



**THE COUNCIL OF THE FEDERATION AND  
CANADIAN INTERGOVERNMENTAL RELATIONS**

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**INTRODUCTION**

Intergovernmental relations have changed dramatically since the beginnings of the Canadian federation. This paper provides a brief historical and structural summary of Canadian intergovernmental relations. It then examines the characteristics of the Council of the Federation, created by the provincial premiers in December 2003. Lastly, it looks at current debate on the relevance and effectiveness of this new mechanism for intergovernmental cooperation.

**CANADIAN INTERGOVERNMENTAL RELATIONS**

**A. History**

The *Constitution Act, 1867* assigns exclusive – or, in some instances, joint – legislative powers to the Parliament of Canada and to provincial legislatures. To create a more flexible federalism, the federal and provincial governments needed to develop a framework for dealing with the various social and economic issues in which each level of government felt it had an important role to play. However, the Constitution does not explicitly state how intergovernmental relations are to be regulated, and it was not until the end of World War II that more formal exchanges between the two levels of government were established.

The 1960s and 1970s were characterized by cooperation. The federal government used its spending power to help the provinces implement various social and economic initiatives. “Low levels of conflict and the rapid expansion of cost-shared programs were characteristic of this era.”<sup>(1)</sup>

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(1) Jack Stilborn and Robert B. Asselin, *Federal-Provincial Relations*, Current Issue Review 93-10E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 1 May 2001, p. 2.

From the mid-1970s to the mid-1990s, cooperation gave way to increased competition between the federal and provincial governments. The constitutional negotiations that took place during this time were characterized by provincial assertiveness and growing disagreement between the two levels of government over national unity and the separation of powers.

Since the mid-1990s, cooperation has alternated with conflict in federal-provincial relations. On the one hand, reductions in federal transfer payments to the provinces in some sectors such as education and health care have increased tensions between the two levels of government. On the other hand, the federal government and the provinces reached an agreement on various aspects of their roles and responsibilities in the social sector. The signing of the Social Union Framework Agreement in 1999 was a step toward renewed cooperation between them. The Quebec government, however, did not sign the Agreement.

## **B. Functioning**

Canadian intergovernmental relations are characterized by executive federalism. Discussion can take place at various levels: between premiers, ministers, deputy ministers, senior officials or public servants from various levels of government. Cooperation can be either vertical (federal-provincial) or horizontal (between the provinces) in nature.

Over the past few decades, a number of mechanisms were established to support intergovernmental relations. A Federal-Provincial Relations Office, the first of its kind, was created within the Privy Council Office in 1968. Since 1994, the Privy Council Office's Intergovernmental Affairs sector has supported Cabinet members "with respect to policy and communications in such areas as federal-provincial-territorial relations, Aboriginal affairs, the evolution of the federation and Canadian unity."<sup>(2)</sup> Mechanisms supporting intergovernmental relations also exist in each of the provinces and are connected to the provincial Cabinet or to a specific department.

At the most senior executive level, mechanisms such as the First Ministers' Conference and the Annual Premiers' Conference were formalized in the 1960s. At this time, a series of intergovernmental forums focusing on specific sectors or regions were established, for

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(2) Intergovernmental Affairs Web site, *Mandate of Intergovernmental Affairs* (<http://www.pco-bcp.gc.ca/aia/default.asp?Language=E&page=whoware&sub=mandateoftheintergovernm>).

example, the Canadian Council of Ministers of the Environment, the Council of Ministers of Education, the Western Premiers' Conference and the Council of Maritime Premiers. Since 1973, the role of the Canadian Intergovernmental Conference Secretariat has been to organize intergovernmental conferences. Its budget is supported by both the federal and provincial governments.

### **C. Priorities**

Over the past few years, the provincial and territorial governments have sought to assert their independence from the federal government in various sectors. Many issues raised by these governments remain unresolved, including the recognition of Quebec's distinct status within Canada, the representation of regional interests within federal institutions, the division of spending power, the definition of the respective roles and responsibilities of both levels of government with regard to health care, education, justice, internal trade, international agreements, sharing the tax base, and so on.

## **THE COUNCIL OF THE FEDERATION**

### **A. History**

Since the 1950s, a number of government papers have supported institutional changes aimed at a new cooperative federalism in which the provinces would be recognized as full partners in the federation. "For example, in 1956, the report of the Tremblay Commission proposed the creation of a standing council of the provinces, modelled after the American Council of State Governments, to ensure coordination of provincial policies, without the federal government's intervention" [translation].<sup>(3)</sup> In 1979, the Task Force on Canadian Unity recommended replacing the Senate with a council of the federation composed of provincial delegates as a way of "integrating executive federalism into the parliamentary institutions."<sup>(4)</sup> In 1980, the Constitutional Committee of the Quebec Liberal Party recommended creating a council of the federation, an intergovernmental forum that would allow provincial delegates "to participate directly in the government of the federation itself, and to verify or influence, as the

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(3) Benoît Pelletier, "Le Conseil de la fédération : Une instance au service du renouvellement du fédéralisme canadien," *Le Devoir* [Montréal], 4 March 2004, p. A7.

(4) The Task Force on Canadian Unity, *A Future Together: Observations and Recommendations*, Ottawa, 1979, p. 104.

case may be, the federal government's actions in matters where consultation between the two levels of government is vital to the health of the federation."<sup>(5)</sup> The forum would be recognized within the Constitution and would not give the federal government any right to vote.

In a report published in October 2001, the Special Committee of the Quebec Liberal Party on the Political and Constitutional Future of Quebec Society again proposed the creation of a council of the federation. The council would improve the federal-provincial coordination of social and economic relations within a flexible federalism that would emphasize asymmetry, intergovernmental cooperation and federal equilibrium. It would have "a vertical (federal-provincial) dimension for matters of joint jurisdiction and a horizontal (interprovincial) one for issues under exclusive provincial jurisdiction."<sup>(6)</sup>

Since his election in April 2003, the Premier of Quebec, Jean Charest, has vigorously supported the creation of a council of the federation. At the 44<sup>th</sup> Annual Premiers' Conference in Charlottetown in July 2003, he proposed a plan to revitalize the Canadian federation. The plan included an agreement in principle to create a council of the federation. The premiers stated that "the current dynamic of Canadian federalism is not working well enough for Canadians, as demonstrated by recent experiences in areas such as health care issues, public health emergencies, international agreements and relations, internal trade and the fiscal imbalance."<sup>(7)</sup> Jean Charest's initiative aimed to demonstrate that more harmonious relations between the governments could be established for the benefit of Canadians. All of the provincial and territorial premiers unanimously supported his approach and expressed their intention to work together more closely and exercise a more coordinated leadership in their negotiations with the federal government.

On 5 December 2003, the provincial and territorial premiers met in Charlottetown to sign the agreement creating the Council of the Federation. They decided on a non-constitutional intergovernmental forum aimed at developing collaborative approaches and

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(5) The Constitutional Committee of the Quebec Liberal Party, *A New Canadian Federation*, Quebec City, 1980, p. 52.

(6) Special Committee of the Quebec Liberal Party on the Political and Constitutional Future of Quebec Society, *A Project for Quebec: Affirmation, Autonomy and Leadership*, Final Report, October 2001, p. 93.

(7) Canadian Intergovernmental Conference Secretariat, "Premiers announce plan to build a new era of constructive and cooperative federalism," News Release, 44<sup>th</sup> Annual Premiers' Conference, Charlottetown, 9-11 July 2003.

making the Canadian federation work better. As set out in the Founding Agreement,<sup>(8)</sup> the objectives of the Council of the Federation are to:

- strengthen interprovincial-territorial cooperation;
- exercise leadership on national issues of importance to provinces and territories and improve federal-provincial-territorial relations;
- promote intergovernmental relations that are based on respect for the Constitution and recognition of the diversity within the federation; and
- work with the greatest respect for transparency and better communication with Canadians.

## **B. Functioning**

The Council brings together the premiers of the ten provinces and three territories. Contrary to the suggestion of the Special Committee of the Quebec Liberal Party, the Council's current structure does not provide for the direct participation of the federal government. This mechanism "replaces the Annual Premiers' Conference and goes much further."<sup>(9)</sup> It aims to coordinate and strengthen, as an umbrella organization, relations between the provinces and the territories. A document published by the Government of Quebec states:

It is up to the provinces and territories, first and foremost, to change the dynamic and send a clear message of their will to restore balance to Canadian intergovernmental affairs ... By presenting shared visions and common orientations while retaining their autonomy, the provinces and territories will take a leadership role in influencing Canada's evolution.<sup>(10)</sup>

The premiers will take turns chairing the Council for a term of one year. The Council will meet at least twice annually to discuss priority issues of common interest. A permanent secretariat, funded by the provinces and territories on a *pro rata* basis according to their respective populations, will be in charge of organizing the meetings. The decisions of the Council will be reached by consensus.

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(8) Council of the Federation, *Founding Agreement*, 5 December 2003.

(9) Government of Quebec, *The Council of the Federation: A first step towards a new era in intergovernmental relations in Canada*, Secrétariat aux affaires intergouvernementales canadiennes, 2004, p. 19.

(10) *Ibid.*, p. 15.



The Council of the Federation has been given responsibility for two other bodies: the Premiers' Council on Canadian Health Awareness and the Secretariat for Information and Co-operation on Fiscal Imbalance. The former was created in January 2002 by the provincial and territorial premiers "to improve Canadians' access to information and enhance public awareness of the challenges of and solutions for the future of health care in each jurisdiction."<sup>(11)</sup> The latter was created in February 2004 at the first official meeting of the Council of the Federation.

The Council's mandate could expand to include other similar bodies and will be required to respond to emerging needs and challenges. It is therefore possible that the federal government might be invited in the future to join the Council. For now, the Founding Agreement states "the Council may decide from time to time to hold special meetings to which it may invite the Federal Government."<sup>(12)</sup>

### **C. Priorities**

At their first meeting in Vancouver in February 2004, the provincial and territorial premiers drew up a list of priority issues and developed a work plan for the current year. The work plan deals in particular with issues of health care sustainability and reform, strengthening of the Equalization Program, relations with the United States, environmental assessments, literacy, appointments to the Senate and the Supreme Court of Canada, involvement of provincial and territorial governments in international agreements that affect their responsibilities, reaching out to young Canadians and review of emergency response programs.<sup>(13)</sup> It was at this meeting that the provincial and territorial premiers officially established the Council's Secretariat and the Secretariat for Information and Co-operation on Fiscal Imbalance.

At their second meeting in July 2004 at Niagara-on-the-Lake, the members of the Council of the Federation developed an action plan to improve health care in Canada. The premiers agreed that the federal government should increase its funding for national health care and participate in creating a national pharmacare program. They acknowledged Quebec's right to opt out of federal government programs and receive full financial compensation.

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(11) Premiers' Council on Canadian Health Awareness Web site, *About the PPCHA* (<http://www.premiersforhealth.ca/about.php>).

(12) Council of the Federation (2003).

(13) Council of the Federation Web site, *Report and Decisions*, 23-24 February 2004 ([http://www.councilofthefederation.ca/pdfs/cof\\_report\\_e.pdf](http://www.councilofthefederation.ca/pdfs/cof_report_e.pdf)).

However, the premiers disagreed on what role the federal government should have in imposing national investment priorities in the area of health. Nevertheless, they did identify priority areas that should be targeted to strengthen their health care systems:

- Reducing waiting times – for key diagnostic treatments, surgical procedures and community care services
- Expansion of community-based care, including primary health care, home care and mental health – improving access to services through an appropriate mix of community based and client-centred services, while decreasing the need for more costly hospital services
- Medical diagnostic services – investing in health technologies
- Health human resources – ensuring an appropriate supply and distribution of health human resources
- Pharmaceuticals – ensuring access to appropriate, safe, high quality and cost effective prescription drugs
- Healthy living – focusing on prevention and wellness
- Information technology – introducing new information technologies<sup>(14)</sup>

## DEBATE, CRITICISM AND PUBLIC OPINION

A 2001 survey conducted by the Centre for Research and Information on Canada (CRIC) found that, for two-thirds of the population, increased governmental cooperation was the most favoured option for making the country work better.<sup>(15)</sup> In 2003, the improvement of federal-provincial cooperation was still a high priority for 70% of Canadians, but only 42% of the population thought both levels of government worked well together.<sup>(16)</sup> It is interesting to note that only 35% of Canadians believed that the Council of the Federation would lead to more cooperation between the provinces, territories and federal government, while 53% said it would actually create more conflicts among governments.<sup>(17)</sup>

In fact, not all observers agree on whether the Council of the Federation will be effective in improving cooperation and social and economic relations within the federation. To

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(14) Council of the Federation Web site, News Release, “Premiers’ Action Plan for Better Health Care,” 30 July 2004 (<http://www.councilofthefederation.ca/pdfs/HealthEng.pdf>). The priorities outlined in the action plan will be the basis for the premiers’ discussions with the Prime Minister at a meeting scheduled for the fall of 2004.

(15) CRIC, *Portraits of Canada 2001*, Ottawa, CRIC Papers, January 2002, p. 22.

(16) CRIC, *Portraits of Canada 2003*, Ottawa, CRIC Papers, January 2004, p. 6.

(17) *Ibid.*

begin with, the federal government's role within the Council is the subject of considerable debate. Many feel that the Council of the Federation's long-term success is possible only if the Council is based genuinely on the principle of co-decision, with the federal government as an active participant.<sup>(18)</sup> Others are concerned that so little prominence is given to other partners (i.e., Aboriginal peoples and municipalities) in the new mechanism for intergovernmental cooperation.<sup>(19)</sup>

Today, many observers are wondering in what way the Council of the Federation is different from the Annual Premiers' Conference. Some feel that existing mechanisms for intergovernmental cooperation are suffering from a democratic deficit, given that meetings are often held out of the public eye and dominated by the executive.<sup>(20)</sup> In order to mitigate the risks of a democratic deficit, some suggest changing the Council's structure to give citizens a more concrete role in the intergovernmental cooperative process.<sup>(21)</sup>

Some observers, however, suggest that more flexible rules are needed in the decision-making process so that each party's interests are taken into account. For example, decisions could be made by a qualified majority, with veto rights.<sup>(22)</sup> Other observers contend that the Council of the Federation will improve federal-provincial-territorial relations only if it can ensure the effective representation of regional interests within the federal government. This could be accomplished through Senate reform, for example.<sup>(23)</sup> Still others feel that, unless the Council of the Federation has a more formal structure recognized within the Constitution, it is unlikely to influence the fundamental dynamics of federal-provincial-territorial negotiations.<sup>(24)</sup>

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(18) Patrice Garant, "Conseil de la Fédération ou de la Confédération : organe suprême de concertation et de co-décision," Paper presented to the VI World Congress of Constitutional Law, Santiago, Chile, 12-16 January 2004. See also Gregory P. Marchildon, "A proposal for an effective Council of the Federation," *Opinion Canada*, Vol. 5, No. 30, 4 September 2003; and Ian Peach, "Half Full, at Best: Challenges to the Council of the Federation," *C. D. Howe Institute Background*, No. 84, Toronto, June 2004.

(19) Frances Abele and Michael J. Prince, "Counsel for Canadian Federalism: Aboriginal Governments and the Council of the Federation," in *Constructive and Co-operative Federalism?* Institute for Research on Public Policy, Montréal, 2003.

(20) Douglas M. Brown, "Getting Things Done in the Federation: Do We Need New Rules for an Old Game?" in *Constructive and Co-operative Federalism?* (2003).

(21) Ian Peach, "Filling the Empty Vessel: Defining the Mandate and Structure of a Council of the Federation," *SIPP Briefing Note*, Saskatchewan Institute of Public Policy, October 2003. See also Peach (2004).

(22) *Ibid.*

(23) Tom Kent, "A Short Path to Revitalized Federalism," in *Constructive and Co-operative Federalism?* (2003).

(24) Garant (2004).

In a federation, an interdependent relationship implies both greater cooperation and a greater number of conflicts, caused by opposing interests, different political allegiances and separate electoral cycles. The Council of the Federation is not immune to intergovernmental conflicts. “Governments ought to be able to agree to disagree without turning their diversity of views into a game of high stakes political poker about the political integrity of the country.”<sup>(25)</sup> This might be addressed by creating an arbitration mechanism for disputes within the Council.

## CONCLUSION

The Speech from the Throne presented by the Governor General of Canada on 2 February 2004 stressed the importance of cooperation between the federal, provincial and territorial governments in a number of areas, including health, education, Aboriginal affairs and municipalities. *An Action Plan for Democratic Reform*, published on 4 February 2004 by the federal government, also emphasized the need for greater cooperation among the various levels of government while respecting each government’s jurisdiction.

Canadian federalism is repeatedly called upon to evolve, especially in an era of globalization when the interdependence and growth of mechanisms for intergovernmental cooperation are becoming more and more a part of everyday government management. Many observers continue to believe that “a truly collaborative federalism can only succeed when there is equality between partners.”<sup>(26)</sup>

For now, the Council of the Federation is managed by the provinces and territories. According to Claude Ryan, for the Council to be a success, “it should not be made into a launching pad for concerted action against the federal government, but an effective mechanism to strengthen the role provinces must play in defining the public good of Canadians” [translation].<sup>(27)</sup> Many hope this new cooperative mechanism will enable provinces and territories to participate more effectively in national decision-making processes, while ensuring the long-term development of a Canadian social and economic union.

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(25) Harvey Lazar, “Cooperation and Conflict in the Workings of the Federation,” in CRIC (2004), p. 8.

(26) Réjean Pelletier, *Intergovernmental Cooperation Mechanisms: Factors for Change?* Discussion paper No. 29 prepared for the Commission on the Future of Health Care in Canada, October 2002, p. 31.

(27) Claude Ryan, “Le Québec et la Concertation Inter-provinciale,” in *Constructive and Co-operative Federalism?* (2003).