

□ Introduction

Section. 92(13) of the *Constitution Act, 1867* invest provincial legislatures with exclusive legislative jurisdiction in relation to matters that come within the class of subject labelled "property and civil rights in the province". Case law illuminates that this phrase is equivalent to the private law of torts, property, contracts, trusts, fiduciary obligations.

Section 92(16) – The Provincial Residuary Clause

Some scholars and courts opine that s.92(16) functions as a provincial counterpart to the "peace, order and good government" clause of section 91. The evidence for this view comes from examination of the drafting history of the constitutional text, as well as from more general concepts of where the balance of power should be struck as between central and local governments. .

According to this view, there are two parallel residual categories of law-making power which require balanced and nuanced interpretation when courts consider division of powers questions relating to matters which are not specifically enumerated in sections 91 and 92. The parallel function of these provisions, however, is not reflected clearly in either the constitutional text or the structure of sections 91 and 92 which divide legislative power. The federal residuum is stated specifically in the introductory clause of section 91, whereas the provincial residuum takes the form of an enumerated class of subjects assigned to the provinces by section 92.

For more information see: "Constitutional Reform and the Introductory Clause of Section 91" (1979) 57 Can. Bar. Rev. 531.