

### Research article

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# Canadian Law Between the Wars

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## Abstract

Examined through a legal prism, Canada is an officially bilingual federal state with a bi-juridical legal system based, for the most part, on the traditions of British common law as it has evolved over the years. But in Quebec, the private law is civil law, contained in a Civil Code, derived from the laws established in what was New France. Canadian public law is essentially British. The current Head of State is King Charles III, Head of the Commonwealth. Canada's constitution sets forth, *inter alia*, the jurisdictional competence of the federal government and that of the provinces and territories. Over the course of the more than 150 years since Confederation, the respective governments have engaged in much litigation, testing the limits of their respective legislative powers.

Beginning in the early years of the twentieth century, an increasing volume of legislation developed as Canada progressed from its colonial status to a fully autonomous state with full control of both its domestic and foreign affairs. The scope and volume of legislation increased substantially in the lead-up to the Second World War (and thereafter) as governments, in their respective spheres, sought to create a legal environment that was attentive to a broader range of social issues. The existence of a federal state complicated the development and enactment of policies that produce the same outcomes throughout the country, since the constitution confers legislative jurisdiction on the provinces regarding property and civil rights. Much effort is expended in intergovernmental negotiations, leading to achievement of substantially harmonised results.

**Keywords** imperial matters; federal/provincial jurisdiction; Privy Council; Indigenous peoples; banking legislation; labour law; women's rights; social security; war; League of Nations; United Nations.

## Introduction

Law is an expression that, in general, reflects the outcome of legislation, whether constitutional (including conventions of a procedural or deferential nature) or reflective of established governmental policies that, in turn, are reduced to legislation (including both statutory and subordinate regulation), adopted by a legally competent legislature empowered with the jurisdiction to legislate. Any study of Canadian law ‘between the wars’<sup>1</sup> requires some measure of set-up, if only to identify the context and to deal with the evolution of the country from its colonial status to a largely self-governing and eventually fully autonomous state, as well as to note preparatory initiatives leading to more modern legislation that had its roots in the period under study.

The roots and traditions of Canadian law are a mixture of both civil and common law, the former derived from the law applied in New France prior to what is sometimes referred to as the conquest, in the course of which the British captured first Louisbourg, the centre of Acadian traditions, then Quebec in 1759 and finally Montreal (by capitulation) in 1760.<sup>2</sup> The British brought with them the common law, along with a somewhat more enlightened system of criminal law than had previously been applied in New France. The French occupation of what became British North America had, however, a lengthy, if somewhat narrower, legal history when compared with the British common law, with its tradition of incremental judge-made law, afflicted with a bewildering set of arcane procedures, penetrable only by a few lawyers.

The French in Canada considerably outnumbered the relatively few British. Britain had enjoyed a military victory, but the formally acquired territory was overwhelmingly occupied by the French, who had been there for more than two centuries. The French were less than enthusiastic about the ‘opportunity’ to change their language, religion and laws. The law in matters such as property, contracts, succession and marriage was well established, resulting in a degree of tension throughout the former area of New France, one that required careful management by the British minority to avoid open conflict. This need for a practical accommodation led to the adoption of the Quebec Act of 1774 by the Imperial Parliament, which preserved many aspects of the civil law, language and protection of the rights of the Roman Catholic Church, giving Roman Catholics in Quebec considerably greater rights than those enjoyed by their counterparts in Britain, the mother country.

This special accommodation of the Quebec Roman Catholics also attracted the attention of the British colonies in New England, whose Roman Catholics also had far fewer rights than those benefitting from the Quebec Act, to the point of invasion of Canada, even prior to what became the US Declaration of Independence in 1776.<sup>3</sup> Indeed, the protections afforded to the French by the Quebec Act played a significant part in eventual decisions, often untidily reached, not to accept annexation with what became the United States of America.

The initial political organisation of the conquered territory applied to the provinces of Nova Scotia, New Brunswick and what had been New France (or Quebec), divided into Upper and Lower Canada pursuant to a British-made constitution coming into force in 1791. When Confederation occurred in 1867, it involved only those territories.<sup>4</sup> Manitoba was added in 1870, British Columbia in 1871 and Prince Edward Island in 1873. Saskatchewan and Alberta joined in 1905. Newfoundland (and Labrador) remained a separate British colony until 1949,<sup>5</sup> when it was incorporated as a province within Confederation. While in Upper Canada, British law prevailed in both criminal and civil matters (through the common law), in Lower Canada it was bifurcated, with British criminal and public law and the French traditions of civil law.<sup>6</sup>

It was in the nature of new colonies that the primary legal (and practical) focus was on local matters, including the clearance of land, the building of shelters, cultivation of crops and ensuring generation of the necessities of life. Law as such was essentially an add-on to the society of the day, most evident in the gradual emergence of municipal institutions and amenities, such as roads and primitive services, essentially utilitarian in nature. Churches, schools, hospitals and the like were generally private undertakings.

One must remember that the Canadian possessions of the day were, in fact, British colonies, with local powers that were vestigial in nature and subject to control by British political institutions, whose officials were unfamiliar with the conditions in those colonies, and headed by British-appointed governors. It would be almost a century before the Dominion of Canada was established (by Britain) pursuant to the British North America Act, 1867.<sup>7</sup> British governors general continued to be appointed thereafter for almost another century. Even Dominion status, which included well-defined legislative powers divided into provincial and federal competence (for peace, order and good government), was short of full self-government, finally achieved only in 1982, with the patriation of the Canadian constitution and the adoption of the foundational Canadian Charter of Rights and Freedoms.

In the early years of the twentieth century, as Europe lurched towards the First World War, development of the law in Canada was neither particularly exciting nor ground-breaking. All non-purely domestic matters were fully controlled by the Imperial Parliament. If Britain was at war, so, automatically, was Canada, without the constitutional necessity for Canadian agreement or even consultation. Despite some negotiated progress during the First World War by Canadian politicians, that position was only seriously challenged when the Second World War was declared by Britain in 1939. Canada issued its own declaration a few days later, even though such a declaration may merely have confirmed the legal fact that Canada was already at war.<sup>8</sup> The final court of appeal in Canadian legal matters was the Judicial Committee of the Privy Council, a state of affairs that lasted until after the end of the Second World War (except for criminal matters, which, after 1933, were deemed by Canada to be essentially local in nature and ceased to be appealable to the Privy Council).

Part of the issue of the generally uninspiring legal development of Canada may be laid at the doorstep of the division of legislative powers in the BNA Act. Property and civil rights fell within the legislative competence of the provinces. While the configuration of the country – especially in 1867, when the population was sparse, travel problematic and uncertainty existed regarding westward expansion of the new Dominion – may have favoured such a statutory matrix, it made development of national policies in many areas very difficult, if not practically impossible. The burning constitutional question in Canada tended to be whether legislative jurisdiction in respect of any particular subject matter was federal or provincial.

The federal powers were contained for the most part in section 91 of the BNA Act and those of the provinces in section 92. The following enumerations provide an overview of the division of powers, within which the federal and provincial governments constantly manoeuvred:

**Section 91:** Public debt and property, regulation of trade and commerce, unemployment insurance,<sup>9</sup> raising of money by any mode or system of taxation, borrowing of money on the public credit, postal service, census and statistics, militia, military and naval service and defence, ..., beacons buoys, lighthouses and Sable Island, navigation and shipping, quarantine and establishment and maintenance of marine hospitals, sea coast and inland fisheries, ferries between a province and any British or foreign country or between two provinces, currency and coinage, banking, incorporation of

banks and the issue of paper money, savings banks, weights and measures, bills of exchange and promissory notes, interest, legal tender, bankruptcy and insolvency, patents of invention and discovery, copyrights, Indians and lands reserved for the Indians, naturalization and aliens, marriage and divorce, the criminal law, except the constitution of courts of criminal jurisdiction, but including the procedure in criminal matters, the establishment, maintenance, and management of penitentiaries. Such classes of subjects as are expressly excepted in the enumeration of the classes of subjects by the Act assigned exclusively to the legislatures of the provinces.

**Section 92:** direct taxation within the province in order to the raising of a revenue for provincial purposes, the borrowing of money on the sole credit of the province, ... provincial offices and appointment and payment of provincial officers, management, and sale of public lands belonging to the province and of the timber and wood thereon, ... public and reformatory prisons in and for the province, ... hospitals, asylums, charities and eleemosynary institutions in and for the province, other than marine hospitals, municipal institutions in the province, shop, saloon, tavern, auctioneer and other licences ..., local works and undertakings other than ... ships, railways, canals, telegraphs ... connecting the province ... lines of steam ships ... works situate[d] in the province declared by Parliament to be for the general advantage of Canada ..., incorporation of companies with provincial objects, solemnization of marriage in the province, property and civil rights in the province, administration of justice in the province ..., imposition of punishment by fine, penalty or imprisonment ..., generally all matters of a merely local or private nature in the province.

Given the judicial structure in the period immediately following Confederation, it is perhaps not surprising that Canadian law as such was slow in developing. The provincial superior courts, the judges of which were appointed by the federal authorities, were the repository of the residual jurisdiction for court intervention. There were no federal courts until 1875, when the Supreme Court of Canada was established, sitting in Ottawa,<sup>10</sup> along with the Exchequer Court of Canada as an itinerant trial court, although seated in Ottawa. The composition of the Supreme Court of Canada is now fixed at nine judges, of which three are appointed from Ontario, three from Quebec and three from the rest of Canada. In

the face of the supervisory power of the Privy Council, Canadian judges were conservative in judicial outlook and tended to focus on the literal meaning of any legislation they were called upon to interpret, the so-called black-letter approach.

Then, too, the subject matter of the legislation of the day did not stray far from the traditional (especially British) subjects, such as criminal law, mercantile law (what would be called business law today), property, succession, admiralty, torts, patents and copyright. Comprehensive legislation in education, health, consumer protection, human rights and others were still areas to be developed, first as policy and then converted into statutory format. The communications revolution had not yet occurred, other than in newspapers, some of which were little more than platforms for the dissemination of the editorial views of their publishers. Radio was on the horizon after the First World War, although mainly local, and television was not a proven concept until just prior to the beginning of the Second World War. The challenges of Canadian geography and sparsely settled communities were more acute than those in Europe, making it more difficult to mobilise national public opinion and action than in Europe, thus reinforcing the role of the provinces.

## Indians

The early arrivals, predominantly from Europe, into what is now Canada, were small in number and had no significant impact on the Indigenous peoples, other than admiring their superior weapons, which they were glad to acquire for the purposes of influencing outcomes in their own domestic rivalries. There were also trade relationships, generally in furs, payment for which exposed them to aspects of European implements and goods. As the number of Europeans grew and there were rivalries among their own communities, the Europeans, in turn, recruited the Indigenous peoples as allies in their own struggles.

This led to them being armed and plied with alcohol, to which they had almost no tolerance, creating many problems affecting both health and conduct. As the European trickle turned into a flood, it became all too clear that the Indigenous traditions and even their existence were at risk. Within ten years of Confederation, Parliament adopted the Indian Act in 1876.<sup>11</sup> It recognised the special nature of the Indians and their culture, providing certain protections for them, albeit in a rather paternalistic manner, and not always in a consistent, sensitive or protective fashion.

A 1920 amendment to the Indian Act provided for enfranchisement of all native Canadians (as defined) and for the transformation of the Department of Indian Affairs, originally created in 1880. In 1936, the department was made a branch of the Department of Mines and Resources; in 1950, responsibility was transferred to the Department of Citizenship and Immigration, to be reborn in 1966 as the Department of Indian Affairs and Northern Development. In 1939, the Supreme Court of Canada ruled, in a dispute between the federal and Quebec authorities, that the term Indian in the BNA Act referred to all original inhabitants of Canada, including the Inuit.

Canada is only gradually addressing the many issues and unresolved implications of past treatment, including land claims, living conditions on reserves, sexual exploitation and residential schools. There have been occasional patchwork efforts to address known problems, some of which have led to the blockading of bridges and roads to protest against particular treatment. One such example was the strike of a Royal Commission on Aboriginal Peoples following a siege at Oka, Quebec, in 1991. A recent and much more poignant exercise was the Truth and Reconciliation Commission arising from the mistreatment of aboriginals during the time when residential schools operated, including the removal of children from their homes and parental care.

The Supreme Court of Canada, especially in recent years, is the Canadian institution that has protected aboriginal rights much more effectively than the executive and legislative branches of governments.

## Transportation

Canada is vast. Its size was almost beyond the comprehension of the European immigrants. Some of the settlers making up New France had acquired more of an idea of the extent of Canada, the Northwest and even the United States as a result of their astonishing voyages of exploration, some of which covered the entire continent. From the outset of the new Dominion, transportation was a primary concern. In 1871, as part of the negotiations with British Columbia to join Confederation, the federal government promised to build a railway from Eastern Canada to the Pacific. British Columbia duly joined in 1871, but as often happens with government promises, had to wait until 1885 for the completion of the project. The Canadian Pacific Railway Company was incorporated in 1881 as a private corporation and continues to operate to the present day. In addition to transporting passengers and freight (much of which is

wheat), it also transported troops and material during the war years and developed marine and air services at various times.

In 1919, another transcontinental railway company, Canadian National Railways Company, was founded in Montreal, established as a government-owned enterprise that combined several existing railways. Four years later, in 1933, legislation was adopted,<sup>12</sup> directing the two competing rail companies (Canadian National and Canadian Pacific) to cooperate in effecting economies and reducing duplication. One result was the cooperative pool trains in central Canada, jointly operated by the two corporations. Canadian National has subsequently been privatised and is now a listed publicly owned company.

One of the world's most significant waterways is the combination of the Great Lakes and the St Lawrence River, which stretches from the middle of the continent to the Atlantic Ocean between Canada and the United States. Its transportation potential was recognised as enormous, even though in the climate of the day, major parts of the waters were frozen during the winter season. The two countries had formed a Deep Waterways Commission in 1895 and an International Joint Commission in 1909 to study the matter. Progress was slow and the United States was also committed to the Mississippi and Missouri routes to the south. In 1927, Canada refused to join the United States in developing a waterway from the Great Lakes to the Atlantic. However, on 18 July 1932, Canada and the United States signed the Great Lakes–St Lawrence Seaway Deep Waterway Treaty to build the St Lawrence Seaway and to improve transportation of grain and other commodities across the continent. The St Lawrence Seaway project would not begin until August 1954 and was eventually opened in 1959.<sup>13</sup> In August 1932, the fourth Welland Canal, bypassing the Niagara Falls, was opened, raising and lowering ships 99.36 metres.<sup>14</sup>

In 1936, Trans-Canada Airlines was created by the Government of Canada as a subsidiary of Canadian National Railways.<sup>15</sup> Effective from 1 January 1965, Trans-Canada Airlines became Air Canada. It was later privatised and is now a publicly traded corporation.

## Banking

The Canadian banking system is organised across five broad categories of financial institutions: chartered banks, trust and loan companies, the cooperative credit movement, life insurance companies and securities dealers. Despite having a constitutional responsibility for banking, the

federal government did not create a national bank until 1934, to serve as a government agency to regulate national policy, effective 11 March 1935.<sup>16</sup> Oddly enough, the Bank of Canada was initially to be privately held. This did not last long. Three years later, it became a publicly owned institution.<sup>17</sup> The Canadian banking system is widely regarded as one of the safest banking systems in the world.

## Taxation

Until 1917, Canada imposed no income tax on personal and corporate incomes. Its taxation revenues were derived principally from customs and excise taxes. Some have expressed the thought that this was to help make Canada appear more attractive to immigrants, for which Canada was competing with other jurisdictions. However, First World War-related costs were such that by 1917 the federal government was forced to adopt a temporary Income War Tax Act to assist with funding the war effort – a first-time national tax on personal incomes.

However, taxes tend not to be temporary and personal income taxes have remained in effect ever since, becoming a major source of government revenues. Provincial governments have also embraced income taxes in respect of provincial undertakings. The taxation statutes are not only confined to the mere collection of government revenues, but also extend to policies designed to achieve specific economic objectives by means of such mechanisms as grants, credits, lower tax rates, exemptions and accelerated or increased deductions in the computation of income.

## Labour relations

The expansion of the resource industries, construction of canals and railways and general growth of the economy led to the development of relationships that were governed by a capitalist labour market. During the colonial period, company towns developed (often based on production of a single resource such as coal or paper), providing a reserve of skilled labour and, to some degree, of worker stability. When violence occurred (as it often did), employer responses ranged from closing company-owned facilities to calling in the militia. Work for women changed from family enterprises to domestic service such as servants and housekeepers. Child labour peaked in late nineteenth and early twentieth centuries. This was supplemented by immigrant children brought from Britain by various

children's aid societies and often involved cruel exploitation. Job security and assistance in the case of illness, injury and death were effectively non-existent.

For most of the nineteenth century, unions were normally small and local organisations, often illegal. Huge violent strikes occurred on work sites such as the Welland and Lachine canals. Growing acceptance of unions had emerged by the mid-century and led to the formation of some purportedly national workers' unions by the end of 1870s. The Toronto printers' strike in 1872 led Prime Minister John A. Macdonald to introduce the Trade Unions Act, with the outcome that labour unions were no longer considered as illegal conspiracies. The Royal Commission on the Relations of Labour and Capital reported in 1889 and documented the sweeping impact of industrialisation in Canada and strong support for unions as a suitable form of organisation for workers. In 1894, Labour Day, the first Monday in September, was established as a national holiday. The federal Department of Labour was created in 1900.

During the First World War, union membership grew to 378,000 by 1919 and strike activity increased to more than 400 strikes in the same year. Most, but not all, of these were in Ontario and Quebec (the two most populous provinces), but also included the Winnipeg General Strike, when its leaders were arrested and the violent suppression of the strike demonstrated that governments would not remain neutral. Labour activities during and after the war eventually led to the introduction of the Unemployment Insurance Act, 1941, a reform achieved only in 1940, which had an important influence on the labour movement. The Great Depression of the 1930s was an important turning point in this struggle, when more than one million were out of work. By 1949, union membership was in excess of one million, especially in new mass production industries such as rubber, electricity, steel, automobile manufacturing and packing houses.

New rights afforded to labour and the rise of the welfare state during the 1930s and 1940s were major achievements, promising to protect Canadian workers against major economic misfortunes. Governments, major employers in their own right, granted similar rights to their employees. The Canadian Labour Congress would emerge in 1956. Looking farther into the future, the Canadian Labour Code was assented to in the Canadian centennial year, 1967.

In the course of the Second World War, despite government efforts to limit union powers through wage controls and restrictions on the right to strike, workers refused to wait until the war was over, which led to the adoption of an emergency order-in-council, protecting employees' rights

to join unions and requiring employers to recognise the union selected by the employees.<sup>18</sup> After the war, in 1948, the Industrial Relations and Disputes Act became the cornerstone of Canadian industrial relations, along with analogous provincial legislation.

During 1945, 17,000 striking members of the United Auto Workers and Ford Motor Company agreed to binding arbitration under Justice Ivan Rand of the Supreme Court of Canada. While arbitrating the strike, Rand handed down what has become known as the Rand Formula, establishing a form of union security pursuant to which an employer would deduct a portion of the salaries of all employees, whether they belonged to the union or not, and pay the overall amount to the union as union dues.

## **Unemployment insurance**

This federal responsibility emerged from a 1940 constitutional amendment to the BNA Act. As early as 1919, the creation of a national programme of unemployment insurance had already been recommended by the Royal Commission on Industrial Relations. When in 1935 the R. B. Bennett government tried to introduce the Employment and Social Insurance Act, both the Supreme Court of Canada and the British Privy Council declared it unconstitutional, as an infringement of provincial authority. This led to the 1940 constitutional amendment, immediately followed by passage of the Unemployment Insurance Act, which created the Unemployment Insurance Fund, the first compulsory unemployment insurance plan in the country, effective on 2 July 1941, with contributions from employers, employees and the federal government.

## **Business-related legislation**

The federal Companies Act came into force on 2 October 1934, replacing the Companies Act of 1927, which established stricter standards for regulations safeguarding the security of investors, shareholders and creditors.

The year 1923 saw the adoption of the Combines Investigation Act, the basis of modern legislation designed to control mergers, trusts and monopolies that limited or eliminated competition. In 1935, the Dominion Trade and Industry Commission became empowered to administer the Act, prohibiting monopolies from operating to the detriment of the public.

## Women's rights and emancipation

On 1 January 1916, Emily Murphy, an Edmonton reformer and suffrage activist, became the first woman magistrate in the Commonwealth. British Columbia's first female judge, Helen Emma MacGill, from Vancouver, was appointed in 1917.

Enfranchisement of women in Canada did not come easily and it was only in 1918 that they became eligible to vote in federal elections. In 1921, the first federal election in which women had the vote, Agnes Campbell MacPhail became the first woman elected to House of Commons in the rural Ontario riding of Grey South East.

Female voting took place at the provincial level during the First World War (see Figure 1). Manitoba women were the first in Canada to be granted the franchise, in 1916, followed by Saskatchewan and Alberta later that same year and in 1917 by British Columbia and Ontario. Nova Scotia granted the franchise for women in 1918, followed by New Brunswick in 1919. In 1922, Prince Edward Island women were given the right to vote in provincial elections as well as the right to hold political office in the province. In 1934, New Brunswick women were granted the same right to run for provincial office in the province. In Quebec, this right was not gained until 1940. Temperance activist Louise McKinney was the first woman in Canada to win a seat in a provincial legislature (Claresholm, Alberta).

Women in Quebec could not practise law until 1942. In 1952, women in Manitoba were the first to serve on juries. Women generally



**Figure 1.** Canadian women voting during the First World War. (Source: National Library and Archives Canada)

could not serve on juries until after the Second World War and, in Quebec, not until 1971.

Women had also long argued for appointment to the federal Senate. They were rebuffed by three successive prime ministers, who believed that qualified persons for the purposes of appointment to the Senate pursuant to section 24 of the BNA Act did not include women, since the drafters of the statute clearly thought so, and that an amendment of the BNA Act would be required to achieve such an outcome. Since political action produced no results, the women took to the courts. The Supreme Court of Canada, predictably, produced a unanimous judgment rejecting their argument. On 18 October 1929, the Judicial Committee of the Privy Council overruled that decision. Lord Sankey, speaking for the Privy Council, stated that: 'The exclusion of women from all public offices is a relic of days more barbarous than ours.'<sup>19</sup> The Supreme Court of Canada came off as looking rather foolish. Four months after the Privy Council judgment, Prime Minister W. L. Mackenzie King appointed Cairine Wilson as Canada's first female senator.

## Social safety nets

Old age pensions were established in 1927.<sup>20</sup> This was the federal government's first major initiative in the field of public welfare. The legislation provided pensions for British subjects who had resided in Canada for at least 20 years and who were 70 years of age or older. The maximum pension was \$270 per year, to be paid to persons with demonstrable need, in cooperation with those provinces that wished to join. The original legislation was replaced by Old Age Security in 1952. Pensions had originally started at age 69, but beginning in 1966, eligibility was lowered, one year at a time, to eventually begin at age 65. In January 1966, the Canada Pension Plan was launched, except in Quebec, which created its own Quebec Pension Plan.

The 1943 Speech from the Throne announced 'a charter of social security for the whole of Canada'. The *Report on Social Security for Canadians* was published, calling for a comprehensive national social security system guaranteeing assistance in old age, sickness, maternity and disability. Family allowances were legislated in 1944, with payments commencing in 1945.

Medicare got its initial start in Saskatchewan in 1947, followed by Alberta in 1950. The first federal involvement began in 1961, with the St Laurent government's Royal Commission on Health Services, 1961–4, chaired by Supreme Court of Canada Judge Emmett Hall.

## Canada and the two World Wars

Constitutional responsibility for Canadian foreign relations was all left to Britain, which, after all, had adopted the BNA Act, 1867. Beginning in 1916, Prime Minister Robert Borden lodged complaints about the significant Canadian contribution to the war effort, but having only minimal involvement in the decision-making process. In March 1917, Borden and other Dominion prime ministers attended the first meeting of the Imperial War Cabinet in London, a body created by British Prime Minister David Lloyd George, to bring together Allied policymaking. Within a month, Borden proposed Resolution IX of the Imperial War Conference, calling for a special Imperial War Conference following the cessation of hostilities, with the objective of readjusting constitutional relations between component parts of the Empire. This was to be based on full recognition of the Dominions as autonomous nations in the Imperial Commonwealth.

On 18 November 1926, the Balfour Report was adopted at the Imperial Conference, declaring Britain and the Dominions of Canada, South Africa, Australia, New Zealand and the Irish Free State to be 'autonomous Communities within the British Empire, equal in status, in no way subordinate [to] one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations'. Just over a week later, Vincent Massey was appointed Canadian Minister to Washington, the first internationally recognised diplomatic appointment made by Canada.

Notable Canadian activity during the First World War included the 1915 composition (apparently in the space of 20 minutes) at Ypres of Dr John McRae's well-known poem, 'In Flanders Fields'. The poem was first published in *Punch* in December that year. In 1917, General Arthur Currie assumed command of the Canadian Expeditionary Force, succeeding Julian Byng as commander of the Canadian Corps in France. That same year, the Conscription Act was passed, leading to demonstrations and riots in Montreal. Also in 1917 was the founding of the National Hockey League. In 1919, after the end of the war, the Nickle Resolution requested that English monarchs refrain from conferring titles on any Canadian subject. This resolution was not law and Canada was the only Commonwealth nation to have such a policy.

Canada was a founding member of League of Nations in 1920, headquartered in Geneva. Canada served on the Council of the League until 1930. In 1935, Canada was part of the Committee of Thirteen to examine how economic sanctions could be used against violators of

peace in Europe. The League was dissolved on 16 April 1946 and was replaced by the United Nations Organization.

During 1920, the Royal North West Mounted Police and the Dominion Police, the federal police force in eastern Canada, became the Royal Canadian Mounted Police. The headquarters were moved to Ottawa from Regina, although the training centre remained (and still remains) in Regina. This national police force has become an iconic symbol of Canada.

The 1922 National Defence Act placed all Canadian defence forces under a single minister for the first time. It was later redesignated as the Department of National Defence Act. Adding to national conformity, also in 1922, British Columbia changed from driving on the left.

In 1923, the Halibut Treaty with the United States was signed, the first time a Canadian representative has signed a treaty with a foreign state without British involvement. This was followed by several others, dealing with trade, cooperation with respect to smuggling, boundaries and other matters.

The Royal Canadian Air Force was formed in 1924. In addition to active service, it would play an important role during the Second World War in training foreign air crews prior to their engagement in combat and other roles.

The Canadian Broadcasting Corporation (CBC) was established in 1936, with powers to regulate private stations and to support and promote Canadian culture, replacing the Canadian Broadcasting Commission that had been established in 1932. CBC went on to become the largest public broadcasting system in the world.

Prime Minister Mackenzie King met with Adolf Hitler in Berlin during 1937, later describing him as 'a simple sort of peasant' representing no serious danger to the world. On the domestic legal front that year, the Privy Council upheld a Supreme Court of Canada decision dated 17 June 1936, striking down the Bennett government's New Deal legislation. In Quebec, the so-called Padlock Act<sup>21</sup> was adopted by Maurice Duplessis' Union Nationale government, a statute eventually ruled unconstitutional in 1957 by the Supreme Court of Canada. Also in 1937, the Royal Commission on Dominion-Provincial Relations was established to examine the BNA Act. The Rowell-Sirois Commission issued its report in May 1940. In 1937, the Alberta government adopted a statute that forced newspapers to disclose their news sources to a government board, as well as to publish government rebuttals to any published criticism of the government. A year later, in 1938, the Supreme Court of Canada invalidated the statute.

On 1 September 1939, Germany invaded Poland. The War Measures Act was proclaimed and the Canadian militia (today's reserves) was called

to active service. Defence of Canada Regulations were proclaimed in force under that Act, giving the federal government sweeping authority to protect the country against subversion and to control dissent. The Wartime Prices and Trade Board, under the Minister of Labour, had power, *inter alia*, to control prices and the distribution of necessary goods and services.

In 1940, Canada commenced a massive programme to construct merchant and naval vessels. As early as May 1941, corvettes were launched to form the Newfoundland Escort Service with other Canadian destroyers. The North Atlantic crossings were particularly dangerous throughout the war due to the German U-boats that were very effective in their harassment and sinking of ships carrying large numbers of troops and filled with supplies destined for Britain and the European theatre of war.

In a major step forward in the war effort, on 11 March 1941, the United States Congress passed the Lend-Lease Act, which permitted the US to provide Allied countries with necessary defence articles. Canada played an active role in the behind-the-scenes negotiations, many of which took place near Montreal. Later in 1941, upon approval of the Anglo-Soviet Treaty, Canada and the USSR became allies following Germany's invasion of the Soviet Union. In 1943, Quebec adopted a law stipulating free and compulsory education in the province.

Canada was a founding member of the United Nations Organization, along with 50 other countries which signed the Charter in San Francisco on 26 June 1945. Canada ratified the Charter on 24 October and the United Nations Organization replaced the League of Nations. On 10 December 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights. Canada was an early signatory, having played an active role in the drafting of this foundational document.

After the end of the war, in January 1946, an Act of Parliament declared the Canada Mortgage and Housing Corporation to be a Crown corporation. The same year, the Atomic Energy Control Board was established to regulate the production and use of atomic energy.<sup>22</sup> September 1945 marked the first atomic fission in Canada and the first controlled atomic reaction outside the United States, sustained within the research reactor at Chalk River, Ontario. In addition, in December 1946, restrictions on the right to strike in the war industries and the freezing of prices and wages were lifted to allow for the readjustment of industries to civil production.

The Canadian Citizenship Act was proclaimed on 1 January 1947, pursuant to which Canadians became Canadian citizens rather than British subjects. Canadian women no longer automatically lost their citizenship when they married non-Canadians. The following year, Japanese Canadians were given the right to vote in federal elections and, in 1949, full citizenship was extended to all Asian Canadians.

On 6 July 1948, delegates from Belgium, Canada, France, Luxembourg, the Netherlands, the United Kingdom and the United States met in Washington, DC, to begin discussions which led to the North Atlantic Security Pact. On March 28 the following year, the North Atlantic Treaty was submitted to the Canadian House of Commons and approved in a single day, having been opposed only by two independent members from Quebec. This was followed almost immediately, on 4 April 1949, by the signature of the North American Pact in Washington, DC, by External Affairs Minister Lester B. Pearson, Canada thereby becoming one of the 12 original members of the North Atlantic Treaty Organization.

On 23 March 1949, assent was given to the North America Bill, passed by the British Parliament for the union of Newfoundland and Canada. This had not been an easy transition: a first referendum in Newfoundland had failed and the second, held on 22 July 1948, was decided narrowly in favour by 78,408 to 71,464. Newfoundland became the tenth Canadian province on 31 March 1949. Parliament passed the Supreme Court Bill in 1949, making the Supreme Court of Canada the final court of appeal for Canada. At the end of the year, on 10 December, the Trans-Canada Highway Act came into effect, authorising the construction of a two-lane roadway across Canada via the shortest route. Initially scheduled for completion by 1956, it was officially opened 3 September 1962. Route selections were made by the respective provinces and costs were shared 50–50 by the federal and provincial governments, with the federal government paying 100 per cent in respect of those portions passing through national parklands.

When the Korean War broke out in 1950, Canada backed a United Nations decision to support the South. External Affairs Minister Lester B. Pearson urged support of a United Nations Security Council resolution condemning North Korea and demanding its immediate withdrawal from South Korea. On 7 July 1950, the United Nations Security Council (with the Soviet representative absent) voted in favour of a multilateral force to aid South Korea. The Korean War hostilities ceased on 27 July 1953, with United Nations and North Korean delegates signing an armistice at Panmunjom. Canadians also served with the United Nations forces after the end of the war until 8 November 1954.

On 24 January 1952, Vincent Massey was appointed as the first Canadian-born governor general of Canada, the 18th person to hold the honorific position. He served in that capacity from 28 February 1952 until 15 September 1959.

Canada's first television station CBFT in Montreal (part of the Canadian Broadcasting Corporation French network) began transmitting

on 6 September 1952. Two days later, on 8 September, Canada's first English-language television station, CBLT, operated by the CBC, began broadcasting in Toronto.

## Looking forward: matters of law still ripening

As noted, Canadian interest in non-traditional expansion of the legal system started to develop around the beginning of the First World War as matters of social policy began to occupy the population and the legislatures, both federal and provincial.

The final removal of the death sentence in Canada would not be made a matter of law until 1999, although from a practical perspective, no executions occurred after 1962. In 1976, the death penalty was removed from the Criminal Code, which was nevertheless maintained by the military until 1999; however, no military executions had occurred after 1945. Some 710 executions had taken place between 1867 and 1962, mostly by hanging, with the military keeping executions by firing squad.

A Bill of Rights was adopted by the Diefenbaker government on 10 August 1960, which, although it has never been repealed, was later largely supplanted by the Canadian Charter of Rights and Freedoms adopted by the Pierre Elliott Trudeau government. The Charter has become a foundational part of the Canadian constitution. The confidence of Parliament in the quality of Canadian courts has left much of the responsibility for evolution of the law in respect of Charter-protected rights in the hands of the courts.

The legal order in Canada continues to expand, extending to matters that operated outside earlier iterations, whether by active choice of legislators or simply by never having been considered as necessary or appropriate in the society of the day. Homosexuality, for example, was once punished under criminal law. Now it is a protected right and discrimination on the basis of sexual orientation is forbidden. The legal implications of homosexuality and related or analogous variations of sexual identification or expression are still in the process of being identified, properly defined and brought within the social net.

The ubiquity of information and the ease of its communication in the existing digital world is driving privacy concerns and developing the means of preventing personal data from becoming public. Access by the public at large to information in the possession of governments and other institutions continues as a matter of concern.

While some of the legal fields identified, in summary only, in this concluding section were clearly within sight at the end of the period under review, others have taken much longer to mature and, even today, many important subjects are not yet settled. The appetite for expansion remains and it is not difficult to predict that legislation and jurisprudence will continue to advance in response to that appetite.

## Note on contributor

**Richard W. Pound** is a scholar, lawyer and former Olympic athlete who has served the Canadian and International Olympic movement in numerous capacities for over 50 years. A past-President of the World Anti-Doping Agency (WADA) and a member of the International Olympic Committee (IOC), he also served as IOC Vice-president for two four-year terms. Further, he is a member of the Canadian Olympic Committee and served this organisation in various capacities, including as Director and President, since 1968. Recognised by *Time* magazine in 2005 as one of the '100 Most Influential People in the World', he was elevated to the rank of Companion of the Order of Canada in 2014. A lifetime educator in the broadest sense, Richard supported his alma mater, McGill University, for decades in pivotal roles and was given the honorary title of Chancellor Emeritus in recognition. His many and varied scholarly publications include, *Chief Justice W. R. Jacket: By the Law of the Land* (2000), *Rocke Robertson: Surgeon and Shepherd of Change* (2008) and the several times revised/updated *Fitzhenry and Whiteside Book of Canadian Facts and Dates* (1986).

## Declarations and conflicts of interest

Research ethics statement

Not applicable to this article.

Consent for publication statement

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The author declares no conflict of interest with this work. All efforts to sufficiently anonymise the author during peer review of this article have been made. The author declares no further conflicts with this article.

## Notes

- 1 For purposes of this article, this period extends from the Boer War to the First and Second World Wars, finishing with the Korean War.
- 2 The war giving rise to these military actions was North American only on the periphery of an ongoing war between England and France relating to the Austrian succession.
- 3 It was not until 1960 that the USA elected John F. Kennedy as the first Roman Catholic president of the country.
- 4 By that time, Upper and Lower Canada had been united into a single province pursuant to the Act of Union, 1841, Canada East (today's Quebec) and Canada West (today's Ontario).
- 5 In 1925, Newfoundland offered to sell Labrador to Quebec for \$30 million, which was rejected by Quebec. After a long-standing dispute, in 1927, the Privy Council (a British institution) awarded Labrador to Newfoundland (still a British colony). Newfoundland enjoyed a brief period as a Dominion, but reverted to colonial status in 1933 as a result of financial difficulties that had it facing bankruptcy. Its Dominion status was removed pursuant to the Newfoundland Act of 1933, which suspended its constitution.
- 6 As it became increasingly clear from the conferences leading to Confederation that it would occur, Quebec set about formalising a Civil Code to capture the appropriate subject matter, based on the *Coutume de Paris*, introduced in New France in 1627, and the 1804 Napoleonic Civil Code of France. The Civil Code of Lower Canada was enacted by the Quebec Legislative Assembly in 1865 and came into force on 1 August 1866.
- 7 This statute is now the Constitution Act, 1867. References to the statute prior to the name change are to the name used at the time, the British North American Act, abbreviated for convenience as the BNA Act.
- 8 The legal status of Canada's situation during 1 and 10 September 1939 was conveniently ignored and the United States shipped considerable war material to Canada, ceasing only when the Canadian declaration was made, to maintain US neutrality by not selling such material to a nation at war.
- 9 This came later through a 1940 amendment to the BNA Act.
- 10 In 2021, for the first time, the Court sat (physically) in Winnipeg; it had a similar sitting in Quebec City in 2022.
- 11 The name of the statute reflected the ubiquitous description of the Indigenous population as a whole. Even with the more nuanced description and understanding of their cultures that now exist, the federal government has never changed the name of the statute. In this segment, focusing as it does on law, I have used the statutory term, while recognising that, in today's world, it is an unsatisfactory descriptor of a broad range of aboriginal and Indigenous peoples or First Nations.
- 12 Canadian National-Canadian Pacific Act, 23 May 1923.
- 13 There were many slips twixt cup and lip. In February 1949, Canadian Prime Minister Louis St Laurent flew to Washington to discuss the project with President Harry S. Truman and to inform him that if American delaying tactics did not cease, Canada was prepared to proceed alone. A second trip in September 1951 occurred for the same purpose. Final commitment to the Seaway came with the passage of the Wiley-Dondero Bill on 13 May 1954 and a ground-breaking ceremony commenced on 10 August 1954.
- 14 Less extensive predecessors to the current Welland Canal had been established in 1829, 1845 and 1887.

- 15 Trans-Canada Airlines Act, 10 April 1937.
- 16 Bank of Canada Act, 1934. Resistance to the creation of a central bank had come principally from the leadership of the chartered banks.
- 17 Bank of Canada Amendment Act, 1938.
- 18 See PC 1003 (federal Cabinet), 17 February 1944.
- 19 *Edwards v. Attorney General of Canada*, [1930] A.C. 124 at 128. See also Sharpe and McMahon, *The Persons Case*.
- 20 Old Age Pensions Act, 1927.
- 21 Act Respecting Communistic Propaganda, 1937.
- 22 Atomic Energy Control Act.

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