Property and Civil Rights

'Property and civil rights' is the constitutional jurisdiction assigned exclusively to the provincial legislatures by s 92(13) of the *Constitution Act, 1867*.[1] The phrase was used in pre-Confederation constitutions to refer to the totality of the private law – the law of property, contracts, torts and trusts.[2] This is the sense in which the courts have interpreted the phrase in delineating provincial jurisdiction under s 92(13). Accordingly, the jurisdiction of the provincial legislature in relation to property and civil rights in the province is sufficiently wide to allow some commentators to refer to it as the "real residuary power" in the Canadian Constitution.[3]

[1] *Constitution Act, 1867* (UK), 30 & 31Vict, c 3, s 92(13), reprinted in RSC 1985, Appendix II, No 5.

[2] See: WF O'Connor, "Property and Civil Rights in the Province" (1940) 18:5 Can Bar Rev 331.

[3] Richard Fisk, "The Scholars and the Constitution: P.O.G.G. and the Privy Council" (1995) 23 Man LJ 496 at 504-505.