

Contents

Preface	11
Introduction	13
The Voluntarist and the Organic Constitutional Perspectives	33
An Exercise in Conceptual Maintenance.....	51
PART I. STEPPING OUT OF THE FOOTSTEPS OF THE EMPIRE	
CHAPTER I. The Labour Conventions Case	61
A. The Factual and Legal Context of the <i>Labour Conventions</i> Case	61
B. “There is Only One Heir to the Mother Country”: The Federal Government’s Sovereignist Arguments	67
C. “But We Are Equally Sisters”: The Provinces’ Federalist Arguments	71
1. Ontario	72
2. New Brunswick.....	76
3. British Columbia	78
D. “Canada is a Federation”: The Judicial Committee of the Privy Council	80
1. Distinguishing Between Making and Implementing Treaties	82
2. Making Treaties on Provincial Matters: A Silent Overruling.....	83
3. Executive Roles in Implementing Treaties	89
4. Section 132 Constitution Act, 1867, Only Applies to Imperial Treaty Obligations.....	91
5. No Treaty Powers in Section 91 of the Constitution Act, 1867	91
6. The Irrelevancy of the “National Concern” Doctrine	94
7. Cooperative Federalism and “Watertight Compartments”	96

**PART II. TRYING TO FIND OUR OWN PATH
BEYOND THE *LABOUR CONVENTIONS* CASE**

CHAPTER II. Treaty-Making in the Canadian Federation	101
A. Rebutting the Case for Plenary Federal Treaty-Making Powers	104
1. The Evanescent Legal Arguments in Favour of Federal Plenary Treaty-Making Powers.....	104
i. The Letters Patent of 1947	104
ii. The Prerogatives of the Crown	108
iii. Constitutional Conventions and Constitutional Usage.....	130
iv. International Law and International Legal Personality	136
2. The Solid Policy Arguments Against Plenary Federal Treaty-Making Powers	159
i. Many Ways to “One Voice”	159
ii. The Need to Align Power with Expertise	165
iii. The Need to Align Power with Democratic Accountability	171
iv. The Subsidiarity Principle, Existential Communities and Functional Regimes.....	172
B. Making the Case for Provincial Treaty-Making Powers	181
1. The Self-Portraits of Provincial Involvement in International Relations	186
2. The Legality of Provincial International Involvements and Treaty-Making	196
i. At Canadian Constitutional Law.....	196
ii. At International Law	199
3. A Plausible Legal Foundation for Federal Treaty Powers in Relation to Provincial Matters: Provincial Delegation.....	211
CHAPTER III. Treaty Implementation in the Canadian Federation	217
A. Section 132 Cannot Be Judicially Revived	218
B. Section 91 and the Federal Powers Over “Peace, Order and Good Government”	228
C. Extra-Territoriality or the “Sufficient Connection” Doctrine.....	239
D. Constitutional Amendments	252
Conclusion	259
Bibliography	267