

Trade and Commerce

One of the heads of power allocated to the federal government in the *Constitution Act, 1867*, s. 91(2). Comparable to the federal power in the United States Constitution to "regulate commerce with Foreign nations, and among the several States," the power to regulate trade and commerce was considered one of the broadest powers available to the federal government to regulate economic activity. It was out of concern that the federal power over trade and commerce would render meaningless provincial authority over *property and civil rights*, that Courts narrowed the scope of this federal power. In an early decision of the *Judicial Committee of the Privy Council* (1881), the federal power was limited to the regulation of foreign trade, interprovincial trade and, perhaps, the "general regulation of trade affecting the whole dominion." But federal power did not extend to the regulation of the contracts of a particular business or trade as such regulation fell exclusively under provincial control. In subsequent decisions, courts would not recognize the federal power to regulate trade generally. The modern Supreme Court of Canada has sanctioned use of this branch of the federal power. The Court upheld a federal law which provides a civil cause of action for breach of the federal Combines Investigation Act. It has been argued by at least one scholar in Quebec that such an interpretation of the federal power by the Supreme Court amounts to a radical reinterpretation and expansion of federal power.

See Smith (1963); Swinton (1990).

Sources:

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