

Understanding Federalism in Canada: The Division of Powers between Federal and Provincial Governments

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Abstract

This paper introduces the key concept of federalism in Canadian politics. It provides a definition of federalism as the separation of power between two distinct levels of government and explains why it is used in Canada. Drawing from the Constitution, it outlines those responsibilities under federal versus provincial concern and the places where jurisdiction is less clear. It further explains how departments and ministries oversee policies and how they differ among governments. It concludes by drawing on case studies in Canadian politics that federalism plays a significant role in, like the response to COVID-19, climate action, healthcare, immigration, and public safety.

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Introduction

Federalism is a very important, but at times confusing, topic in Canadian politics. When the decision is made to split a government into different levels, one must also face the decision of how their responsibilities are split, including who controls what, who pays for what, and who is ultimately accountable for what.

Fortunately, the answers to many of these questions can be found in the Constitution. Inevitably, though, there will be disputes between governments regarding jurisdiction. These are often sorted out by courts whose judgements guide how the division of powers will be interpreted (Wright, 2010). These built-up judgments, or case law, are an essential part of the constitutional order. All of this information can seem challenging to navigate, this paper thus aims to clarify the concept of federalism.

This primer will be divided into four sections:

1. What is Federalism?
2. Federalism in Canada
3. A Tour of Departments and Ministries
4. Case studies

We will begin this paper by defining federalism. We will then show how federalism works in Canada and the specific roles of each level of government. After that, we will assess what this means for the landscape of departments that you must navigate when you need something from the government. Finally, concerning some recent issues, we will show how federalism affects individuals in their daily lives.

The more people begin to learn about the concept of federalism, the easier it becomes for the general public to hold their governments accountable. When people are unsure what level of government is responsible for a certain issue, it can obscure the lines of accountability (Cutler, 2008). Understanding federalism can therefore be an empowering tool to spur civic engagement.

What is Federalism?

According to the Government of Canada (2021), federalism means there will be at least two distinct orders, or levels, of government. The power of government and the power to raise money (usually through taxation) will be split among these levels so individual governments may act independently. This division of powers and responsibilities is written down within a constitution that no single government has the authority to change on its own. Federalism is often used when a country's population has big pockets of different languages, cultures, economic systems, or other differences (Government of Canada, 2021). This helps account for the different needs of regions rather than imposing a one-size-fits-all model.

Senator Eugene Forsey (1980) explains that a federal system aims to establish a central government to take care of national issues, and sub-federal governments (such as states, provinces, etc.) to handle regional or community issues. This system seems intuitive for geographically vast countries where one body may not be able to maintain all needs. Indeed, many countries adopt federalism partially because of this.

Federalism can also be useful in countries that are not homogenous, containing regional differences such as language or culture (Government of Canada, 2021). Before Confederation, there was much debate on how Canada would look, including visions of separate colonies and one unitary colonial state, which was ultimately found to be unworkable (Stevenson, 2023). Federalism was seen as a way to unite various colonies into one state while simultaneously avoiding conflict based on the varying identities and needs of the regions.

The Canadian conception of federalism, while partially inspired by the American model, was also created in fear of the recurrence of an event like the American Civil War (Forsey, 1980). Being highly decentralized, the American system originally gave a great deal of power to the states, leading the Canadian founders to initially prefer a comparatively more centralized model to prevent conflict between regions (Smyth & McIntosh, 2023). Going further back, the system we know today was also likely inspired by structures like the Haudenosaunee Great Law of Peace which established models for federalism that impacted American settlers like Benjamin Franklin and James Madison (Evans, 2023).

Federalism in Canada

Ultimately, the source document for federalism in Canada is the Constitution, where the division of powers has been spelt out. Originally, given the country's status as a colony, its own Constitution was merely just a law in the UK called the *British North America Act* (1867). The document's name later changed to the *Constitution Act* when the Canadian Constitution was patriated in 1982 (McIntosh & McConnell, 2021). Sections 91 through 93 of this set out the allocation of powers between the federal and provincial governments.

Section 91 opens by setting out the powers of the federal Parliament in Ottawa, the function of which is "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" (*Constitution Act*, 1867). Importantly, the latter half of this statement specifies that anything not explicitly handed to the provinces in this document defaults to being under federal control. This is known as a *residual clause*: the residual power belongs to the federal government, at least on paper (Centre for Constitutional Studies, 2019). In practice, this does not mean that everything not explicitly mentioned is out of the federal government's hands; there must first be careful consideration of which level of government has jurisdiction.

Section 91 of the *Constitution Act* (1867) finishes by setting out several areas of policy that are under federal control:

1. The Public Debt and Property.
2. The Regulation of Trade and Commerce.
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.
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 accepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

While some of the language here is outdated, the general idea is clear: policy areas thought to be in the national interest, rather than just regional, are assigned to the federal government.

Section 92 goes on to establish what areas of policy will be under exclusive provincial control (*Constitution Act*, 1867):

1. The amendment from time to time notwithstanding anything in this Act of the constitution of the province except as regards the office of lieutenant governor.¹
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.

¹ It is important to note that while this was included in the 1867 *British North America Act*, it is now repealed by the 1982 *Constitution Act*.

10. Local Works and Undertakings other than such as are of the following Classes:
 - I. 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:
 - II. Lines of Steam Ships between the Province and any British or Foreign Country:
 - III. Such Works as, although wholly situated 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.

Here, we see that provinces get their own taxation powers to run their systems of government. Their powers also include jurisdiction over municipalities, hospitals (and by extension health care), licensing of restaurants and bars, and their own justice systems, including the ability to enforce provincial laws. Allocating property and civil rights to provincial jurisdiction gave provincial governments vast power in the realm of civil law, covering everything from contracts to labour regulations.

While the provinces also have a great deal of power over natural resources, there is also language that limits the power of provinces in this sector. This can be seen in the specification in subsection 10 stating that provinces do not have jurisdiction over big projects of the interest of two or more provinces. This is known as federal *declaratory power* and has been used 472 times, with the majority of uses relating to approving local railway routes (Brideau et al., 2022).

Section 93 is where topics like the division of powers regarding education and the rights of religious minorities are addressed. The power to run education lies with the provinces but the federal government can contribute to funding it (*Constitution Act*, 1867, s. 93). This may seem like an odd arrangement, but is within the federal government's power due to it being *federal spending power*. Federal spending power allows the federal government to fund things otherwise outside of its jurisdiction (Dunsmuir, 1991). This helps pay for the necessary expenses surrounding healthcare and education.

Sections 94 and 95 are not as sweeping as Sections 91 to 93. However, they cover key topics such as pensions and agriculture which are *shared jurisdiction*, meaning that the federal and provincial governments have shared power (*Constitution Act*, 1867). These sections also set out which level of government will prevail if they pass laws in areas that conflict with each other. Provincial laws about pensions take priority over federal laws that conflict with them, but federal laws override provincial laws when it comes to agriculture and immigration.

While very helpful in understanding the division of powers, the Constitution is often worded in ways that invite interpretation. Furthermore, modern topics like the internet and climate change are not mentioned considering the document was created in 1867. When these unaccounted-for circumstances make jurisdiction unclear, it is up to the courts to decide which level of government ultimately has power (Wright, 2010). As judgements accumulate, the way we read the Constitution is significantly impacted. Resultantly, while the federal government looks quite powerful on paper, many legal rulings have given more power to the provinces over time (Smyth & McIntosh, 2023).

Why was the Constitution written this way, and why were the powers and responsibilities divided up in the way that they were? The short answer is to allow provinces to protect diversity. The kind of diversity in question is rooted in the legacy of the two colonial powers that dominated the creation of Canada's institutions, leaving a settler society largely divided between British Protestant Anglophones on one side and French Catholic Francophones on the other (Smyth & McIntosh, 2023). Federalism aimed to ensure that provincial governments would prevail on the issues that divided the two, protecting diversity so that neither side would be dominated by the other. This was especially important for topics like education and healthcare, where religion and language were essential considerations. Another key example of preserving difference is Québec's continued use of civil law based on the French legal tradition rather than the British system of common law used by the rest of Canada (Department of Justice, 2021).

A Tour of Departments and Ministries

It is one thing to know which level of government is responsible for what, but it is another thing entirely to be able to identify what number must be called regarding your specific questions or concerns. Federal and provincial or territorial governments divide their responsibilities into subdivisions and assign someone to be in charge of each subdivision (Privy Council Office, 2023). These people are members of the *Cabinet* and are known as ministers. The parts of government that ministers are in charge of are called *ministries*, and each one deals with a different responsibility (Privy Council Office, 2023).

Ministers and ministries are just one layer of the vast *civil service*. Their role is that of the *political executive*. In other words, each minister is a politician who has their own staff (Parliament of Canada, n.d.). Importantly, there is another layer of the civil service which is not political: *departments*. This is where most of the work gets done and how most people who work for the government are employed. Included in this is the deputy minister of a ministry, who is a civil servant rather than a politician (Privy Council Office, 2022). While governments (and consequently, ministers) change, civil servants stay in place and often have many years of experience within their departments.

When individuals interact with a government, they are often interacting with a department, not a ministry. Navigating our government systems may be overwhelming for someone unfamiliar with how they work. Therefore, it is always useful to demystify them and demonstrate that they can be accessible regardless of how intimidating they can seem.

While this document cannot provide a complete list of all federal and provincial ministries, departments, agencies, and Crown corporations, below is a partial list and preliminary discussion of key institutions.

We will begin with some key federal departments (Treasury Board of Canadian Secretariat, 2024):

- Agriculture and Agri-Food
- Canadian Heritage
- Employment and Social Development
- Environment and Climate Change
- Finance
- Fisheries and Oceans
- Global Affairs
- Health
- Immigration, Refugees and Citizenship
- Indigenous and Northern Affairs
- Infrastructure
- Innovation, Science, and Economic Development
- Justice
- National Defence
- Natural Resources
- Public Safety
- Public Services and Procurement
- Transport
- Veterans Affairs
- Mental Health and Addictions

Ministries may split, merge, or otherwise change over time depending on how the government of the day decides to arrange them. For example, in 2013, the Canadian International Development Agency and the Department of Foreign Affairs and International Trade Canada merged to form the Department of Foreign Affairs, Trade and Development (Foreign Affairs, Trade, and Development Canada, 2013). As a result, these departments do not exactly correlate to ministries – the specific ministers responsible for a department will usually be listed on the department’s website. However, this list does give an idea of how the civil service is structured.

Provincial and territorial ministries work similarly, with some of them having ministries in common with the federal government. However, this is not always the case. Economical, geographical and cultural differences between provinces lead to different needs in terms of ministerial coverage. As a result, some will have ministries encompassing specific areas of policy, while others will not. For example, Ontario has a Ministry of Natural Resources whereas Prince Edward Island (P.E.I.) does not have a single dedicated ministry for natural resources (Government of Ontario, 2024; Government of Prince Edward Island, 2024).

Because this document cannot list every province’s different ministries and departments, we will focus on how departments differ. It is worth noting that not all provinces have departments, with some choosing to only have ministries overseeing areas of policy. This is the case for Alberta, British Columbia, Ontario, Québec and Saskatchewan. We will also observe how different ministries of different provinces handle a given policy area. Lastly, we will compare the ministries of Ontario and P.E.I. differ as the largest and smallest provinces per capita, respectively.

We will begin by looking at the ministries in Newfoundland and Labrador, which are directly comparable to their departments. There are currently 17 members of the Cabinet and 15 departments (25, when sub-departments are counted) with a further 24 provincial agencies Government of Newfoundland and Labrador (Government of Newfoundland and Labrador, 2020). A single minister

may be involved in multiple departments and agencies and others may not have a department or agency at all, instead listing a topic that they will focus on. Those members of cabinet who are not involved with a specific ministry are termed “ministers without portfolio” and exist at the federal level and in certain provinces (Government of Canada, 2023).

As a way of illustrating how a given ministry or department may vary across provinces, we will look at the example of education. Education is a key provincial responsibility and is a significant policy area for every government (*Constitution Act*, 1867, s. 93).

Province	Ministry	Department
Alberta	Education; Advanced Education	N/A
British Columbia	Education and Child Care; Post-Secondary Education and Future Skills	N/A
Manitoba	Education and Early Childhood Learning; Advanced Education and Training	Education and Early Childhood Learning; Advanced Education and Training
Newfoundland and Labrador	Education	Education
New Brunswick	Education and Early Childhood Development; Post-secondary Education, Training and Labour	Education and Early Childhood Development
Nova Scotia	Education and Early Childhood Development; Advanced Education	Education and Early Childhood Development; Advanced Education
Ontario	Education; Colleges and Universities	N/A
Prince Edward Island	Education and Early Years	Education and Early Years
Quebec	Éducation; Enseignement supérieur	N/A
Saskatchewan	Education; Advanced Education	N/A
Northwest Territories	Education, Culture and Employment	Education, Culture and Employment
Nunavut	Education	Education
Yukon	Education	Education

Provinces marked as N/A (not applicable) do not have a department overseeing education. Instead, this responsibility is reserved to a ministry.

In some provinces, a given ministry and its related department correspond one-to-one, while in others they might not. This inconsistency exists because, as previously mentioned, not all provincial governments have departments. However, this might also be due to different provincial needs. For instance, New Brunswick has 2 ministries for education, but only one corresponding department. Similar observations can be made for other provinces. For this primer, we want to highlight that these differences exist and that governments can have different ways of managing similar areas of policy.

Finally, comparing provinces with different population sizes can also provide insight into how this can impact the configurations of ministries. For instance, budget considerations can affect how many ministries can be supported by a government and to what extent. Ontario and Newfoundland and Labrador are prime examples of how this can sometimes be the case.

Ontario

Agriculture, Food and Rural Affairs
 Attorney General
 Children, Community and Social Services
 Citizenship and Multiculturalism
 Colleges and Universities
 Economic Development, Job Creation and Trade
 Education
 Energy and Electrification
 Environment, Conservation and Parks
 Finance
 Francophone Affairs
 Health
 Indigenous Affairs and First Nations Economic Reconciliation
 Infrastructure
 Intergovernmental Affairs
 Labour, Immigration, Training and Skills Development
 Long-Term Care
 Mines
 Municipal Affairs and Housing

Newfoundland and Labrador

Children, Seniors and Social Development
 Digital Government and Service NL
 Education
 Environment and Climate Change
 Executive Council
 Finance
 Fisheries, Forestry and Agriculture
 Health and Community Services
 Immigration, Population Growth and Skills
 Industry, Energy and Technology
 Justice and Public Safety
 Labrador Affairs
 Municipal and Provincial Affairs
 Tourism, Culture, Arts and Recreation
 Transportation and Infrastructure

Natural Resources and Forestry

Northern Development

Public and Business Service Delivery and
Procurement

Red Tape Reduction

Rural Affairs

Seniors and Accessibility

Solicitor-General

Sport

Tourism, Culture and Gaming

Transportation

Treasury Board Secretariat

Governments will often have a dedicated webpage listing departments and/or the resources people often need, like renewing identification, registering vehicles, and so on.

Case Studies

Federalism may still be an abstract concept to understand when not applied to real-life situations. To conclude this guide, the following lines will present some real-world issues and how federalism may relate to them and you.

Federalism is a key factor in understanding our response to climate change. Environmental problems tend to cross borders and aren't confined to one area of jurisdiction. Both levels of government typically have a Ministry of the Environment portfolio at all times, even if sometimes it is combined with other things. Collaboration and negotiation efforts between levels of government are also evident in issues regarding public health and healthcare, as demonstrated by the response to the COVID-19 pandemic (Vahed, 2020). Lastly, immigration and public safety are also other areas where both the provincial and federal governments have varying levels of influence (Immigration and Citizenship Canada, 2022; Manikis, 2021).

Climate

While the Constitution clarifies jurisdiction on topics related to the environment, there was little idea when it was written that a modern Ministry of the Environment would ever be created (*Constitution Act*, 1867). As climate change has become an increasingly urgent issue, the importance of having dedicated government institutions came to the forefront. Climate change, as a phenomenon which is not contained within provincial – or even national – borders is a key site of collaboration between the levels of government.

One significant action the Canadian government has taken in response to climate change, and one which receives much attention and debate, is carbon pricing. This was implemented under the *Greenhouse Gas Pollution Pricing Act* (GGPPA) (2018). The following lines provide some clarification on how federal and provincial governments work together over this particular policy, commonly known as a “carbon tax.” This primer will highlight how federalism may influence the ways in which members of the public interact with this policy.

The carbon tax follows a principle known as “polluter pay”, which means that the cost of emitting pollution – in this case, carbon – is applied to whoever is responsible for the emissions (GGPPA, 2018). The policy suggests that since carbon dioxide is a leading greenhouse gas and driver of climate change, an economic disincentive to emitting it should reduce emissions overall and begin to restrain the damage done by climate change (Environment and Climate Change Canada, 2023). Although the policy was established by the federal government, it has had implications for provincial and territorial governments. The federal government has set out a “default” carbon pricing scheme, and the provinces and territories are able to pass schemes of their own, provided they exceed the federal standards. If they are unable to meet these standards, or if one of them does not implement a carbon pricing plan at all, the federal policy becomes active in that jurisdiction by default (GGPPA, 2018).

Under the GGPPA, companies that emit carbon are covered under the Output-Based Pricing System (OBPS) (Environment and Climate Change Canada, 2024a). The OPBS targets industrial emitters by setting emission standards and providing guidelines and incentives for them to address their greenhouse gas emissions. In comparison, the average person will more frequently encounter the fuel charge instead of the OPBS, which is applied to fossil fuels available for consumer use (e.g. putting gas in a vehicle) (Canada Revenue Agency, 2023).

The pricing plans for provincial emissions vary and may thus fall short of federal guidelines. This means it is possible for an effective part of a province’s plan to be in place whereas the default federal plan replaces other parts which do not meet federal standards. For instance, as of June 2024, the federal system applies in full – both the OBPS and fuel charge – to Nunavut, Yukon, and Manitoba (Environment and Climate Change Canada, 2024b). On the other hand, the Northwest Territories, British Columbia, and Québec have their own provincial/territorial system. Alberta, Saskatchewan, Ontario, New Brunswick, Nova Scotia, Newfoundland and Labrador, and Prince Edward Island have a combination of the federal system and a unique provincial system (Environment and Climate Change Canada, 2024b).

When provinces or territories have policies which meet the federal standard, the revenues from that taxation go to the province or territory to be spent in whatever way the government wishes (Environment and Climate Change Canada, 2024c). When the federal program is used since the province or territory does not meet the federal standards, the revenues from the charges first go to the federal government. They then return that money through climate action programs and payments directly to individuals or groups in the respective province or territory (Environment and Climate Change Canada, 2024c).

The reason for returning revenues through programs and direct payments is that the program was designed to be revenue-neutral. In other words, all money raised from it was intended to be returned to the people it raised from through program expenditures or direct cash transfers (Environment and Climate Change Canada, 2024c). The carbon tax is a key example of the federal government

attempting to address matters crossing provincial and territorial borders and jurisdictions, while still giving them space to implement their own policies.

COVID-19

Public health and the economy have played a major role in the response to the pandemic caused by the SARS-CoV-2 virus. Public health measures taken included widespread testing for COVID-19, tracing the sources of infections, isolating individuals to minimize the chain of infection, and supporting individuals in quarantine through various programs such as the Safe Voluntary Isolation Sites Program (Public Health Agency of Canada, 2021).

The government also attempted to introduce measures alleviating the economic issues of a population with a reduced ability to work and fewer opportunities to spend. This included things like income supplements and various loans and grants to businesses (Canada Revenue Agency, 2023).

Since these interventions were vast in their impact and scope, different levels of government needed to work together to successfully carry them out. Although healthcare is largely under provincial jurisdiction, the federal government maintains its own public health agency to address issues that involve multiple provinces, as was the case during the COVID-19 pandemic (Health Canada, 2023). While cash transfers to individuals were mainly managed by the federal government, both levels of government could use taxation and spending to provide economic support (Canada Revenue Agency, 2023).

Healthcare

Healthcare can be an easy portfolio to ignore until someone needs it. However, concerns about the healthcare system are highly relevant to politics. Understanding the Canadian health system can be a daunting task, but demystifying responsibilities regarding healthcare in Canada is a good starting point.

As noted above, hospitals and other aspects of health care were assigned as a provincial responsibility in the 1867 *Constitution Act*, but it is unlikely that anyone back then could have predicted how complex and broad modern healthcare would grow to be. Modern healthcare has allowed for great progress in the world of medicine and healthcare services but does require a price for administration. Provincial governments generate much revenue for healthcare but the federal government can help pay for costs through the Canada Health Transfer (Canadian Medical Association, 2024).

As such, the two levels of government periodically negotiate agreements about how they will collaborate to ensure that each province and territory has the fiscal capacity to provide necessary health services. This is known as *fiscal federalism*, where the levels of government cooperate in order to allocate the burden of costly but necessary government operations (Krelove, 1997). Fiscal federalism can often include transfers of funds from the federal to provincial and territorial governments to support areas like healthcare (Department of Finance Canada, 2024).

Immigration

Immigration is another realm of shared jurisdiction (*Constitution Act*, 1867). The federal government has specific agreements with each province and territory on how to cooperate on this topic which are operationalized by Immigration, Refugees and Citizenship Canada (IRCC) through diverse funding of

settlement programs (IRCC, 2024a). These programs cover services providing needs assessments and referrals, information and orientation, language training, employment-related services, and community connections (IRCC, 2024b).

Provinces and territories vary in the degree of influence they exert over immigration, but Québec has historically held a significant amount of control over their policies. Some key agreements made between the federal government and Québec were the Lang-Cloutier Agreement (1971), the Cullen-Couture Agreement (1978) and most recently, the Canada-Québec Accord relating to Immigration and Temporary Admission of Aliens (1991) (Kostov, 2009). With these agreements, Québec sought to avoid a situation in which Francophones are steadily outnumbered and to preserve Québec's culture through their own resettlement and integration plans (McCallum & Béchar, 2024).

The Canada-Québec Accord ensures that Québec's proportion of immigrants accepted in any given year matches its proportion of the overall Canadian population (McCallum & Béchar, 2024). It also allows Québec to select refugees, although it is still the federal government that outlines the possible pool of refugees. The process of resettlement and helping newcomers is further left to the province (McCallum & Béchar, 2024). This can be compared to other provinces and territories, where newcomers usually deal mostly with the federal government when accessing services meant to help with integration.

Public Safety and Policing

While the Constitution designates policing as a provincial area of policy, both levels of government often play a role in it (Department of Justice, 2024). This issue came to the forefront earlier in 2022 when downtown Ottawa and other parts of the National Capital Region were occupied by people in large trucks (*Trucker Convoy*, 2022). Some confusion was evident about which level of government should be ultimately accountable for handling the event once the disruption it caused got out of hand.

Municipal, provincial and federal law enforcement have been involved in the incident. The involvement of municipal police forces is under the control of municipal governments. It is key to note that municipal powers are delegated from provincial powers, there are no guarantees to municipal jurisdiction like there are to provincial and federal jurisdiction under the Constitution (Centre for Constitutional Studies, n.d.). Instead, provinces decide how to delegate this power.

The provincial and federal governments thus worked together over this incident. On Parliament Hill, the Parliamentary Protective Service – a federal agency accountable to the RCMP and to the Speakers of the House of Commons and Senate – was active (Public Safety Canada, 2022). At border crossings, the federal Canadian Border Services Agency was involved. The federal Royal Canadian Mounted Police further provided policing services to provinces that did not have their own provincial police services. Provincial police were also present, as seen by the presence of the Ontario Provincial Police at the blockade in Ontario (Public Safety Canada, 2022).

The presence of all these agencies could lead to some confusion regarding which level of government is responsible and accountable for addressing the situation. National security requires cooperation between all levels of power, but it is still fundamentally a federal responsibility. On the other hand, the administration of justice and imposition of punishment is a provincial power according to sections 14 and 15 of the *Constitution Act* (1867). This raises the question of whether the blockade was primarily

a matter of national security or of policing. The difficulty of answering this led to a lack of clarity on what agencies should take the lead and thus a harder-to-coordinate response (Champagne, 2023).

Eventually, the federal *Emergencies Act* was invoked and the convoy action was brought to an end. The inquiry required every time the Act is invoked was completed and released on February 17, 2023 by Commissioner Rouleau (Public Order Emergency Commission, 2023). The report stated that the federal government met the threshold to use the *Emergencies Act*, but presented 56 recommendations to be addressed by the federal government, including proposed amendments to the Act.

Conclusion

The division of powers in Canada may be relatively clear on paper, but in practice, it can be more complex. In a real-world situation, this may translate to governments and agencies involved being unsure as to how to proceed due to different levels of government having concurrent responsibilities. When this happens, federalism does not stay static. It evolves because actors involved in a given issue want certainty and clarity as to what roles each level of government is responsible for. The Supreme Court often helps to clarify these areas of confusion, but collaboration between governments is also an essential part of evolving federalism.

The ongoing changes and collaborative work between governments form the federalism we know today, which progresses with the times and national circumstances. This primer has thus aimed to provide an informative and helpful introduction to this important concept of Canadian society.

References

- Brideau, I., Brosseau, L., & Lowenger, A. (2022). *The distribution of legislative powers: An overview* (2019-35-E). Library of Parliament.
<https://lop.parl.ca/staticfiles/PublicWebsite/Home/ResearchPublications/HillStudies/PDF/2019-35-E.pdf>
- Canada Revenue Agency. (2023, June 30). *Fuel charge rates*. Government of Canada.
<https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/fcrates/fuel-charge-rates.html>
- Canada Revenue Agency. (2024, April 25). *COVID-19 benefits from the CRA*. Government of Canada. <https://www.canada.ca/en/revenue-agency/services/benefits.html>
- Canadian Medical Association. (2024). *How is healthcare funded in Canada?*
[https://www.cma.ca/how-health-care-funded-canada#:~:text=More%20than%2070%25%20of%20health,Canada%20Health%20Transfer%20\(CHT\)](https://www.cma.ca/how-health-care-funded-canada#:~:text=More%20than%2070%25%20of%20health,Canada%20Health%20Transfer%20(CHT))
- Centre for Constitutional Studies. (2019, July 4). *Peace, order and good government*.
<https://www.constitutionalstudies.ca/2019/07/peace-order-and-good-government/>
- Centre for Constitutional Studies. (n.d.). *Federalism*.
<https://www.constitutionalstudies.ca/the-constitution/federalism/>
- Champagne, E. (2023, November 6). *The "failure of federalism" at the siege of Ottawa was primarily a failure of governance*. Policy Options.
<https://policyoptions.irpp.org/magazines/may-2023/rouleau-failure-federalism-governance/>
- The Constitution Act, 1867, 30 & 31 Vict, c 3.
- Cutler, F. (2008). Whodunnit? Voters and responsibility in Canadian federalism. *Canadian Journal of Political Science*, 41(3), 627-654. <https://doi.org/10.1017/s0008423908080761>
- Department of Finance Canada. (2024, February 16). *Federal transfers to provinces and territories*. Government of Canada.
<https://www.canada.ca/en/department-finance/programs/federal-transfers.html>
- Department of Justice. (2021, September 1). *Where our legal system comes from*. Government of Canada. <https://www.justice.gc.ca/eng/csj-sjc/just/03.html>

Department of Justice. (2024, June 11). *State of the criminal justice system dashboard*. Government of Canada. <https://www.justice.gc.ca/socjs-esjp/en/dash-tab/lm-sp>

Dunsmuir, M. (1991). *The spending power: Scope and limitations* (BP-272E). Government of Canada. <https://publications.gc.ca/Collection-R/LoPBdP/BP/bp272-e.htm#:~:text=From%20one%20viewpoint%2C%20therefore%2C%20the,fulfil%20its%20specific%20constitutional%20responsibilities>

Environment and Climate Change Canada. (2023, October 12). *Decarbonization incentive program: What you need to know*. Government of Canada. <https://www.canada.ca/en/environment-climate-change/services/climate-change/carbon-pollution-pricing-proceeds-programming/output-based-pricing-system-proceeds-fund/decarbonization-incentive-program/what-you-need-to-know.html>

Environment and Climate Change Canada. (2024, May 21). *Output-based pricing system*. Government of Canada. <https://www.canada.ca/en/environment-climate-change/services/climate-change/pricing-pollution-how-it-will-work/output-based-pricing-system.html>

Environment and Climate Change Canada. (2024, May 3). *Carbon pollution pricing systems across Canada*. Government of Canada. <https://www.canada.ca/en/environment-climate-change/services/climate-change/pricing-pollution-how-it-will-work.html>

Environment and Climate Change Canada. (2024, June 17). *How carbon pricing works*. Government of Canada. <https://www.canada.ca/en/environment-climate-change/services/climate-change/pricing-pollution-how-it-will-work/putting-price-on-carbon-pollution.html#toc3>

Evans, T. T. (2023, July 12). *How the Iroquois Confederacy was formed*. History. <https://www.history.com/news/iroquois-confederacy-hiawatha-peacemaker-great-law-of-peace>

Foreign Affairs, Trade, and Development Canada. (2013). *Foreign affairs, trade and development Canada* (2014E-PDF). Government of Canada.

https://www.international.gc.ca/departement-ministere/assets/pdfs/DFATD-DPR-2013-14_FIN_AL_ENG.pdf

Forsey, E. A. (1980). *How Canadians govern themselves*. Library of Parliament.

https://learn.parl.ca/staticfiles/Learn/assets/PDF/ParliamentaryPrimer/how_cdn_govern_themselves_10th_ed-e.pdf

Government of Canada. (2021, October 5). *Federalism in Canada*.

<https://www.canada.ca/en/intergovernmental-affairs/services/federation/federalism-canada.html>
1

Government of Canada. (2023, September 25). *Guide to Canadian ministries since Confederation*.

<https://guide-ministries.canada.ca/#PORTFOLIO>

Government of Ontario. (2024, June 11). *Ministries*. <https://www.ontario.ca/page/ministries>

Government of Prince Edward Island. (2024). *Departments*.

<https://www.princeedwardisland.ca/en/topic/departments>

Greenhouse Gas Pollution Pricing Act, SC 2018, c 12, s 186.

Health Canada. (2023, April 4). *Canada's health care system*. Government of Canada.

<https://www.canada.ca/en/health-canada/services/canada-health-care-system.html>

Immigration and Citizenship Canada. (2022, February 15). *Federal-provincial/Territorial agreements*. Canada.ca.

<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/agreements/federal-provincial-territorial.html>

Immigration, Refugees and Citizenship Canada. (2024, March 6). *Acts and regulations*. Government of Canada.

<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/acts-regulations.html>

Immigration, Refugees and Citizenship Canada. (2024, May 27). *Find free newcomer services near you*. Government of Canada. <https://ircc.canada.ca/english/newcomers/services/index.asp>

- Kostov, C. (2009). Canada-Quebec immigration agreements (1971–1991) and their impact on federalism. *American Review of Canadian Studies*, 38(1), 91–103.
<https://doi.org/10.1080/02722010809481822>
- Krelove, R. (1997). Canada. In *Fiscal federalism in theory and practice*. International Monetary Fund. <https://doi.org/10.5089/9781557756633.071.ch009>
- Manikis, M. (2021, August). *Federalism and victims' rights in Canada*. Office of the Federal Ombudsperson for Victims of Crime.
<https://www.victimsfirst.gc.ca/res/cor/FVR-FVR/index.html>
- McCallum, M., & Béchar, J. (2024). *Immigration: The Canada-Quebec Accord (2011-89-E)*. Library of Parliament.
<https://lop.parl.ca/staticfiles/PublicWebsite/Home/ResearchPublications/HillStudies/PDF/2011-89-E.pdf>
- McIntosh, A., & McConnell, W. H. (2021, October 21). *Constitution Act, 1867*. The Canadian Encyclopedia. <https://www.thecanadianencyclopedia.ca/en/article/constitution-act-1867>
- Parliament of Canada. (n.d.). *The branches of government*.
<https://learn.parl.ca/understanding-comprendre/en/canada-system-of-government/the-branches-of-government/>
- Privy Council Office. (2022, November 30). *Deputy minister champions and committees*. Government of Canada.
<https://www.canada.ca/en/privy-council/topics/deputy-minister-champions-committees.html>
- Privy Council Office. (2023, June 26). *About Cabinet*. Government of Canada.
<https://www.canada.ca/en/privy-council/services/about-cabinet.html>
- Public Health Agency of Canada. (2021, November 26). *Government of Canada announces funding for COVID-19 safe voluntary isolation sites in British Columbia*. Government of Canada.
<https://www.canada.ca/en/public-health/news/2021/11/government-of-canada-announces-funding-for-covid-19-safe-voluntary-isolation-sites-in-british-columbia.html>

- Public Safety Canada. (2022, December 20). *Parliamentary committee notes: Evolution of the freedom 2022 convoy*. Government of Canada.
<https://www.publicsafety.gc.ca/cnt/trnsprnc/brfng-mtrls/prlmntry-bndrs/20221013/04-en.aspx>
- Smyth, J., & McIntosh, A. (2023, April 21). *Federalism in Canada*. The Canadian Encyclopedia.
<https://www.thecanadianencyclopedia.ca/en/article/federalism>
- Stevenson, G. (2023, April 21). *Federalism in Canada*. The Canadian Encyclopedia.
<https://www.thecanadianencyclopedia.ca/en/article/federalism>
- Treasury Board of Canada Secretariat. (2023, October 4). *Departments and agencies*. Government of Canada. <https://www.canada.ca/en/government/dept.html>
- Trucker convoy: Police charge two Ottawa men following protest-related investigations; 'I'm here until the end' — demonstrators revel on fifth day*. (2022, February 2). Ottawa Citizen.
<https://ottawacitizen.com/news/local-news/trucker-convoy-shutdown-continues-for-fifth-day-shepherds-of-good-hope-overwhelmed-by-donations>
- Vahed, M. V. (2020, January 4). *COVID-19 federalism: Disparate government responses in Canada*. Munk School of Global Affairs & Public Policy.
<https://munkschool.utoronto.ca/research/covid-19-federalism-disparate-government-responses-canada>
- Wright, W. K. (2010). Facilitating intergovernmental dialogue: Judicial review of the division of powers in the Supreme Court of Canada. *The Supreme Court Law Review: Osgoode's Annual Constitutional Cases Conference*, 51(1), 625-693. <https://doi.org/10.60082/2563-8505.1206>