

Co-operative Federalism

What is co-operative federalism?

Canada uses a system of government known as federalism in which political power is shared by the federal and provincial governments.^[1] Co-operative federalism is a concept of federalism based on the federal and provincial governments working together to achieve mutual goals.^[2]

The [division of powers](#), outlined in sections 91 (federal powers) and 92 (provincial powers) of the *Constitution Act, 1867*^[3], limits what each level of government has the authority to do. For example, the provinces have the exclusive power to regulate trade that occurs *within* their province, while the federal government has the exclusive power to regulate trade that occurs *between* provinces.^[4] Although the Constitution sets out what each level of government has the exclusive power to do, in practice, there is significant overlap between the federal and provincial areas of control, such as in the area of health care.^[5]

Courts have developed the idea of co-operative federalism into a legal principle to reject strict approaches to interpreting the division of powers.^[6] Co-operative federalism reflects the realities in society that often require the federal and provincial governments to establish coordinated efforts.^[7] The more flexible approach to interpreting the division of powers makes it easier for collaboration between governments.^[8] Courts prefer to allow laws jointly enacted by both levels of government to operate in order to promote co-operative federalism.^[9]

Co-operative federalism in action

“Canadian federalism’s constitutional creativity and cooperative flexibility”^[10] is apparent in the Supreme Court of Canada case of *Re Agricultural Products Marketing Act (Canada)*.^[11] The case confirmed that a national egg marketing plan requiring provincial and federal laws to work together was constitutional. A federal agency assigned production quotas to each province so that they could share the national egg market.^[12] Both the provincial and federal governments agreed with this arrangement.^[13]

One issue in the case was whether the provinces could regulate the production of eggs that would eventually leave the province.^[14] Only the federal government has the power to control international trade and trade between provinces.^[15] The Supreme Court allowed the provinces to continue despite the effect of the laws on trade outside of the province, concluding that overall purpose of the laws were valid.^[16] The majority of the Court recognized that the provincial laws complemented the federal laws, and that finding them to be invalid would make it impossible for a practical co-operative regulatory scheme under the Constitution.^[17]

Limits of co-operative federalism

The principle of co-operative federalism is not meant to diminish a government's power in its area of authority or jurisdiction.^[18] The majority of the Supreme Court of Canada in *Quebec (Attorney General) v Canada (Attorney General)* emphasized that the principle must respect the division of powers.^[19] In this case, the majority did not apply the doctrine of co-operative federalism as it would undermine the jurisdiction of the federal government.^[20]

The case related to a federal law that was passed in 2012 to put an end to the long-gun registry.^[21] The long-gun registry was initially created in 1995 when the federal government passed the *Firearms Act*, establishing a national gun control scheme.^[22] Quebec viewed the registry as a partnership between the two levels of government.^[23]

Data from the national and provincial registries were combined into a central database.^[24] Quebec claimed that it had gathered, analyzed, organized, and modified data in the central database.^[25] The province argued that it had a right to the data because it resulted from the partnership; therefore, the federal government was obligated to transfer the data to the province owing to the principle of co-operative federalism.^[26]

The majority of the Supreme Court concluded that regardless of Quebec's involvement, the principle of co-operative federalism cannot be used to force the federal government to give Quebec the data.^[27] If the federal government has the power to create the registries, then according to the Constitution, it also has the power to dispose of its data without Quebec's consent.^[28]

This keyword was written by Raymond Chen.

^[1] *Reference re Secession of Quebec*, [1998] 2 SCR 217 at para 56.

^[2] Eric M. Adams, "Judging the Limits of Cooperative Federalism" (2016) 76 SCLR (2nd).

^[3] *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, Appendix II, No 5.

^[4] *Citizens Insurance Co v Parsons*, (1881) 7 AC 96 (PC) .

^[5] *PHS Community Services Society v Canada (AG)*, 2011 SCC 44 at paras 62, 66-69.

^[6] *Quebec (AG) v Canada (AG)*, 2015 SCC 14 at para 17 .

^[7] *Ibid* at para 148.

^[8] *Ibid* at para 147.

^[9] *Tsilhqot'in Nation v British Columbia*, 2014 SCC 44 at para 149.

^[10] *Fédération des producteurs de volailles du Québec c Pelland*, 2005 SCC 20 at para 15.

[11] *Re Agricultural Products Marketing Act (Canada)*, [1978] 2 SCR 1198 .

[12] *Ibid* at 1214-16.

[13] *Ibid* at 1214.

[14] *Ibid* at 1216.

[15] *Parsons*, *supra* note 4.

[16] *Ibid* at 1285-87, 1296.

[17] *Egg Reference*, *supra* note 11 at 1296.

[18] *Quebec*, *supra* note 6 at paras 19-20.

[19] *Ibid* at paras 18-20.

[20] *Ibid* at para 20.

[21] *Ibid* at para 7.

[22] *Ibid* at para 5.

[23] *Ibid* at para 22.

[24] *Ibid* at para 6.

[25] *Ibid* at para 121.

[26] *Ibid* at para 22.

[27] *Ibid* at para 20.

[28] *Ibid*.