

Alberta Sovereignty Act

What is it?

The *Alberta Sovereignty Within a United Canada Act* (also known as the *Sovereignty Act*)^[1] is a piece of legislation passed by the Legislative Assembly of Alberta on December 8, 2022.^[2] It is a novel piece of legislation that provides a process for the Government of Alberta to suspend provincial enforcement of federal legislation or initiatives that the legislature regards as unconstitutional or potentially harmful to Albertans.^[3] For example, if the federal government imposed a ban on a certain type of firearm, the provincial government could pass a resolution through the process outlined in the *Sovereignty Act* and direct the executive branch to cease enforcement of the ban.

What are experts saying about it?

Since the first draft of the *Act* was unveiled in November 2022, it has faced criticism from constitutional scholars in and outside of Alberta. The main concern that many of the *Act*'s critics share is that it arguably allows the Legislative Assembly to usurp the role of the courts. For example:

- Professors Martin Olszynski and Nigel Bankes at the University of Calgary suggested that the *Act* attempts to give legislatures the power to declare whether a federal law is constitutional, even though this is the duty of the courts.^[4]
- Professor Emmett MacFarlane commented that, through the *Act*, the Alberta government claims to have the power to order provincial entities to violate valid federal law.^[5]
- Professor Eric Adams has claimed that abandoning the exclusive role for the courts to adjudicate matters regarding constitutionality embraces a dysfunctional version of federalism.^[6]

By contrast, some commentators have defended the constitutionality of the *Act*. For

example, Geoffrey Sigalet and Jesse Hartery have argued that, as drafted, the *Act* appears to constitute legislative recognition of the province's existing power to decline to enforce federal laws.^[7] To quote Sigalet and Hartery: "the provincial executive branch is not required to co-operate in the *administration* of federal laws or programs."^[8]

At the time of publishing, the *Act* has not yet been employed by the provincial government and the federal government has not raised constitutional challenge against it.

[1] *Alberta Sovereignty within a United Canada Act*, SA 2022, c A-33.8 [Sovereignty Act].

[2] Alberta, Legislative Assembly, *Hansard*, 30th Leg, 4th Sess, No 6 (December 7, 2022).

[3] *Sovereignty Act*, *supra* note 1, s 3(b).

[4] Martin Olszynski & Nigel Bankes, "Running Afoul the Separation, Division, and Delegation of Powers: The Alberta Sovereignty Within a United Canada Act" (December 6, 2022), online: *ABL aw g* <<https://ablawg.ca/2022/12/06/running-afoul-the-separation-division-and-delegation-of-powers-the-alberta-sovereignty-within-a-united-canada-act/>>.

[5] Emmett Macfarlane, "Alberta's Sovereignty Act passes after amendments — yes, it's still garbage" (December 8, 2022), online: *Substack: Declarations of Invalidity* <<https://emmettmacfarlane.substack.com/p/albertas-sovereignty-act-passes-after>>.

[6] Eric Adams, "Danielle Smith didn't give us a watered-down version of Alberta's Sovereignty Act" (November 29, 2022), online: *CBC News* <<https://www.cbc.ca/news/canada/calgary/opinion-danielle-smith-breaking-down-alberta-sovereignty-act-1.6668760>>.

[7] Geoffrey Sigalet & Jesse Hartery, "Opinion: The Alberta Sovereignty Act appears to be constitutional" (December 1, 2022), online: *The Hub* <<https://thehub.ca/2022-12-01/opinion-the-alberta-sovereignty-act-appears-to-be-constitutional/>>.

[8] Geoffrey Sigalet & Jesse Hartery, "Opinion: Alberta's Sovereignty Act is constitutional but needs nuance" (December 7, 2022), online: *National Post* <<https://nationalpost.com/opinion/alberta-sovereignty-act-constitutional-but-needs-nuance>>.

[9] Macfarlane, *supra* note 5.

[10] *Ibid.*