

Who's responsible?

A summary of “division of powers”



The first step in any environmental work (be it a campaign or a 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 made decisions about government responsibilities.

When writing what has 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 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, policies). Responsibility for freshwater is not given exclusively to either the federal or provincial government, so the authority is shared and is related to other listed “heads of power”.

Here's a summary of the “heads of power” that the federal and provincial governments are responsible for that relate to the “natural environment”, including freshwater. The factors determining jurisdiction (eg, which level of government responsible and/or which level of Court hears a legal challenge) are: **nature of the problem** and **agencies involved**.

Federal government responsibilities (s.91, Constitution):

- Peace, order and good government (POGG);
- ss.91 (12) Sea Coast and Fisheries;
- ss.91 (24) Aboriginal Issues;
- ss.91 (27) Criminal law; and
- ss.92 (10) Federal works and undertakings

Provincial government jurisdiction (s. 92, Constitution):

- ss.92(5) Management of provincial public lands
- ss.92(13) Property and civil rights
- ss.92(16) Matters of a local and private nature
- ss.92A Non-renewable natural resources

First Nation and Métis jurisdiction is *complicated*. In the Canadian legal system, aboriginal and treaty rights are constitutionally protected (s. 35, Constitution).

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

* Ecojustice recognizes that there exists, within Canada, indigenous legal systems. Indigenous legal systems are not to be confused with the way what is commonly called Canadian law and/or the Canadian legal system have evolved to recognize aboriginal and treaty rights. Our lawyers are not experts in indigenous legal systems and therefore are only able to provide legal information related to the Canadian law.

This document includes legal information and does not constitute legal advice. If you have a specific legal question about an issue you are working on, you are advised to seek legal advice.