

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 caused 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. However, 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 the courts to determine the allocation of legislative responsibility for such matters as aviation, broadcasting and citizenship.

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 lack the necessary financial resources. To redress this, numerous federal-provincial tax-sharing agreements and shared-cost programs have been reached by the federal and provincial governments. Such agreements had not been anticipated by the original drafters of the BNA Act. Nevertheless these agreements have resulted in new constitutional arrangements and techniques for dealing with federal-provincial economic relations and have come to be known collectively as co-operative federalism.

## 2.3 The legal system

### 2.3.1 Common law and Quebec civil law

The legal system in the provinces and territories is derived from the common law system of England with the exception of Quebec, where the system has been influenced by the legal developments of France. Quebec has its own civil code and code of civil procedure. However, in the field of public law the principles of common law apply. 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 provinces there are law reform commissions which have been charged with the function of inquiring into matters relating to the reform of 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 the Law Reform Commission of Canada studies and reviews on a continuing basis the statutes and other laws of Canada with a view to making recommendations for their improvement, modernization and reform.