

## Who's Responsible? A summary of "division of powers" in Canada



The first step to any environmental work (be it campaign or legal case or both), is to determine who's responsible for the issue of concern.

In the Canadian legal system\*, answering the question "who's responsible" requires that we consider how, back in the 1860s, the drafters of the Canadian Constitution made decisions about government responsibilities.

When writing what has since become the Canadian Constitution, the legal drafters did not deal with the "natural environment" as a complete area of responsibility. Responsibility for fish and fish habitat lies solely with the federal government. Responsibility for international agreements lies solely with the federal government. Responsibility for managing forests lies solely with the provincial government. Responsibility for creating local governments lies solely with the provincial government (and, as such, municipal powers only exist based on what authority the province delegates to them through laws, regulations, and policies). Responsibility for fresh water is not given exclusively to either the federal or provincial government; the authority is shared and is related to other listed "heads of power".

Here's a summary of the "heads of power" that relate to the "natural environment". The factors in determining jurisdiction (eg, which level of government is responsible and/or which level of court hears a legal challenge) are: **nature of the problem** and **agencies involved**.

Federal responsibilities (*Constitution Act, 1867*, s 91):

- Peace, order and good government (POGG);
- Sea Coast and Inland Fisheries – s 91(12);
- Navigation and Shipping – s 91(10);
- Indigenous peoples and lands – s 91(24);
- Criminal law – s 91(27); and
- Federal Works and Undertakings – s 92(10)

Provincial responsibilities (*Constitution Act, 1867*, ss 92 and 92A):

- Management of provincial public lands and forests – s 92(5);
- Property and Civil Rights – s 92(13);
- Matters of local or private nature – s 92(16);
- Non-renewable natural resources – s 92A; and
- Provincial Works and Undertakings – s 92(10)

Indigenous jurisdiction is *complicated*. Within the Canadian legal system, "aboriginal and treaty rights" are constitutionally protected (*Constitution Act, 1982*, s 35). Internationally, there's the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). If you want to read more about the Canadian Constitution Acts, see the federal Constitutional Documents website: [http://laws-lois.justice.gc.ca/eng/Const/Const\\_index.html](http://laws-lois.justice.gc.ca/eng/Const/Const_index.html).

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\* Within Canada, there are two legal systems – Let's call them Indigenous and Settler. Ancient & Contemporary Indigenous Nations (and associated legal traditions) include: Innu, Mi'kmaq, Cree, Anishinabek, Haudenosaunee, Dakota, Métis, Blackfoot, Shuswap, Salish, Haida, Dene and Inuit. Settler (Dominant) Legal System: European "common law" and "civil law" (Québec). Ideally, we'll harmonize and reconcile Indigenous and Settler legal orders. For the purposes of this summary, the focus is on the Settler Legal System, referred to as the Canadian legal system.

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# SYSTEMS & PROCESSES OVERVIEW

