

CANADA'S EXECUTIVE STRUCTURE ©

The Executive in Canada is defined as follows under s. 9 of the *Constitution Act, 1867*:

Declaration of Executive Power in the Queen

9. The Executive Government and Authority of and over Canada is hereby declared to continue and be vested in the Queen.

In practice this is Cabinet, the Ministers, and the government departments who are supposed to implement *Regulations* pursuant to statute, as well as administer the laws passed by Parliament. This also applies provincially.

In theory there is a “separation of powers” between the Legislature, the Executive, and the Courts. This “separation of powers” is the separation of the source of all powers, Her Majesty’s powers, in that the Executive is Her Majesty under s. 9 of the *Constitution Act, 1867*, Her Majesty is part of Parliament as defined under s. 17 of the *Constitution Act, 1867*, and it is Her Majesty’s Courts.

The only true separation in fact and function, is as between the Courts and the Executive/Parliament.

The Supreme Court of Canada has aptly pointed out the reality, particularly in a majority government, that:

53 On a practical level, it is recognized that the same individuals control both the executive and the legislative branches of government. As this Court observed in *Attorney General of Quebec v. Blaikie*, [1981] 1 S.C.R. 312, at p. 320, “There is thus a considerable degree of integration between the Legislature and the Government. . . . [I]t is the Government which, through its majority, does in practice control the operations of the elected branch of the Legislature on a day to day basis”. Similarly, in *Reference re Canada Assistance Plan, supra*, at p. 547, Sopinka J. said:

. . . the true executive power lies in the Cabinet. And since the Cabinet controls the government, there is in practice a degree of overlap among the terms “government”, “Cabinet” and “executive”. . . . In practice, the bulk of the new legislation is initiated by the government.

- *Wells v. Newfoundland*, [1999] 3 S.C.R. 199, @ paragraph 53

The Executive is equally bound to constitutional norms and review (*Operation Dismantle Inc. v. The Queen*, [1985] 1 S.C.R. 441 and *Canada (Prime Minister) v. Khadr*, 2010 SCC 3). This is not new. Pre-Patriation of the Constitution in 1982, it has always been held that the Executive is bound by constitutional norms. (*Air Canada v. A.G.B.C.* [1986] 2 S.C.R. 539 (SCC))