LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT



HillStudies

In-depth reads on Canadian topics

# FEDERAL AND PROVINCIAL JURISDICTION TO REGULATE TRANSPORTATION ISSUES

Publication No. 2025-11-E

**30 July 2026**

Jed Chong

Library and Research Services

## AUTHORSHIP

30 July 2026 Jed Chong

## ABOUT THIS PUBLICATION

Library of Parliament HillStudies provide in-depth studies of policy issues. They feature historical background, current information and references, and often anticipate the emergence of the issues they examine. They are prepared by Library and Research Services, which carries out research for and provides information and analysis to parliamentarians, Senate and House of Commons committees and parliamentary associations in an objective, impartial manner.

© Library of Parliament, Ottawa, Canada, 2026

*Federal and Provincial Jurisdiction to Regulate Transportation Issues*
(HillStudies)

Publication No. 2025-11-E

Ce document est également publié en français.

# CONTENTS


EXECUTIVE SUMMARY

1 INTRODUCTION....1

2 THE CONSTITUTIONAL BASIS FOR DETERMINING JURISDICTION....1

2.1 Federal Heads of Power....1

2.2 Provincial Heads of Power....2

3 TRANSPORTATION SECTORS: FEDERAL AND PROVINCIAL JURISDICTION....2

3.1 Air Transportation....2

3.2 Marine Transportation....3

3.3 Rail Transportation....4

3.4 Road Transportation....5

4 OTHER SOURCES OF FEDERAL JURISDICTION....5

5 NON-REGULATORY TOOLS....6

6 CONCLUSION....7

# EXECUTIVE SUMMARY

Canada's *Constitution Act, 1867* does not assign transportation to either Parliament or the provincial legislatures. Instead, jurisdiction to regulate in relation to a specific transportation issue depends on which constitutional subject matter is engaged by the proposed law or regulation.

For example, federally regulated transportation issues may overlap with federal jurisdiction over Indigenous issues. The federal government also has responsibilities regarding the accessibility of federally regulated transportation services.

While some transportation-related matters, such as air transportation or safety requirements on roads and highways fall exclusively under federal or provincial jurisdiction, others involve shared jurisdiction, requiring coordination between both levels of government.

# FEDERAL AND PROVINCIAL JURISDICTION TO REGULATE TRANSPORTATION ISSUES

## 1 INTRODUCTION[1]

Legislators seeking to regulate matters related to transportation must keep in mind which aspects of moving goods and people fall under federal jurisdiction, which are under provincial jurisdiction and which may be regulated by both levels of government.[2]

In this HillStudy, the term "regulate" is used in its generic sense, meaning to control by constraint. It encompasses the enactment of legislation by Parliament or a provincial legislature and the making of regulations by a government. The term also includes government decision making and management of an issue when backed by the force of law.

Sections 91 and 92 of the *Constitution Act, 1867*[3] (the Constitution) set out the areas over which each level of government may regulate. Neither section includes transportation as a subject matter. Instead, the term "transportation" is used as a collective description that includes some of the areas the Constitution assigns to either Parliament or provincial legislatures.

This paper provides an overview of the constitutional basis for regulating transportation in Canada and explains which levels of government are responsible for regulating different aspects of transportation.

## 2 THE CONSTITUTIONAL BASIS FOR DETERMINING JURISDICTION

Jurisdiction to regulate in relation to transportation in Canada depends on which subject matter listed in the Constitution best characterizes the core substance of the regulation and whether authority over that subject matter is assigned by the Constitution to Parliament or to the provincial legislatures.

### 2.1 FEDERAL HEADS OF POWER

The following constitutional heads of power form the basis of most federal jurisdiction over transportation-related matters:

- works and undertakings[4] of a local nature that connect one province with any other province(s) or extend beyond the limits of a single province (section 92(10)(a));

- ship lines operating between a province and any British or foreign country (section 92(10)(b)), which has been interpreted to regulate marine shipping in general, marine safety, etc.;
- works "declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces" (section 92(10)(c));
- beacons, buoys and lighthouses, as well as Sable Island (section 91(9));
- trade and commerce (section 91(2)), which has been used to regulate the safety of new cars and components;
- navigation and shipping (section 91(10));
- interprovincial or international ferries (section 91(13)); and
- the power "to make Laws for the Peace, Order, and good Government of Canada" (section 91), which underpins federal authority over air transportation.[5]

The federal government can also regulate greenhouse gas emissions in relation to the aspects of the transportation sector under its jurisdiction, notably shipping and aviation.[6]

### 2.2 PROVINCIAL HEADS OF POWER

Provinces have jurisdiction over many transportation-related matters, primarily through the following three heads of power expressly assigned to them under the Constitution: [7]

- any local work or undertaking other than those noted above that fall explicitly under federal jurisdiction (section 92(10));
- property and civil rights in a province (section 92(13)); and
- generally all matters of a merely local or private nature in a province (section 92(16)).

## 3 TRANSPORTATION SECTORS: FEDERAL AND PROVINCIAL JURISDICTION

### 3.1 AIR TRANSPORTATION[8]

For obvious reasons, air travel was not expressly included as a subject matter in the Constitution. However, the opening of section 91 of the Constitution gives Parliament the authority "to make Laws for the Peace, Order, and Good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces."

Courts have interpreted this provision as placing all aspects of air transportation under federal jurisdiction, including purely local undertakings.[9] In particular, Canadian courts have held that airports and aeronautics undertakings are exempt from any provincial regulation that affects a vital part of the federal undertaking. As a result, airports are exempt from such measures as municipal zoning by-laws and height restrictions.

Provincial laws of general application may nevertheless apply in cases where they do not impair the core operation of the aeronautics undertaking. For example, an Ontario levy on liquor loaded onto aircraft from an airport in the province for passenger consumption in the air was held to apply to Air Canada since the levy did not affect the operation of the aircraft.[10]

Provincial and territorial governments have also established and operate certain airports, primarily in remote and northern regions.[11] Nevertheless, all airports in Canada, including provincially operated airports, must still be federally certified and comply with federal regulatory requirements.

Parliament exercises its exclusive responsibility for regulating air services in Canada through Part II of the *Canada Transportation Act*.[12] As well, under the *Aeronautics Act*, it regulates aviation safety and security, including the safety of passengers, aircraft, and airport and aviation facilities.[13]

Transport Canada owns the land and infrastructure associated with many of Canada's major airports, but it has established not-for-profit corporations to manage and operate them on a commercial basis. Over the years, Transport Canada has sold many publicly owned small airports to local, provincial or territorial authorities.[14]

### 3.2 MARINE TRANSPORTATION[15]

The federal government's jurisdiction over shipping and navigation includes the authority to regulate emissions from ships and boats, including sewage, oil and ballast water discharges. Federal jurisdiction also extends to regulating shipping routes and safety measures aimed at preventing spills, wrecks and disruption of the marine environment.

Courts have long recognized a public right to navigate Canada's waterways, regardless of who owns the waterways.[16] This right applies to vessels of all sizes, from large commercial ships such as tankers to small recreational craft like canoes, and to all types of navigable waters, including oceans, rivers, lakes and streams. Because the public's right to navigate waterways is protected, and navigation is a federal head of power, the federal government must decide which works that interfere with navigation – such as dams and bridges – will be allowed.

The federal government also has the authority to legislate and regulate in relation to transportation over inland waters, such as the Great Lakes–St. Lawrence Seaway, the territorial sea and the exclusive economic zone as defined in the *Oceans Act*.[17] More specifically, Transport Canada regulates numerous aspects of international and domestic transportation, including licensing of commercial and pleasure craft.

While Transport Canada retains ownership of the land and infrastructure of the country's major ports, it has transferred their management and operation to not-for-profit corporations that operate them on a commercial basis. The department has also transferred ownership of many of Canada's small public ports to local and provincial authorities and shut down others. Nevertheless, Transport Canada still owns and operates dozens of remote, regional and public ports,[18] and maintains a registry of the ports it owns.[19]

Fisheries and Oceans Canada is responsible for administering fishing harbours, while the Canadian Coast Guard – which falls within the responsibilities of Fisheries and Oceans Canada – manages marine emergency response.

Marine pilotage, whereby licensed marine pilots guide vessels through Canada's ports, straits, lakes, rivers and other waterways, also falls within federal jurisdiction. The enactment of the *Pilotage Act* in 1972 paved the way for the creation of four regional pilotage authorities to operate and maintain safe and efficient pilotage services within each designated area of operation.[20]

Finally, section 108 and the Third Schedule of the Constitution ("Provincial Public Works and Property to be the Property of Canada") transfer the responsibility for all public works associated with rivers and waterways to the federal government. However, the ownership of the rivers themselves remains with the provinces. As a result, provincial legislatures can legislate in relation to the use of these waters as long as any legislation does not interfere with or impair federal navigation and shipping legislation.[21]

## 3.3 RAIL TRANSPORTATION

The federal government regulates the vast majority of rail services in Canada owing to its authority over interprovincial and international railways.[22] Federally regulated railways are subject to such legislation as the *Canada Transportation Act* and the *Railway Safety Act*.[23]

In general, railways operating wholly within a single province – which encompasses the vast majority of shortline railways – fall under provincial jurisdiction unless they have been declared to be for the general advantage of Canada under section 92(10)(c) of the Constitution. The power to declare works for the general advantage of Canada has been used nearly 500 times, mainly in the late 19th and early 20th centuries and most often in relation to railways.[24]

More recently, a Senate public bill, which died on the *Order Paper* when Parliament was dissolved prior to the 2025 election, would have declared the Chignecto Isthmus dyke system and related works in Nova Scotia and New Brunswick to be for the general advantage of Canada.[25]

### 3.4 ROAD TRANSPORTATION

Under Parliament's trade and commerce power (section 91(2) of the Constitution), the federal government regulates the safety of new cars and car components. All motor vehicles imported into Canada must comply with federal safety and environmental regulations under the *Motor Vehicle Safety Act*.[26] Vehicles manufactured in Canada must also have a national safety mark showing that they meet applicable safety and environmental standards.[27]

The federal power to regulate trade and commerce has also been used to set emissions standards for vehicles and engines that are imported into Canada, transported across a provincial border or that bear the national emissions mark.

In theory, interprovincial and international trucking services are federally regulated, while trucking companies operating within a single province fall under provincial jurisdiction. However, under the *Motor Vehicle Transport Act*, the federal government delegates its responsibility for regulating interprovincial motor carrier undertakings to provincial authorities.[28] As a result, provincial boards license the undertakings and determine the terms and conditions under which they operate.[29]

The provinces are responsible for enforcing safety requirements on roads and highways, including the Trans-Canada Highway and the National Highway System. This responsibility includes, for example, driver and vehicle licensing, as well as setting requirements for driver training and the rules of the road (such as speed limits).[30] One exception to this rule is that the federal government regulates vehicle use on federal property (such as national parks) and on part of the Alaska Highway.[31]

## 4 OTHER SOURCES OF FEDERAL JURISDICTION

To the extent that a transportation-related matter has an impact on the unique rights of Canada's First Nations, Inuit and Métis Peoples, it may trigger federal responsibilities such as the duty to consult.[32] For example, when a railway company requests authorization to construct a railway line under section 98 of the *Canada Transportation Act*, this will often trigger the duty to consult.[33]

Federally regulated transportation services are also subject to the *Accessible Canada Act*[34] and four supporting regulations, as well as many codes of practice, standards and guidelines related to accessibility. The Canadian Transportation Agency is responsible for creating and enforcing expectations for the accessibility of federally

regulated transportation, with these expectations sometimes varying between large and small service providers.[35]

## 5 NON-REGULATORY TOOLS

While this HillStudy has examined federal and provincial jurisdiction over transportation matters by mode of transport, many transportation-related matters – such as national supply chains – are multimodal in nature and span multiple areas of jurisdiction.

When studying these complex issues, it is also useful to consider policy tools beyond regulations. For instance, while a detailed examination of the federal spending power[36] is outside the scope of this paper, it is worth noting that the federal government can provide funding to provinces or individuals, sometimes with conditions attached. The federal government does use this power in the area of transport policy.

Infrastructure programs are one way in which the federal government exercises the federal spending power. For example, federal infrastructure programs target areas such as active transportation (the movement of people or goods powered by human activity, such as walking or cycling, etc.), public transit and national trade corridors.[37]

Research and development programs provide another example of the use of this power. For instance, Transport Canada supports climate adaptation research in the rail sector in addition to training to help adapt northern transportation systems to the changing climate and research and development of related technologies.[38]

Federal procurement can also serve as a policy tool in the transportation sector. For example, the Greening Government Strategy includes targets for the use of zero-emission vehicles.[39]

The federal government can play a role in convening stakeholders and other levels of government to facilitate collaboration and discussion of transportation policy issues. For example, Transport Canada's National Supply Chain Office, "works with industry, governments and partners to make Canada's supply chains more efficient, fluid, resilient and reliable."[40]

Parliamentary committee recommendations to the federal government sometimes involve these collaborative and non-regulatory powers. For example, the 2018 report of the Standing Senate Committee on Transport and Communications on automated vehicles recommended increasing federal research funding and strengthening collaboration with provincial and territorial governments.[41] More recently, the 2023 report of the House of Commons Standing Committee on Transport, Infrastructure and Communities on improving bus connectivity in Canada

recommended expanding the Rural Transit Solutions Fund and enhancing collaboration between all levels of government and stakeholders.[42]

## 6 CONCLUSION

When the *British North America Act* (now known as the *Constitution Act, 1867*) was enacted, responsibility for most transportation-related matters was divided among the federal and provincial governments. As new transportation-related matters have emerged – notably air transportation, which did not exist in 1867 – Canadian courts have interpreted the original constitutional framework to clarify which level of government has jurisdiction. Sometimes, the division of powers is complex and overlapping. As a result, the federal government and the provinces have worked together to harmonize the application of regulations across all four modes of transportation.

---

NOTES

1. Parts of this introduction have been repurposed from Penny Becklumb, *Federal and Provincial Jurisdiction to Regulate Environmental Issues*, Publication no. 2013-86-E, Library of Parliament, 29 October 2019.
2. This HillStudy focuses on federal and provincial jurisdiction since section 92(8) of the *Constitution Act, 1867* allocates "Municipal Institutions in the Province" to provincial legislatures. See *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.). However, municipalities can and do have responsibilities regarding transport-related issues, such as zoning and public transit. For more information on the role of municipalities in transport policy and Canadian federalism, see Joshua Medicoff and Daniel Béland, "Some provincial governments seek conflict with municipalities – and gain from it," *Policy Options*, 19 September 2022; and Kristin R. Good, *Reconsidering the Constitutional Status of Municipalities: From Creatures of the Provinces to Provincial Constitutionalism*, Centre of Excellence on the Canadian Federation, 4 February 2021.
3. *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.). Unless otherwise noted, all section numbers in this HillStudy refer to sections of the *Constitution Act, 1867*.
4. The courts have interpreted "undertaking" to include both a physical and an organizational element, meaning that it involves the organization or enterprise that provides the transportation service. For example, federal regulation of the air transport sector includes both the physical infrastructure, such as airports, and the airlines. See Patrick J. Monahan, Byron Shaw and Padraic Ryan, *Constitutional Law*, 5th ed., 2017, p. 379.
5. This list is based on information from Patrick J. Monahan, Byron Shaw and Padraic Ryan, *Constitutional Law*, 5th ed., 2017, pp. 376 and 394–395. Wording placed in quotation marks is from the *Constitution Act, 1867*. See *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.).
6. Penny Becklumb, *Federal and Provincial Jurisdiction to Regulate Environmental Issues*, Publication no. 2013-86-E, Library of Parliament, 29 October 2019.
7. The *Constitution Act, 1867* does not assign jurisdiction to the territories. Instead, the territories come under the authority of Parliament, which has delegated substantial authority to the territorial legislatures to make laws through federal statutes. See *Yukon Act*, S.C. 2002, c. 7; *Northwest Territories Act*, S.C. 2014, c. 2, s. 2; and *Nunavut Act*, S.C. 1993, c. 28.
8. Unless otherwise indicated, this section on air transportation is based on Patrick J. Monahan, Byron Shaw and Padraic Ryan, *Constitutional Law*, 5th ed., 2017, pp. 394–396 and 400.
9. For example, see *Johannesson v. Municipality of West St. Paul*, 1951 CanLII 55 (SCC), [1952] 1 S.C.R. 292.

10. *Air Canada v. Ontario (Liquor Control Board)*, [1997] 2 S.C.R. 581.

11. Jed Chong, *Airport Governance Reform in Canada and Abroad*, Publication no. 2017-17-E, Library of Parliament, 4 May 2017.

12. *Canada Transportation Act*, S.C. 1996, c. 10.

13. *Aeronautics Act*, R.S.C. 1985, c. A-2.

14. Jed Chong, *Airport Governance Reform in Canada and Abroad*, Publication no. 2017-17-E, Library of Parliament, 4 May 2017.

15. Parts of this section of the paper are based on Penny Becklumb, *Federal and Provincial Jurisdiction to Regulate Environmental Issues*, Publication no. 2013-86-E, Library of Parliament, 29 October 2019.

16. *Wood v. Esson*, [1884] 9 S.C.R. 239 (CanLII); *Stephens and Mathias v. MacMillan and MacMillan*, [1954] O.R. 133 (CanLII); and *Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 S.C.R. 3 (CanLII).

17. *Oceans Act*, S.C. 1996, c. 31.

18. Transport Canada, *Backgrounder on Canada's port system*.

19. Transport Canada, *List of ports owned by Transport Canada*.

20. *Pilotage Act*, R.S.C. 1985, c. P-14. See also Geneviève Gosselin, "Marine Pilotage in Canada: En Route to Modernizing the Pilotage Act," *HillNotes*, Library of Parliament, 3 September 2020.

21. Patrick J. Monahan, Byron Shaw and Padraic Ryan, *Constitutional Law*, 5th ed., 2017, p. 396.

22. The Canadian Transportation Agency maintains a list of federal railway companies. See Canadian Transportation Agency, *Federal Railway Companies*.

23. *Canada Transportation Act*, S.C. 1996, c. 10; and *Railway Safety Act*, R.S.C. 1985, c. 32 (4th Supp). See also Transport Canada, *List of Rail Transportation Acts*.

24. Patrick J. Monahan, Byron Shaw and Padraic Ryan, *Constitutional Law*, 5th ed., 2017, p. 393.

25. Bill S-273, An Act to declare the Chignecto Isthmus Dykeland System and related works to be for the general advantage of Canada, 44th Parliament, 1st Session.

26. *Motor Vehicle Safety Act*, S.C. 1993, c. 16.

27. Patrick J. Monahan, Byron Shaw and Padraic Ryan, *Constitutional Law*, 5th ed., 2017, p. 376 (footnote 3).

28. *Motor Vehicle Transport Act*, R.S.C. 1985, c. 29 (3rd Supp.).

29. Patrick J. Monahan, Byron Shaw and Padraic Ryan, *Constitutional Law*, 5th ed., 2017, p. 402.

30. Canadian Council of Motor Transport Administrators, *Commercial Motor Vehicle (CMV) Safety*.

31. Transport Canada, *Highways*.

32. A discussion of the complexities of federal jurisdiction over Indigenous affairs is beyond the scope of this publication. For more information, see Isabelle Brideau, *The Duty to Consult Indigenous Peoples*, Publication no. 2019-17-E, Library of Parliament, 12 June 2019; and Sara Fryer and Olivier Leblanc-Laurendeau, *Understanding Federal Jurisdiction and First Nations*, Publication no. 2019-51-E, Library of Parliament, 29 November 2019.

33. Canadian Transportation Agency, *Consultation with Indigenous Peoples, and the Accommodation of their Rights and Interests, in the Context of Canadian Transportation Agency Determinations*, 2020.

34. *Accessible Canada Act*, S.C. 2019, c. 10.

35. For more information on how accessibility is regulated in the Canadian transportation sector, see Canadian Transportation Agency, *Legislation, regulations, codes of practice, standards and guidelines*.

36. Centre for Constitutional Studies, *Federal Spending Power*, 4 July 2019.

37. Government of Canada, *Funding programs*; Transport Canada, *National Trade Corridors Fund*; and Government of Canada, "Defining Active Transportation and Active Transportation Infrastructure," *National Active Transportation Strategy 2021–2026*.

38. See, for example, Transport Canada, *Climate Change and Adaptation to Extreme Weather Infrastructure Projects*, 2023; and Transport Canada, *Northern Transportation Adaptation Initiative Program*.

39. Treasury Board of Canada Secretariat, *Greening Government Strategy: A Government of Canada Directive*.

40. Transport Canada, *National Supply Chain Office*.

41. Senate, Standing Committee on Transport and Communications, *Driving Change: Technology and the future of the automated vehicle*, Ninth report, 29 January 2018.

42. House of Commons, Standing Committee on Transport, Infrastructure and Communities, *Improving Bus Connectivity in Canada*, Thirteenth report, May 2023.