

Natural Resources

By contrast to the manufacturing economies of Ontario and Quebec, the economies of the western provinces have traditionally emphasized primary production of oil, gas, wood, minerals and grains. These natural resources are sold largely in interprovincial and international markets. In the 1970s, the Supreme Court of Canada held that Parliament has paramount jurisdiction to legislate in relation to the export of natural resources. The decisions invalidated provincial taxes upon exported natural resources as “indirect taxation” (see taxation power), made provincial regulatory jurisdiction insecure and seemed to hollow out provincial ownership rights.

There were other provincial concerns about natural resources. The decisions of the 1970s could be extended to the generation, production and export of electrical energy. Moreover, electrical generation is done by an interconnected grid that can and does in many cases extend beyond the limits of a province. This additional fact can bring the whole undertaking within federal jurisdiction, as can the fact that electrical energy is regularly supplied to the United States. All of this heightened provincial complaints about the constitutional division of powers over natural resources at the end of the 1970s.

Section 92A of the *Constitution Act, 1982* was designed and proclaimed against this background. Section 92A authorizes the provinces to legislate for the export of resources to other provinces, subject to Parliament’s paramount legislative power in the area. It also permits indirect taxation in respect of resources, subject to a requirement not to discriminate against other provinces by use of this new taxing authority. The power would appear to respond to provincial concerns by reversing the decisions of the 1970s and by expanding provincial taxing and regulatory jurisdiction over natural resources.