or in some cases to one or the other government.

One significant outcome of the allocation of powers under the BNA Act has been that expenditures of the provincial governments have often 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 this did not involve major expenditure of public funds. However, changing demands of society and entry of government into the field of social welfare led to expenditure of large sums. The provinces have the power to levy direct taxation within the province for provincial purposes while the federal government has a broader authority to levy taxes by "any means of taxation." The federal government therefore has substantial tax resources. While the provinces have responsibility for many costly public institutions they often