DISCUSSION PAPER NO.29

Intergovernmental Cooperation Mechanisms: Factors for Change?

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October 2002

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Highlights

- In a federation, both orders of government must cooperate. To do so, they can avail themselves of intrastate mechanisms vis-à-vis the country's central political institutions. In Canada, we cannot help but note the failure of these institutions to represent the interests of the provincial entities; this is true not only of the Senate but of the federal Cabinet and political parties as well.

- Interstate mechanisms, involving both orders of government, have done more to bring about change in the Canadian federation, but this change has not been equally beneficial for all the provinces. In this regard, the agreement on labour training of 1997 corresponds to the idea of asymmetric federalism, while the Internal Trade Agreement signed in 1994 can be seen as reflecting a brand of federalism which brings all provinces together. The Social Union Framework Agreement, however, represents federalism without Quebec. As regards the field of health, what emerges is a form of "hegemonic cooperation" between Ottawa and the provinces, while agreements are easier to conclude among the provinces on technical or scientific aspects.

- From these experiences with intergovernmental cooperation, we can conclude that the Canadian federation has evolved, while at the same time stressing that asymmetric formulas in no way prevent cooperation among the provinces. However, for these interstate mechanisms to function properly, a sense of trust must develop among the political players in the federation, while interprovincialism seems to generate less mistrust on the part of the provinces. Government transparency and accountability to citizens should also guide intergovernmental relations, which would also make it possible to increase citizens' participation in the political process.

- All in all, it is not so much intergovernmental cooperation mechanisms themselves that must be changed as people's mentalities.

Executive Summary

In a federation, both orders of government must cooperate by availing themselves of either intrastate mechanisms—vis-à-vis the country's central political institutions—or interstate mechanisms of cooperation. The question arises, in the case of Canada, as to whether these two types of mechanisms have helped change the federation or whether, on the contrary, they have been an impediment to change.

First, we cannot help but note the failure of these central political institutions to adequately represent the viewpoints of the provincial entities. The Canadian Senate has never played its role of representing regional interests at the central level. Neither has the federalization of the Cabinet, i.e. the tradition of appointing ministers from the various provinces, fulfilled this representational role, since ministers are bound by party discipline and ministerial solidarity. The same is true of the federal political parties, where strict discipline curtails the expression of regional interests. In a nutshell, intrastate federalism has not been up to the task of representing provincial entities at the central level.

Consequently, we must look elsewhere, toward interstate federalism—characterized by steady relations between the two orders of government—in order to establish whether the cooperation mechanisms in place have brought change to Canada's federation. A review of some agreements concluded in recent years between Ottawa and the provinces shows that they contribute to change, but that this change is not equally beneficial for all the provinces.

The 1997 agreement on labour training is, to a great extent, a reflection of asymmetric federalism that takes into account the marked differences between provincial education systems. The Internal Trade Agreement (ITA), signed in 1994, is more evocative of a federalism which brings together all the provinces on an equal footing, although some issues still need to be resolved, such as the opening of public procurement and full mobility of labour. The Social Union Framework Agreement (SUFA), on the other hand, is an example of federalism minus Quebec, which ended up isolated in defending its principles. To date, however, SUFA does not seem to have kept its promises: it has not prevented Ottawa from acting unilaterally, it has hardly encouraged citizen engagement, and it has yet to produce a dispute resolution mechanism.

Turning to the field of health, two trends seem to be emerging. First, collaborative federalism, heralded by some as the federalism of the 1990s, must be seen instead as a brand of "hegemonic cooperation" based on a dominant power, especially since the federal government has been recording major budget surpluses: the outcome is an uneven relationship between political leaders that fosters neither transparency nor accountability. Second, the various working groups created in the field of health allow numerous exchanges among the participants and illustrate well that this is an evolving sector, where agreements can be reached among the provinces on questions of a more technical or scientific nature, especially if Ottawa sticks to a role of consensus "facilitator".

What kind of picture emerges from these various examples? First, it must be pointed out that intergovernmental cooperation mechanisms have made for greater flexibility and adjustments in the way Canada's federation works. Cooperation is justified by the "mutual interdependence" today's world requires, but it cannot justify the use of Ottawa's spending power and still less the unilateralism displayed by the federal government. On these last two points, it can, on the contrary, be an impediment to change.

Furthermore, recognition of asymmetric formulas in no way impedes intergovernmental cooperation, as evidenced by the agreement on manpower training. In the health field as in other sectors, asymmetry in programs, more so than uniformity, should more readily elicit cooperation among the provinces. The ITA, for its part, is a good example of the cooperative (agreement signed by all the provinces) and at the same time competitive (different objectives and numerous exemptions inserted in the text) dimension that characterizes intergovernmental relations.

In the final analysis, a sense of trust must develop among the federation's political leaders so they can work together in good faith. This trust will be strengthened by a recognition of equality among partners, but it can be undermined if one level of government is subordinated to the other. Two other key principles must guide intergovernmental relations, i.e. transparency at the numerous meetings held and in disclosing the results, and accountability, which requires the parties to submit to public discussion, if not the negotiations themselves, the decisions taken (at the very least). If one wants to ensure accountability, it is also important to maintain a clear line of responsibility between governments. Transparency and accountability also represent the best means of increasing citizen involvement in the political process. All in all, trust, transparency and accountability of governments, as well as citizen engagement, should underpin intergovernmental relations.

Interprovincialism seems to generate less mistrust on the part of provinces, since they see themselves more as collaborators than as opponents and have developed a horizontal relationship free of any form of subordination. Also, the notion of equality which governs their relations leads to greater mutual trust.

In short, regular cooperation, ongoing consultation and the necessary financial resources remain to this day the foundations of true collaborative federalism based on equality between Ottawa and the provinces. To make it happen, it is people's mentalities, more than intergovernmental cooperation mechanisms themselves, that must be changed.

Introduction

Federalism is founded on the notion of shared sovereignty, in that none of the entities forming the federation—be it the central State or the provinces, Länder or cantons—can fully lay claim to sovereignty. To achieve shared sovereignty, the power to legislate is shared between the two orders of government. A written constitution sets out the distribution of jurisdictions defining the matters on which each may legislate or, in some cases, recognizing areas where each can intervene according to certain terms and conditions.

The famous formula devised by Daniel Elazar (1987, 12), known as self-rule plus shared-rule, translates well the reality of federalism and the main principles underlying it. On the one hand, federated entities (such as the Canadian provinces) as well as the central State must be autonomous in their jurisdictional sphere, thus precluding forms of subordination by one order of government with respect to the other. This autonomy must translate into sufficient financial capacity with which to effectively exercise powers—otherwise, the autonomy becomes illusory.

On the other hand, the federated entities and the central State must share a number of common rules: a constitution governing the federation; common institutions; and a political community characterized at once by the desire to live together and by the expression of the diversity present in the federation. In this regard, the central political institutions must reflect as best they can the country's unity and diversity. That is why, with rare exceptions, all federations have a second Chamber (Watts 1999, 92), which is supposed to represent the diversity embodied by the federated entities. Participation by federated entities in the exercise of central power is essential in a federation. And yet not only must participation be effective, but the composition of the second Chamber and the mechanism for appointing its members must also meet the objective of representation and real participation of federated entities in the exercise of central power.

Recently, the Supreme Court of Canada provided a good illustration of federalism, invoking the dual principles of autonomy and participation as well as the need to respect diversity.

> The principle of federalism recognizes the diversity of the component parts of Confederation, and the autonomy of provincial governments to develop their societies within their respective spheres of jurisdiction. The federal structure of our country also facilitates democratic participation by distributing power to the government thought to be most suited to achieving the particular societal objective having regard to this diversity. The scheme of the Constitution Act, 1867, […] was not to weld the Provinces into one, nor to subordinate Provincial Governments to a central authority, but to establish a central government in which these Provinces should be represented, entrusted with exclusive authority only in affairs in which they had a common interest. Subject to this, each Province was to retain its independence and autonomy and to be directly under the Crown as its head.
> (Supreme Court of Canada 1998, par.58).

This kind of federalism is not static: it must evolve with time. In this regard, politicians have several avenues available to them to make amendments to the Constitution, the supreme law governing the country. Since 1867, there have been about 40 constitutional amendments, some affecting the division of powers (such as unemployment insurance in 1940, and old-age pensions

in 1951), and others institutions, the admission of new provinces, and political rules (such as the changes to representation in the House of Commons). However, since the failure of both the Meech Lake Accord in 1990 and the Charlottetown Accord in 1992, this avenue seems completely blocked, with the exception of bilateral amendments under section 43 of the *Constitution Act, 1982*. Unlike his predecessor, the current Prime Minister, Jean Chrétien, steadfastly refuses to go down the path of constitutional reform (Pelletier 2000, 73-77).

A federation engages only occasionally in reforming its constitution. Between these instances, courts are called upon to interpret the supreme law of the land. That is what the Judicial Committee of the Privy Council, based in London, did until 1949, and the Supreme Court of Canada since then. Both have acted as the final court of appeal in all matters, including constitutional disputes. In addition to the criticism that Supreme Court judges are appointed solely by the federal government, which is contrary to the spirit of federalism and the practice of most federations (Watts 1999, 100-101), many have noted the trend towards a "judicialization of the political system" and a "politicization of the judicial system", especially since a Charter of Rights was adopted in 1982 (Monahan 1987; Knopff and Morton 1992; Mandel 1989). However, the courts have a say only if asked to settle a dispute between two parties, or if a government submits a question to the court through a reference proceeding (Tremblay 2000, 339-361).

Some federations, like Switzerland and Australia, modify their constitution by referendum. They appeal directly to the sovereign people, considered the ultimate decision-maker on constitutional amendments. This avenue has rarely been taken in Canada, except for the Charlottetown Accord in 1992, and in some provinces such as Newfoundland and Quebec (in 1980, 1992 and 1995). Under the *Constitution Act, 1982*, the constitution is primarily the responsibility of governments and provincial legislatures (Cairns 1991; 1992), not of citizens, as though representative democracy must always prevail over participatory democracy.

There is another avenue for making adjustments to the federal system without necessarily resorting to constitutional amendments. In a context of greater interdependence and with the aim of ensuring increased constitutional flexibility, the different orders of government have put in place intergovernmental cooperation mechanisms in order to engage into consultations and develop better cooperation and coordination among themselves. This has allowed them to adapt to changes and to resolve disputes as they arise (Watts 1999, 57). These administrative agreements can affect the jurisdictional balance without the need for formal amendments or constitutional interpretation by the courts. These are the mechanisms of intergovernmental cooperation, involving first ministers, sectoral ministers and senior officials—which have given rise to "executive federalism" (Smiley 1980)—that are of particular interest here.

The idea of growing interdependence does not mean that one order of government is dependent on or subordinated to another, but that the actions of one order of government influence the other. This requires coordination and a certain amount of cooperation between governments. Nevertheless, this "cooperative" federalism results just as often in competition and conflict as in cooperation and coordination.

In light of the above comments, this report looks more specifically at the question of whether the mechanisms for intergovernmental cooperation in the Canadian federation can contribute to or hinder change. In other words, to what extent have these mechanisms at the federal-provincial as well as the interprovincial level promoted or hampered desired changes?

By change, we mean any modification of a previous situation, whether it takes the form of a simple addition to an existing situation, a major reform or real innovation. At its inception, hospital insurance was a real innovation, while reforms enacted by Ministers Marc-Yvan Côté and Jean Rochon led to major changes to Quebec's health care network. However, expanding the range of health care covered by Medicare is an addition to an existing program. In some cases, these changes are perceived in a positive light, while in others they are seen in a negative light (such as the major cuts made in health spending).

The Failure of Intrastate Federalism

Intergovernmental cooperation mechanisms, particularly federal-provincial mechanisms, should respond to the principle of *participation* mentioned in the Introduction. We refer here to the central political institutions that should enable federated entities to participate in central decision making. As Preston King (1982, 405) was already reminding us, the distinctive element of a federal system—that can contribute to the success of the whole—is the extent to which "the central government incorporates regional units into its decision procedure on some constitutionally entrenched basis".

What has been called *intrastate* federalism can be defined, according to Smiley and Watts (1986, 4) as the "arrangements by which the interests of regional entities—either of the government or of the residents of these entities—are channelled through and protected by the structures and operations of the central government." In Canada's case, we cannot help but note the shortcomings, if not the failure, of the mechanisms in expressing and conveying the interests of the federated entities to the "structures and operations of the central government."

Many analysts consider that the Canadian Senate, while it has adequately fulfilled its role of taking a sober second look at legislation and of investigating important issues, has failed to meet expectations concerning representation of regional interests. This is, after all, an essential, fundamental role that must be played by a second Chamber in a federation.

Using the criteria of performance, effectiveness and legitimacy developed by Bakvis and Skogstad (2002, 3-23), we can see that the Canadian Senate meets those very partially, if at all. Indeed, it enjoys only limited legitimacy by virtue of the fact that all members of the Senate are appointed by the federal Prime Minister alone, and remain in place until retirement. They cannot be expected to be accountable to the governments or population of the federated entity they are supposed to represent, or to uphold the interests of these entities. Moreover, their effectiveness, measured in terms of results obtained as representatives of the federated entities, is also very low because in the Senate, as in the House of Commons, party discipline rules. In this sense, the Senate is not a provincial Chamber, like the German Bundesrat, but a partisan one, like the House of Commons.

Accordingly, the Senate has an overall weak performance in terms of its ability to adequately represent the diversity of federated entities and to ensure their participation in the central decision-making process. On the one hand, appointing only Liberal or Conservative senators (the only two parties to hold power in Ottawa since 1867) fails to properly represent the wide diversity of Canadian politics, which is not limited to these two parties. On the other hand, given its limited legitimacy, the Senate cannot, in the end, oppose decisions taken by the House of Commons, which means that it will always capitulate when the House turns down an amendment coming from the Senate, unless a compromise satisfactory to both parties is found. In this regard, we note that the extensive powers of the United States Senate have not been altered by the fact that senators are now directly elected by the population of each State, whereas before (until 1913), they were elected indirectly by state legislatures.

The federalization of the federal Cabinet is a custom dating back to the early days of Confederation. The first cabinet of John A. MacDonald included "representatives" of the four provinces from which Canada originated. With few exceptions, this tradition has prevailed ever since. Next came the practice of mandating a minister to defend regional interests (Bakvis 1991), making up for the deficiencies of the Senate, which has not really risen to the task. But these ministers have never represented, nor wanted to represent, provincial governments.

The federalization of the Cabinet comes up against two major obstacles. First, with the exception of the unionist government in power from 1917 to 1921, no Canadian government—not even a minority one—has ever included more than one political party. The problem stems precisely from the fact that the party in power does not always enjoy solid support in the various Canadian provinces. That was the case with, among others, the Liberal governments of Pierre Elliott Trudeau and Jean Chrétien during the last quarter century. Second, bound by party discipline and ministerial solidarity, which are "the two sides of the same coin" (Pelletier 1999, 58), ministers must close ranks once a decision has been made and Cabinet must display a show of unity behind the decision. This does not mean that there are no discussions about divergent regional interests around the Cabinet table, but that these divergences must be kept quiet in the interest of ministerial solidarity once a decision has been taken.

Political parties have also been used both as a way to integrate a diverse population and as a means of representing an array of interests. At the federal level, parties have been required not only to carry out the traditional functions of political formations in democratic countries, e.g. running candidates in elections, formulating policy and forming the government, but also to represent the regional, linguistic or ethnic distinctions that characterize Canada. This process was to take place *within* each party rather than letting the parties dividing among themselves the responsibility of representing and defending these various interests (Elkins 1991; Covell 1991; Carty, Cross and Young 2000). The brokerage theory has been used to translate this reality and explain the Canadian party system (Clarke *et al.* 1991). If a party wants to capture and maintain power, it must cast the net wide and come to terms with Canada's diversity. This has been the key to the Liberal Party's success during the 20th century, as it has succeeded more often than any other at building a coalition of these various interests.

Once again, two problems come to mind in analysing the representative role of Canada's political parties. First, Members of Parliament are bound by party discipline, which impedes the expression of regional interests in the House of Commons. Party discipline, as recognized by the Royal Commission on the Economic Union and Development Prospects for Canada in 1985, "(sharply limits) the ability of individual Members of Parliament to act as spokespersons for their province's interests." (MacDonald Commission 1985, Vol. 3, 79). Dissidence within a party is rare, and often heavily sanctioned (exclusion from caucus). Second, the Canadian parliamentary system—inherited from Westminster—operates on a majority basis; hence, a single party finds itself in power, relegating other parties to play the role of opposition. The outcome of the last three federal elections (1993, 1997 and 2000) shows that the ruling Liberal Party received little support in the West, lukewarm support in Quebec and a whopping majority in Ontario. At the same time, two "regional" parties—the Bloc québécois in Quebec and the Reform Party (now known as the Canadian Alliance) in the West—captured more than half the seats in their respective regions. The current fragmentation of Canadian politics certainly ensures better

representation of regional interests in the House of Commons, but the parties defending these interests are relegated to opposition benches, while the party in power is muzzled by party discipline. With the exception of Ontario, which largely controls the Liberal caucus and exerts wide influence in Cabinet, the other regions have felt, and still feel, excluded from power and from genuine participation in the decision-making process at the central level. This is especially true of the West.

In short, the current political situation reflects a crisis in representation marked by the failure of intrastate federalism in Canada. This crisis is apparent at several levels. First, there is the issue of electoral participation: in November 2000, only six out of ten voters (61.2%) took time to cast their ballots, breaking a record that had stood since 1896. Second, one must consider the tepid support which the electorate has given the majority party: the Liberals managed to capture only 38.5% of the vote in 1997 and 40.8% in 2000. Third, the Senate has been unable to adequately play its role of representing regional interests, which should be the primary role of a second Chamber in a federation. Finally, we must keep in mind the impact of party discipline, which impedes the expression, in Parliament, of the various interests found within parties, most notably the party in power—where this expression would be even more important since that party is the main source of policies that are eventually adopted and implemented.

In the long run, reforming central institutions would enhance the legitimacy of the federal authorities, which could then claim to represent not only Canada as a whole, but also Canada's diversity and regional interests. For now, such is not the case—especially given the absence from the political agenda of any meaningful reform of Canada's central institutions.

Interstate Federalism Put to the Test

In response to the shortcomings of intrastate federalism, a form of interstate federalism characterized by on-going relations between the two orders of government has emerged, especially after the Second World War (McRoberts 1985, 75). If cooperation and coordination cannot take place efficiently in central institutions, they can be achieved by other means. As in the Westminster model, where the government plays a dominant role, these mechanisms have taken the form of "executive federalism", characterized by the intervention of members of the executive branch, not only first ministers and sectoral ministers, but also senior officials reporting to them. But these mechanisms of cooperation and coordination also give rise to competition and conflict between governments that do not pursue the same policies. That is why we must see the players in these intergovernmental cooperation structures as associates-rivals or *partners-adversaries*, reflecting the dual dimension of cooperation and conflict which marks many intergovernmental meetings.

At the same time, we need to examine whether intergovernmental cooperation mechanisms implemented long ago have brought real change to the Canadian federation. If the conflictual nature of certain issues can impede change, one must also ask whether the cooperative dimension can prevail in some areas, and under what conditions. To that end, we will review a number of agreements—or, on occasion, unilateral decisions by Ottawa—and from these, draw general conclusions after setting the basis for stakeholders' claims. We will do so mainly (though not exclusively) from a Quebec perspective.

Before looking at these case studies, it is important to provide an overall assessment of federal-provincial-territorial meetings held in recent years. Next, we will try to depict the "general mood" of intergovernmental relations over the past decade.

Early on, McRoberts wrote that "federal-provincial liaison bodies, drawing together federal-provincial officials, primarily bureaucratic, in a wide range of areas grew from 64 in 1957 to, by one estimate, 400 in 1972." (1985, 75). That is a considerable increase, linked to the implementation of a large number of federal-provincial programs. Furthermore, the *Secrétariat aux affaires intergouvernementales canadiennes* of the Government of Quebec reports 96 meetings during the fiscal year from April 1, 1999 to March 31, 2000, and 103 meetings in 2000-2001. This includes federal-provincial-territorial meetings, federal-provincial meetings, provincial-territorial meetings and interprovincial meetings in such diverse fields as agriculture, health, justice, the environment, transportation, social services, domestic trade, forestry, the labour market, etc. Two-thirds of these are administrative meetings involving deputy ministers or senior officials. However, there is also a large number of ministerial meetings—they make up almost a third of the total.

Quebec has taken part in practically all of these meetings, the only exceptions being six in 1999-2000 and seven in 2000-2001 which it attended as an observer only. Most of these exceptions had to do with meetings on social policy, linked to the implementation of the Social Union Framework Agreement, which Quebec refused to sign.

In the 1993 federal election, the Liberal government of Jean Chrétien was elected on the promise of putting aside Canada's constitutional problems and concentrating on other political priorities, particularly the economy. This commitment came in the wake of two resounding constitutional failures, namely the Meech Lake Accord in 1990 and the Charlottetown Accord in 1992. However, following the referendum held in Quebec in October 1995 on the sovereignty-partnership option, the federal government sought to regain the initiative both on the constitutional front (reference to the Supreme Court and the Clarity Act) and in other sectors.

In the latter case, the main idea is to show that, while the constitutional path is practically blocked, it is nevertheless possible to resolve certain issues that concern the provinces. Using a pragmatic, case-by-case approach, the Chrétien government is trying to prove that agreements can be reached with the provinces, showing some flexibility as required. Appearing at times accommodating, at others more restrictive, using the carrot-and-stick approach, he is pursuing a dual objective: to show that federalism can evolve by concluding agreements with the provinces, thereby creating a heightened sense of belonging in Canada by emphasizing pan-Canadian mobility and a genuine national identity through shared values, especially in the social area.

With these notions in mind, we will review certain agreements reached between Ottawa and the provinces in recent years.

Labour Force Training or Asymmetric Federalism

The *Adult Occupational Training Act* of 1967 brought an end to nearly 50 years of conditional grants in the field of vocational education. This legislation stemmed, in part, from the unilateral decision by federal authorities "to transform the vocational training of adults into an adjunct of employment policy" (Dupré 1985, 9). From that point on, despite the transfer of this program from the vocational education sector to the employment sector, Quebec insisted on full control over this field, linked—in its view—to an integrated policy of training and re-entry into the labour force. In fact, according to Stefan Dupré, the federal manpower plan of the mid-1960s never got off the ground, because the ministries of education successfully intervened and forced federal officials to deal with them. In Dupré's opinion, this provincial victory sealed the fate of the federal plan in the months following its unveiling (1985, 10).

But the federal-provincial bickering did not end there. It finally ended 30 years later, in 1997, when Ottawa and the provinces concluded a labour force training agreement. The breaking of this deadlock was linked to the referendum of October 1995 in Quebec and to preparations for the federal election that took place later in 1998. In the wake of its referendum defeat, the government of Lucien Bouchard (who had just replaced Jacques Parizeau at the helm of the Parti québécois) showed a willingness to strike agreements with Ottawa as long as they: a) were in keeping with Quebec's interests; b) helped change situations deemed unacceptable; or c) helped increase Quebec's powers. For its part, the Liberal government of Jean Chrétien wanted to show Quebeckers—ahead of the upcoming federal election—that Canadian federalism was flexible and worked well. In short, conditions appeared very favourable on the heels of the Quebec referendum, since Ottawa needed to signal its openness to Quebec (Pelletier 1998, 302).

It is against this backdrop that the labour force training agreement (more precisely, the Canada/Quebec labour market agreement in principle) reached with the federal government should be analysed. From Quebec's standpoint, an agreement of this nature, first envisioned under the government of Jean Lesage in the 1960s, had become a major priority and enjoyed the support of all the province's socio-economic stakeholders. As for Ottawa, it did not want to sign such an agreement with Quebec alone, since it could be interpreted elsewhere in Canada as a concession to Quebec (following the 1995 referendum, that had been perceived as a threat) or as the granting of a special status (linked to the notion of distinct society, already rejected with the Meech Lake Accord in 1990) (Pelletier 1998, 302).

The agreement in principle reached with Quebec, combined with the related implementation agreement, provides an example of asymmetric federalism at work: an administrative agreement authorized by a very broad piece of federal legislation that allows the marked differences between the provinces' educational systems to be taken into account. Asymmetric in that five provinces, including Quebec and Alberta, obtained a complete transfer of labour market responsibilities, while three Atlantic provinces (with the exception of New Brunswick) settled for a joint management formula or participation in the federal program, and British Columbia concluded what was seen as a hybrid, temporary agreement.

The asymmetry can also be seen in the Quebec agreement, which stands apart from the others on a specific point (following an exchange of letters between the responsible ministers). Under Quebec's Bill 101, French is recognized as the official language of the public administration; hence, services to users are first offered in French, except if businesses wish to communicate in their language. On request also, services can be offered in English. On the other hand, the government's Web sites are bilingual. Such a policy contrasts with the bilingualism policy in effect at the federal level, which requires services to be offered to users in both official languages, but only in areas where the demand warrants it (Pelletier 1998 and 2002 interview). Implementation of these agreements is left to the provinces, which can select the formula best suited to their situation. Thus, Quebec and Alberta decided to amalgamate or integrate the various existing programs, but insisted on different methods of implementation (e.g. employment assistance in Quebec and loans/grants in Alberta).

All in all, this transfer of responsibilities and federal public servants has been favourably received in Quebec, even though Quebec authorities were initially confronted with major problems raised by a different classification system for federal employees, the status of Quebec's casual employees, and the need to adjust internal systems. Since then, the problems have been solved: the fact that these programs were amalgamated, it was stressed, helped a great deal.

Internal Trade Agreement, or Federalism with the Provinces

Doern and MacDonald describe the Internal Trade Agreement (ITA) as the convergence and interaction of three policy spheres: industrial regional policy; trade policy; and federal-provincial policy. With respect to the latter point, which is of particular interest to us here, they indicate that the entire negotiating process provides an example of federalism at work (1999, 17-36).

This prompted Daniel Johnson, Quebec's Premier at the time, to say that the agreement represented "a perfect illustration of how federalism should work" (quoted in Schwartz 1995, 214).

Already, the Free Trade Agreement with the United States, and then Mexico, had paved the way for a form of cooperation, if not participation, by the provinces in developing the central government's negotiating position for Canada. To be sure, this approach was modelled on "executive federalism", as described by Smiley (1980) and Cairns (1977). But opening up Canada's markets to the free flow of goods and services made it even more necessary to open up Canada's domestic market in the same way (Schwartz 1995).

As for the more traditional brand of executive federalism, the Internal Trade Agreement innovates on two fronts: first, the presence of a neutral presiding officer who acted as a mediator, seeking to reconcile 13 different interests (the 10 provinces, the federal government and the two territories) in 15 policy areas, and to reach compromises among the parties while taking into account their interests (Doern and MacDonald 1999, 32). The second innovation involves the creation of an Internal Trade Secretariat, ultimately responsible in part for the successful outcome of the negotiations. The Secretariat was charged not only with establishing common grounds for discussions on internal trade, but also and most importantly, during the intensive phase of the negotiations, with providing the necessary analyses to demonstrate the impact of a particular decision or the applicability of the framework rules (Doern and MacDonald 1999, 55-56). In particular, the actors were concerned with the Agreement's effects on the distribution of powers defined in the constitution. Thus, the Secretariat's role was to show that a negotiated agreement on internal trade would have no effect on the constitution front.

Of course, each delegation had its own agenda and its own objectives. Generally speaking, there was a need to strike a balance between trade liberalization and the imperatives of regional economic development. That said, Alberta and Manitoba were wholeheartedly in favour of interprovincial free trade, while Quebec was rather favourably inclined, albeit with certain reservations in the energy and cultural sectors. But from Quebec's perspective, it was important to reach an agreement before the upcoming provincial election, scheduled for 1994. The provinces then led by New Democratic governments (Ontario, British Columbia and Saskatchewan) appeared fairly sceptical and criticized various aspects of free trade, seeking to maximize the exemptions and minimize the general rules. The Atlantic provinces and the Territories, while not opposed to the idea of opening markets, feared that regional development policies would fall by the wayside, with considerable fall-out for them. Politically, they were negotiating from a position of weakness (Doern and MacDonald 1999, 59-81).

The Agreement was signed in July 1994 following a first ministers meeting. What really got the negotiating process on track was an agreement by internal trade ministers, in December 1992, on three main principles, and four main rules for applying these principles, to guide future negotiations. Soon after, in March 1993, that group—the Committee of Ministers on Internal Trade (CMIT)—reached agreement on a series of negotiating rules, and even set a firm date for the start of negotiations as well as a deadline (June 30, 1994). The report prepared by the chief negotiators committee in January 1994 paved the way for more intensive talks; these, in turn, enabled the Internal Trade Secretariat to produce a draft text for discussion and further revisions. Following a second draft submitted in May, the CMIT reached an agreement on June 28, 1994, which was eventually signed by the first ministers in July 1994. The role played by first ministers was more "philosophical" than practical. But at the same time, they pressed for the negotiations to be completed within the required time frame (Doern and MacDonald 1999, 46-56). The Agreement took effect on July 1 of the following year.

Implementation of the ITA partially lessened the need for bilateral agreements between any two provinces (e.g. between Quebec and New Brunswick and between Quebec and Ontario), particularly on procurement. This was by no means a panacea; problems still remained, especially in the area of labour mobility.

Indeed, implementation of the ITA has not resolved all the issues. The chapter on energy is still the subject of negotiations. The Internal Trade Secretariat, established under the Agreement and based in Winnipeg, is examining what the parties to the Agreement have achieved since its implementation and what remains to be done (www.intrasec.mb.ca). Judging by the evidence, the achievements have been impressive and point for the most part to the creation of an internal common market. Which is not to say that everything has been settled, especially in light of a series of legitimate objectives, in all chapters, that give rise to numerous exceptions. In fact, during a conference held in Toronto on May 31 and June 1, 2001, participants said that progress had been slow and implementation even slower. They urged Ottawa to show leadership in this area (Internal Trade Secretariat 2001, 37). Opening up procurement to free trade, full labour mobility and liberalizing the energy sector are the areas most often cited as not yet in line with the requirements of internal free trade.

We must bear in mind that the ITA is a *political* document, not a *legal* text, which might make it less restrictive for the actors involved. This non-legislative (and definitely non-constitutional) dimension is linked to the political backdrop against which the Agreement was negotiated. After the Meech and Charlottetown failures, an agreement had to be reached at all costs (in the words of Mark MacDonald, "federalism was in need of a victory—any victory…" (2002, 143)) in order to show that federalism could work and that it was possible to agree on important questions, in this case questions pertaining to the economy. It should also be noted that the parties involved were fully aware of the costs of a failure to reach this agreement.

In sum, as one interviewee noted, the ITA strikes a fragile balance between the desire for more liberalized trade and the desire to maintain regional distinctiveness. In this sense, the "national" consciousness is not as developed as it could be. As the interviewee added, however, progress continues, albeit on a small scale (for example, the gradual opening up of procurement). As for the dispute resolution mechanism provided for in the Agreement, everything will depend on the willingness of politicians to negotiate in good faith and abide by the recommendations of the dispute settlement panel.

Social Union or Federalism without Quebec

To gain a proper understanding of the Social Union Framework Agreement (SUFA), one must consider two important issues that surfaced in the 1990s. First, a profound need was felt to reform social programs that had been in place for a quarter century. In that regard, the question arose as to which order of government should take on this controversial task, given the implications and the intervention of both orders of government in this area. Second, questions were raised as to the recurring deficits of governments in Canada since the mid-1970s, which worsened during the 1990-92 recession (Richards 2002, 1).

The governments of the Prairie provinces were the first to act, cutting programs and eventually taxes. Ottawa was next, with across-the-board program cuts; only old-age security and Aboriginal programs emerged unscathed. In 1995, the federal government created the Canada Health and Social Transfer (CHST) by merging the Established Programs Financing (EPF) and the Canada Assistance Plan (CAP). The new CHST featured block funding, as had been the case with EPF since 1977 but not with the CAP, the last major federal transfers program to the provinces where funding of social services and social assistance was split evenly between the two orders of government (except for the more well-off provinces). In addition, federal Finance Minister Paul Martin announced in his February 1995 budget that the provinces would see their transfers reduced by more than a third, i.e. by $6 billion over a two-year period.

This major cutback was the main focus of the meeting of provincial first ministers in August 1995, which led to the creation of a provincial-territorial committee to look into the matter. The committee tabled a progress report in December 1995. In light of the unilateral approach taken by the federal government, it proposed an improved framework for Ottawa's spending power, a better definition of the exclusive jurisdiction of each order of government, efforts to reduce overlap as much as possible to enhance accountability, and adoption of joint decision-making mechanisms (Gagnon, 2000, 12-13).

Subsequently, the Quebec government decided to opt out of the talks, concerned with maintaining its jurisdiction, as Premier Bouchard underscored in Jasper, in August 1996, and reiterated a year later at the provincial first ministers conference in St. Andrews. In the meantime, the federal government, at the behest of the provinces (except Quebec), engaged more actively in negotiating an agreement on the social union. In June 1998, all the provinces, without Quebec, agreed on an agenda for negotiating with Ottawa. However, the main agenda items were compatible with the key objectives pursued by Quebec (Richards 2002, 4).

The August 1998 Annual Premiers' Conference, in which Quebec participated, produced a consensus among all the provinces. Referred to as the Saskatoon consensus, it was founded on an essential, oft-reiterated demand by Quebec, namely the ability of a province (or territory) to opt out of any new or modified Canada-wide social program in areas of provincial/territorial jurisdiction with full compensation, provided that the province/territory carries on a program or initiative that addresses the priority areas of the Canada-wide program (Noël 2000a, 24). This agreement allowed the provinces to maintain a common front, which held fast until the eve of the signing of the SUFA. Indeed, the final document that emerged from the January 1999 meeting of provincial ministers responsible for this area, in Victoria, set forth a common provincial position.

A few days later, however—on February 4, 1999, more precisely—the common front collapsed: the Social Union Framework Agreement was concluded between the federal government and nine provinces. Quebec did not sign that agreement, seeing it as legitimizing the federal government's spending power without Ottawa offering anything tangible in return (such as a guarantee of stable funding), beyond a requirement to consult the provinces. It entrenched the federal government's role in the social sector without recognizing the primacy of provinces. Ottawa's flexibility and initiatives were preserved, while the constraints it would have to meet were fairly modest. Most important, the agreement remained silent on a major demand by Quebec: "the ability (of a province or territory) to opt out of any new or modified Canada-wide social program in areas of provincial/territorial jurisdiction with full compensation", as stipulated by the news release issued in August 1998 at the Annual Premiers' Conference in Saskatoon.

As several analysts pointed out (Lazar 2000a, 28-29; Vaillancourt 2002, 38-39; Robson and Schwanen 1999, 3), it was the lure of money that swayed the nine provinces to sign the agreement, from their previous unanimous stance in favour of restraining Ottawa's spending power. Robson and Schwanen add that Ottawa and the provinces thereby forced Quebec to defend alone its constitutional rights (1999, 4). Beyond the lofty aims of the Saskatoon consensus, one thing is clear: most provinces wanted increased federal funding, something that Ottawa promised them in 1999 and which ended the common front, at least momentarily.

Ottawa's interest in SUFA stemmed from the fact that "as the signing date approached, the fiscal circumstances of the federal government improved dramatically, and Ottawa was able to put cash on the table in exchange for looser constraints on its spending power" (Gibbins 2001, 7). At the same time it wanted to show that, in line with statements by Prime Minister Chrétien, federalism could be renewed without having to amend the Constitution.

According to federal officials interviewed for this paper, SUFA is simply a "code of conduct" for the various governments and a "general framework" to guide the ministries involved. For the federal government, the deal has already led to significant progress, since it made it possible, among other things, to conclude an agreement on affordable housing based on the principles contained in the Agreement.

However, it seems that the Agreement has failed to live up to the expectations of most provinces. Quebec sees it as an unacceptable step backwards; indeed, even the Liberal Party headed by Jean Charest, and Mario Dumont's Action démocratique du Québec, refused to endorse the Agreement. André Binette had this to say about the demise of the common front:

[translation] "The English-speaking provinces are trying to make the federation work, even if it means centralization. Quebec cannot bring itself to pay such a price, because it would pose a threat to its national identity" (2000, 50).

Three years have passed since the Agreement was signed. Thus, governments have jointly undertaken, with the exception of Quebec (which has observer status), "a full review of the Agreement and its implementation" (article 7 of SUFA). The process is under way, but little progress has been made. All the provinces, but particularly Alberta and Ontario, want the dispute resolution mechanism issue resolved; they are even threatening to reopen the Agreement. It is clear that if this issue were settled to the provinces' satisfaction, it would constrain the federal government and further restore a balance and a more level playing field between the "partners".

In any event, it is difficult at this point to assess the real effects of the Agreement, apart from increased federal funding on social programs—an increase that would have come about with or without the Agreement. Given the magnitude of the federal surpluses, it would have been completely unacceptable for Ottawa to deny the provinces additional funding. But the way the provinces see it, federal funding remains inadequate, a position reiterated by the premiers at their annual conference in Winnipeg in August 2000 and again, with insistence, in Victoria in August 2001. There, they suggested that "adequate and sustainable fiscal arrangements" might include not only restoration of federal funding through the CHST with an appropriate escalator, but also tax-point transfers as one possible alternative, and fundamental changes to the equalization system. They renewed this consensus at a special meeting held in Vancouver in January 2002.

In addition, each first ministers' meeting, along with each health ministers' meeting, is an opportunity to underline the magnitude of the task at hand: pharmaceuticals management, health human resources management, continuing care (primary care, home care, community care), clear accountability and reporting to citizens… (the list goes on).

It should also be pointed out that in various news releases issued after these meetings, Quebec makes a point of reminding everyone of its position: while it declined to sign the Social Union Framework Agreement (and therefore does not feel bound by it), it usually adheres to the principles set out therein and is committed to cooperating with other provinces. But the point that truly emerges from the framework agreement process is the need for intergovernmental cooperation "in full respect of each government's jurisdiction", as stated in the news release issued at the conclusion of the federal-provincial-territorial first ministers' meeting of September 2000 in Ottawa.

In sum, since the Agreement is first and foremost a "code of conduct" for the various governments, it is difficult to assess its concrete effects. In practical terms, the issue is as much about health care innovation as about mobility of persons; as much an issue about the fight against poverty (Osberg 2000) as about Millennium Scholarships; and as much about affordable housing as about the National Child Benefit. When all is said and done, SUFA will be assessed on the basis of the policies adopted and the programs implemented. Except for the first section dealing with principles, SUFA focuses on the processes (five sections) rather than on the substance (only one section, on mobility), notes Harvey Lazar (2000b,101). Which is to say that in order to adequately assess SUFA, we cannot look solely at the substance of the Agreement

(the programs put in place), but need to look also at the process (are these programs in line with the provisions of SUFA?).

Finally, it can be said that to date (August 2002), SUFA has not delivered on its promises, neither in terms of federal-provincial cooperation and constraint on spending power—witness the ever-expanding unilateral actions by Ottawa in the form of *ad hoc* and targeted transfers (Millennium Scholarships, Canada Research Chairs, Canada Foundation for Innovation, the medical equipment trust fund, etc.)—nor in terms of dispute resolution, since the mechanism provided for in the Agreement has yet to materialize, nor in terms of citizens engagement, since performance indicators, participation structures and accountability procedures are still lacking. However, SUFA has led to Quebec's isolation, and has thus shown that Canadian federalism can be reformed without Quebec.

Health: The Dangers of Unilateralism

It is widely recognized that the federal government played a major role in implementing the hospital insurance program in 1957, followed by Medicare in 1966; this is not to ignore the pioneering role played by the Government of Saskatchewan. As was the practice in that period of "cooperative" federalism, these projects took the form of programs funded jointly and equally by the two orders of government (Lazar 2000a, 6-16). All the provinces, including Quebec, eventually came on board.

Painstaking negotiations between Ottawa and the provinces led to the creation, in 1977, of the Established Programs Financing (EPF) system, whereby the federal government pledged to provide, for health and postsecondary education, block funding in the form of tax point transfers and cash. Thus, EPF gave the provinces greater leeway and in so doing, lessened Ottawa's control over sectors that, after all, were under provincial jurisdiction. By its very nature, block funding was not accompanied by any real control mechanisms for the federal government over funds given to the provinces, by contrast with the joint programs.

According to Monique Bégin, former federal Minister of Health and Welfare, the objective of the *Canada Health Act* of 1984 was precisely to restore federal control, lost with the introduction of EPF, over the implementation of health policies in the provinces (Bégin 2002). The 1984 Act stated five fundamental principles (accessibility, universality, comprehensiveness, portability, public administration), still in effect, and enabled the federal government to ensure that these principles were upheld, and thus exert once again some control over this sector. A recalcitrant province that accepted, say, user fees or physician overbilling would face a penalty.

After three years, seven provinces had been imposed penalties totalling $245 million—$134 million for overbilling and $111 million for user fees. All these fines were later reimbursed after the provinces banned these practices, which contravened the principles set out in the Act (Bégin 2002, 3). The key consideration isn't so much the penalties imposed—fairly minimal since 1984—as the conditions or standards which continue to govern the payments made under the CHST. These conditions are currently at the heart of the debate surrounding the management of the health sector (*Commission sur le déséquilibre fiscal* 2002, 78-80).

This type of punitive federalism reduces the provinces' ability to make changes to health programs. To understand why the debates in this area have been so fierce, we should consider the principles of public administration, comprehensiveness or accessibility. The Act of 1984 continues to play a major role in the field of health. Thus, it helps control the often conflictual relations between governments.

In this context, can we really talk about a collaborative federalism coming increasingly to the fore since the mid-1990s (Lazar 1998, 2000a)? This type of federalism would foster partnership and equality between orders of government rather than strong federal leadership. It would correspond to a period of belt-tightening and block funding that would hardly encourage federal activism. On the contrary, Ottawa would be obliged to accept a more egalitarian partnership on account of its inability to use cash transfers to shape the provinces' conduct (Lazar 2000a, 29).

Apart from the fact that reductions in federal spending have now given way to budget surpluses, we must bear in mind that on several occasions Ottawa has used trusts or foundations as new mechanisms for shaping the provinces' conduct, either by requiring them to invest in a particular sector (purchase of medical equipment), or bypassing them in dealing directly with citizens or organizations (Millennium Scholarships, research chairs).

As for the notion of partnership and equal footing, Alain Noël—among others—argues that, on the contrary, the current "collaborative" brand of federalism is hierarchical and must be viewed as "hegemonic cooperation", a label borrowed from Keohane. In this form of cooperation, one order of government wields dominant power, setting the rules and providing the necessary stimulus so that the other order conform to these rules. It simply reflects a reality where cooperation emerges from conflict rather than harmony, but also where the conflicting parties are not necessarily on an equal footing (Noël 2000b, 6-14). In other words, cooperation is "a regulated and institutionalized form of conflict" (Noël 2001, 17).

Some analysts blame the difficulties associated with collaborative federalism on the lack of a "mission statement", of clear objectives and of a long-term perspective to guide politicians, particularly about fiscal federalism (Lazar 2000a). Indeed, most political decisions taken by heads of government at federal-provincial conferences have implications for fiscal federalism. In turn, all the changes made over the years to federal transfers to the provinces have had a direct impact on provincial budgets. In this context, several policies announced in recent federal budgets—policies that had an impact on provinces—are not the product of federal-provincial negotiations. This mode of operation, which violates the principles set out in SUFA (e.g. the need to give advance notice), has led to increased uncertainty among provincial actors.

This observation, while shared by several analysts, is interpreted differently by others. According to Alain Noël, Ottawa's social and intergovernmental policies can seem improvised, inconsistent or unpredictable; "this approach, however, should not be taken as a sign of weakness or lack of purpose". "The cultivation of uncertainty," he adds, "is a prerogative of power" (Noël 2001, 3). The difficulties raised by collaborative federalism do not stem, according to Noël, from a lack of vision on Ottawa's part, but rather from an "uneven relationship solidly

rooted in a serious and growing vertical fiscal imbalance between the two orders of government" (Noël 2001, 3).

This brings us to the heart of the debate on Canadian federalism. It is not a genuine partnership between equals, but an uneven relationship between politicians—one of whom exhibits his mastery of the situation by keeping the others in a climate of uncertainty through decisions that betray a lack of direction, especially when they negate an agreement signed a few years earlier (most notably, articles 3 and 4 of SUFA). Thus, there is no apparent transparency or accountability guiding federal budgetary policy, or even intergovernmental relations as a whole. This raises fears that collaborative federalism was linked to a particular set of conditions shaped by fiscal restraints, and that it has rapidly morphed into a form of unilateralism where the central government has reclaimed control over intergovernmental relations. In this context of inequality, it is harder to find evidence of transparency and accountability, unless what is meant by accountability is being answerable not to citizens but to the central government.

Health: A Dynamic Sector in Spite of It All

Beyond the Social Union Framework Agreement, which "could turn out to be a major innovation in the workings of the federation, heralding a new era of collaboration (and) mutual respect among levels of government […] or could be ignored by its signatories and relegated to a footnote in the country's history" (Lazar 2000b, 100), the health sector remains of utmost importance in the lives of all Canadians.

Reading through the agendas for meetings of health ministers or deputy ministers over a period of four years, one notes that most of the (numerous) items deal with current issues of concern to the public or specific groups. From tainted blood and hepatitis C to health human resources (physicians, nurses, etc.), from anti-smoking initiatives to primary health care, from homecare to medical equipment, from organ donations to pharmaceuticals management, from reproductive technologies to information on health and communications technologies, from children's health to aboriginal health, and from performance indicators to dispute resolution, not to mention reports submitted by various task forces and meetings with representatives of physician or nursing organizations, it's all grist for the mill, making for a busy one- or two-day meeting of ministers or deputy ministers, along with senior officials—and over more than one occasion. The Canadian Intergovernmental Conference Secretariat provides extensive logistical support for all these conferences. Health Canada, for its part, sees itself as a "facilitator" and/or a "coordinator" on health issues with a Canada-wide dimension (according to an unofficial document submitted in August 2000 to the Senate committee chaired by Senator Kirby).

In June 1992, the federal, provincial and territorial deputy ministers of health unanimously decided to adopt a new advisory committee structure to replace the 50-odd committees and sub-committees of various types that existed in 1990. This new structure is reduced to four advisory committees: one on public health, another on health human resources, a third on health services and a fourth on health information, which subsequently became the Canadian Institute for Health Information. A few others have been added since, most as a result of SUFA (e.g. on health infrastructures (electronic means, privacy protection …) and one on performance indicators

and accountability). For each of these broad sectors, of course, there are various working groups, which can be official or simply *ad hoc* (from 100 to 150 groups, for example the one on mental health indicators). These committees report back to the Conference of Deputy Ministers of Health. The plan is to fund them on a federal-provincial basis, with the provinces assuming a greater share of the funding (80-20), which can cause problems if a large province such as Quebec refuses to take part.

All of these working groups will be generating and sharing information, analysing in greater depth specific issues, seeking the best possible solutions and suggesting alternatives. No province, I was told during interviews, would have enough resources to develop expertise in all these sectors. I was also told that a broader agreement can be reached on matters of a more technical or clinical nature, where the *evidence* plays a larger role, by contrast with issues of a more political nature. An example is the campaign against tobacco use. It is easier to agree on the solutions for this health problem than on health funding, which is a political problem with fiscal implications.

In the area of health, however, consensus are often reached both at the deputy minister level and at the ministerial level. For example, ministers can reach an agreement on the broad policy directions to take, but must also take into account the public's expectations. This may lead to tensions between the consensus achieved at the lower (administrative) level and at the higher (political) level, where jurisdictional issues, government priorities, resource availability, and the expectations of the electorate and of given groups in society must all be taken into account.

In this dynamic sector, ministers usually meet once a year, deputy ministers usually twice and committees many times per year. The committees are required to report back to deputy ministers at least twice a year. In fact, in 1999 alone deputy ministers held 20 meetings, some by teleconference; they met eighteen times in 2000, and thirteen times in 2001.

All in all, the rules and *modus operandi* of the structures put in place allow for dialogue on various issues, solutions and ways of doing things; this, in turn, makes it possible to reach consensus. Often, various parties offer the same diagnosis for a problem and share the same solutions, for example a holistic approach to primary care reform. It then becomes a matter of finding the required flexibility to implement these solutions. In other words, service delivery will take different forms in different provinces. The problem—if there is one—will surface at the political level, where consensus are made public, since that is when government authorities must factor in the political consequences of their actions. Thus, Quebec does not always want to be officially associated with a consensus, because it seeks to protect its jurisdictional autonomy. In this regard, we should recall the general preamble to the news release on health issued at the end of the first ministers meeting in Ottawa in September 2000:

> Nothing in this document shall be construed to derogate from the respective governments' jurisdictions. The Vision, Principles, Action Plan for Health System Renewal, Clear Accountability, and Working Together (i.e. the five key points in the news release) shall be interpreted in full respect of each government's jurisdiction. (http://www.scics.gc.ca/cinfo00/800038004_e.html).

This brings us to the crux of the problem facing intergovernmental relations: How can Ottawa, using its spending power, respect areas of provincial jurisdiction? In the final analysis, will it simply "facilitate" consensus or simply "coordinate" provincial undertakings, or will it be a major player in the health sector? The ambiguity persists. It is likely underlying the current Quebec-Ontario-Alberta axis that seems to be taking shape in the health area. The Social Union Framework Agreement sought to dispel this ambiguity by officially recognizing the federal government's spending power, but Quebec refused to go along out of a concern for jurisdictional encroachment.

An Assessment of Interstate Federalism

We should begin by establishing what the Canadian public thinks of intergovernmental cooperation. In a 2001 survey commissioned by the Centre for Research and Information on Canada (CRIC), two things stood out in terms of the approach needed to make the country work better. First, in each province, increased cooperation between Ottawa and the provincial government was seen as the best way to make the federation work better. However, it should be noted that support for cooperation was weaker in Quebec (62%) and higher in Western Canada (71%), the other regions falling somewhere in the middle (CRIC 2002, 22-24). In previous years (1998-2000), the picture was similar: more than six Quebeckers in ten (63%) considered intergovernmental cooperation a high priority, while more than seven out of ten Canadians outside Quebec (73%) shared that view, based on data obtained from previous CRIC surveys.

Second, while intergovernmental cooperation emerged as the favoured option to make the federation work better, it does not preclude Ottawa from transferring additional powers to the provincial governments. Here again, Quebeckers stand apart from residents of other provinces: in 2001, 42% saw this option as a high priority, while Canadians outside Quebec gave it much lower support (from 18% in Ontario to 30% in the West). In other words, if intergovernmental cooperation appears to be a preferred option for making the Canadian federation work better, it is not a panacea that would obviate the need to make other changes, such as the transfer of powers.

The Effects on Federalism and Change

Beyond formal amendments to the Constitution and beyond the interpretations made by the courts to address the shortcomings of intrastate federalism, intergovernmental cooperation mechanisms have undoubtedly allowed for greater flexibility and adjustments in the workings of the Canadian federation.

We should begin by clarifying a key point. People often tend to contrast intergovernmental cooperation with a distribution of powers based on "watertight compartments", each order of government being allocated exclusive powers, as is the case in Canada, but also in Switzerland and Belgium (Watts 1999, 37). Such a vision rests on the idea that, if each order of government enjoys exclusive powers, it can act independently in its areas of jurisdiction without the need to cooperate with other governments.

This classic vision of dualistic federalism, to use the term coined by K.C. Wheare (1963), has pretty much fallen out of favour today, replaced by so-called cooperative or interdependent federalism. To some, this suggests that the Canadian federation cannot avoid the "mutual interdependence" of the modern world, and that the "mutual independence" or watertight compartments of the past have become increasingly dysfunctional in a world of growing interconnectedness (Lazar 1998, 27). This notion of inevitable interdependence has served to justify the federal spending power and Ottawa's many encroachments into areas of provincial jurisdiction. What some provinces refuse to do, Quebec included, is link interdependence and encroachment by the federal government (*via* its spending power), whereas the two can be dissociated, as evidenced by the numerous cooperation agreements struck among the provinces.

In other words, intergovernmental cooperation is justified by the necessary "mutual interdependence" in the contemporary world, but it does not justify the use of the federal spending power in areas of provincial jurisdiction. This is the source of many conflicts in today's Canadian federation.

This clarification made, even though the Constitution sets out watertight jurisdictions, it goes without saying that the lines separating the various jurisdictional areas are not always clear. For example, the employment insurance rules established by the federal government impact on and can even conflict with provinces' social welfare policies. While each order of government operates in its areas of jurisdiction, there is room for intergovernmental cooperation. Similarly, conflicts may arise between the regulation of trade and commerce, an area of federal jurisdiction, and the regulation of labour relations, which falls under provinces' authority. Hence the need for intergovernmental cooperation. When all is said and done, the compartments are not always as "watertight" as one might claim, and even if they were, mutual interdependence still requires governments to cooperate with one another—although this does not justify Ottawa's intrusion in areas of provincial jurisdiction.

In such instances, intergovernmental cooperation mechanisms can hamper change, in that they seem to serve to justify actions by the federal government that one or more provinces would not accept. If they are used to legitimize encroachments by Ottawa or to allow it to impose conditions, they can indeed become a major impediment to change, since they would be seen as a tool for subordinating provinces to the federal government. Any form of subordination, whatever the mechanism used, is rightly perceived as contrary to the very foundations of federalism.

This point was stressed by Premier Lucien Bouchard in August 1996 when he explained Quebec's refusal to go along with the provinces on the social union. In his words, the Government of Quebec cannot (quoted in Noël 2000a, 35) [translation] "become involved in intergovernmental decision-making processes that would subject it to standards to which Quebec would not have consented, in areas coming under its jurisdiction".

In addition, and as we have seen earlier, the agreement on labour training—or, to be more precise, on the labour market—led to the recognition of asymmetry, with five provinces fully assuming this power while others opted instead for a form of co-management with Ottawa. This is by no means an impediment to intergovernmental cooperation. Thus, during fiscal year 2000-2001, Quebec took part in about ten conferences on the labour market, at both the federal-provincial and the provincial-territorial levels, involving senior officials, deputy ministers or ministers. The asymmetry of these agreements does not stand in the way of intergovernmental cooperation; on the contrary, it can even encourage the sharing of information on various aspects. The same can apply to asymmetry in standards. In fact, several analysts (Burelle 1995; McRoberts 1997; Dufour 2002) argue that asymmetry can be a viable option for the Canadian federation, especially to satisfy Quebec's demands.

It was precisely this point that proved to be SUFA's major stumbling block in the case of Quebec: the federal government refused to recognize the right to opt out with financial compensation, thereby precluding the possibility of giving future consideration to genuine asymmetrical formulas in the social sector. One author who analysed SUFA suggests, however, that Quebec should "take advantage of Western Canada's current focus on provincial autonomy as an opportunity to promote asymmetrical federalism as a potential solution to both the Quebec problem and Western alienation" (Dufour 2002, 20).

I fear, however, that the federal government is seeking to counter through various means any form of situational or *ad hoc* alliances that Quebec might form with one or more provinces. It is almost as if Ottawa feared that recognizing asymmetry in the social area (and particularly in the health sector) would lead to changes in the major principles underlying the *Canada Health Act* and to the establishment of social programs differing too much from one province to the next, which might prove an impediment to mobility. What's more, Quebec has developed an often unique expertise over the past decade in social policy reforms, and its non-participation in SUFA deprives other provinces of this expertise, as it deprives Quebec of the others' experiences (Vaillancourt 2002). The latter observation illustrates clearly that asymmetry in programs, more than uniformity, should more readily elicit cooperation among the provinces, because they likely feel a lesser need to cooperate when they are all doing the same thing.

Some see the social union going down an entirely different path: it encourages uniformity by discouraging provincial innovation independently from Ottawa and the other provinces. "Throughout the document," argues John Richards, "lurks the danger of *common thinking*— reliance on a single policy response to any given problem" (2002, 6). Uniformity can be an effective tool for strengthening national unity, but it leaves no room for diversity. In reality, social union amounts to unity in principle but diversity in practice. Here again, an excessive emphasis on unity of principles can inhibit change, even if there is recognition of possible diversity in concrete application. Could there be recognition of asymmetry even in the definition of standards?

When assessing SUFA's winners and losers, Harvey Lazar argues that the provinces lost by straying from some of the positions they defended as part of the Saskatoon consensus, including their stance on the opting-out clause. But they gained in that Ottawa accepted decision-making rules which give the provinces a formal—albeit modest, as Lazar points out—role in the exercise of the spending power, something which they had lacked previously (Lazar 2000b, 115). In this regard, Quebec appears to be the biggest loser, since the ability to opt out with full compensation, which was part of the Saskatoon consensus, is nowhere to be found in SUFA. For Quebec, this has always been a core demand. Ottawa, for its part, seems to have come out the big winner, since it met most of its objectives, including official recognition of its spending power, increased mobility within Canada, greater transparency and accountability on the part of provinces, and only modest constraints on its spending power. In return, it pledged to invest more money in the social sector—which it would have done anyway given its budget surpluses—and to set up a dispute resolution mechanism, which still has to materialize three years later. By launching initiatives to manage the Millennium Scholarships, the purchase of medical equipment, or the one—since abandoned—aimed at supporting infrastructure investments, Ottawa has certainly not made itself overly transparent, far less accountable.

Turning our attention to health and leaving aside the Social Union Framework Agreement which oversees this sector, we can see that, from the myriad studies by committees and working groups, agreement can emerge more easily on technical and scientific issues. Moving up to the deputy ministers and ministers, negotiations have often led, even at this more politicized level, to agreements on a host of subjects. As evidence, we need only read the news releases issued at the conclusion of these meetings. For example, the first ministers' meeting held in Ottawa in September 2000 ended on a number of commitments on health promotion, primary care, homecare and community care, pharmaceuticals management, development of health information technologies, investment in equipment and health infrastructure, and health system performance reporting. The news release issued following the Provincial-Territorial Premiers' Meeting in Vancouver in January 2002 also announced numerous points of agreement among the participants and, most important, the creation of a Premiers' Council on Canadian Health Awareness aimed at improving Canadians' access to information and "enhancing public awareness of the challenges of and solutions for the future of health care."

In all likelihood, the most important issues are not linked to the technical or scientific aspects of this sector. Rather, they come from two other sources. The first is well known and involves health funding. To solve this problem, increased funding is contemplated, but we must bear in mind that health takes up the largest chunk of provincial budgets. This pressure on provincial budgets could be alleviated, however, by larger transfers from the federal government. Another source of problems is the way Ottawa approaches intergovernmental relations. The notion of an *equal* partnership, evoked by Lazar (1998, 2000a) in his definition of collaborative federalism, could smooth out a number of difficulties. But it all comes down to an equal partnership. Many decisions announced in federal budgets do not reflect this partnership. Similarly, the current disagreement on dispute resolution mechanisms clearly shows that it is still difficult to act as equal partners. Too often, unilateralism seems to win out over a true partnership of equals.

Federalism, as has already been pointed out, is based on the dual notion of unity in the entire federation and a recognition of the diversity characterizing the federated entities. Intergovernmental cooperation mechanisms can be expected to reflect this duality. On the one hand, the introduction of mechanisms (including, for example, an Internal Trade Secretariat) and the results of negotiations reflecting the *cooperative* aspect of federalism in which the central government and the provinces, or the provinces amongst themselves, can reach agreements, even if only after numerous compromises and even if, occasionally, that agreement is based on the lowest common denominator. On the other hand, in view of the prevailing diversity, the provinces can be expected to try and preserve their distinctiveness, which translates into different policies reflecting the needs and preferences of their citizens. In this regard, federalism appears to be more *competitive* in essence, which is also reflected in federal-provincial or interprovincial negotiations.

The ITA is a good example of this duality. The cooperative aspect was reflected in an agreement, arrived at through painstaking negotiations and signed by all the parties, and in the fact that to date, the parties have abided by the decisions of dispute panels (in 1999 and in 2000; a third case—dealing with margarine colouring—is underway involving Quebec). The competitive aspect refers to the many legitimate objectives defended by one or the other party to the negotiations and by the many exemptions found in the Agreement. In other words, if the goal is closer economic integration and an unfettered internal market (cooperation), then the need to ensure economic development that also responds to a wide diversity of regional imperatives (competition) cannot be ignored.

Since federal-provincial relations are often marred by disputes over jurisdictions that a party holds or would like to obtain and over one party's willingness to respect the other's jurisdiction, it goes without saying that negotiations between provinces and the central government are usually based on competition between them and usually focussed on the potential effects of an agreement on the distribution of powers. Thus, each order of government likes to emphasize that a given agreement does not affect the distribution of powers set out in the Constitution. This is the case for the ITA, whose article 300 states the following:

> Nothing in this Agreement alters the legislative or other authority of Parliament or of the provincial legislatures or of the Government of Canada or of the provincial governments or the rights of any of them with respect to the exercise of their legislative or other authorities under the Constitution of Canada.
> http://www.intrasec.mb.ca/index_he.htm.

Similarly, at the beginning of the news release, emphasis is placed on respecting the areas of jurisdiction assigned to each order of government: the aim is to underscore a problem or a potential problem. If Ottawa wants to impose standards or guidelines (even under its spending power) in areas of jurisdiction belonging to the provinces, a number of provinces are going to rebel, Quebec chief among them. Gagnon and Erk cite the notion of "federal trust" in an attempt to resolve this issue. According to them, this notion assumes a lack of clear consensus on issues, but requires a sense of *trust* among partners in the federation, so that they can work together in good faith (Gagnon and Erk 2002, 324-326).

This is also echoed by Harvey Lazar, who argues that the absence of a clear mission statement or overarching vision for the future of Canadian fiscal federalism makes it harder for the different orders of government to predict how their partners will behave and thus undermines the trust necessary to ensure effective cooperation between these governments (Lazar 2000a, 5, 22).

For partners to be able to reach agreements, they obviously must be able to trust each other and feel that everyone can work together in good faith. This "good faith", especially for Quebec, has been severely tested in the past. The coalition of eight provinces opposed to patriation in 1981 eventually fell apart, the pact made by the ten provinces on the contents of Meech disintegrated, the Saskatoon consensus reached by the ten provinces came unglued, leaving Quebec out in the cold—inevitably, all these elements undermine trust and cast doubt on the parties' "good faith".

Another factor which impacts on change is the "joint decision trap". According to this notion, imported from Europe, there could be high costs associated with a collaboration model that attaches a great value to consensus. This can lead to policies which represent "the smallest common denominator" (Simeon 2001, 60). In the context of the Canadian federation, this is clearly a danger which can lead to inaction (Lazar 1998, 31). But it should be pointed out that while there have been some obvious failures with intergovernmental cooperation (Meech, Charlottetown), there have also been agreements, like the ITA and the labour market agreement. The most fundamental danger, in our view, lies not so much in the search for consensus as in the signing an agreement that does not unite all the provinces, particularly when the same province is the one being excluded. The resultant political schism is probably more harmful than signing agreements based on the smallest common denominator, since this type of agreement can always be enhanced after the fact. As pointed out by Bakvis and Skogstad, the phenomenon whereby nine provinces reach a consensus among themselves and with Ottawa, isolating Quebec or leaving it to negotiate a separate agreement with Ottawa, has been called "9-1-1 federalism" (2002, 12): this is indeed emergency federalism, which cannot serve as a day-to-day model of how the Canadian federation is supposed to work.

One more factor could weaken federal-provincial relations. The recent attempt to judicialize relations between Quebec and Ottawa can only further reduce the chances for accommodation. It is not so much the Supreme Court's Opinion in the Quebec Secession Reference as Bill C-20, the so-called referendum clarity act (and Quebec's reply, Bill 99). The Opinion is fairly moderate, leaving grey areas that the Court did not wish to clarify—precisely to allow for discussion in the political arena (on a clear question, a clear reply, decision-making rules, the focus of the negotiations). The more people try to codify the grey areas, the less room there is for political debate, negotiations and an eventual agreement. The legal route always points to an impasse or, at least, the perception by one of the parties involved that an impasse has been reached. This, in turn, brings discussions and negotiations to an end.

The Effects on Democracy

In the absence of a true forum for provincial representation in central institutions and as part of a parliamentary system characterized by the concentration of power in the executive branch (Savoie 1999), we have to ask ourselves whether linking intergovernmental relations and democracy does not constitute an oxymoron (Simeon and Cameron 2002, 278-295). Indeed, everything is pointing in this direction.

First, federal-provincial negotiations are conducted in secret, which does not encourage public debate. Yes, the media report on the most important meetings and outline areas of agreement. But the specific agenda for these meetings is rarely divulged. This makes it hard to measure the distance travelled between what was on the agenda and the results achieved as they appear in news releases. Moreover, a lot of meetings, especially administrative ones, take place out of the public gaze. The intent of these closed-door meetings, I was told during interviews, is to avoid creating overly high expectations among the general population and interest groups, expectations which would not be met in the short term. Sometimes, a number of meetings must be held before a consensus can emerge on a particular subject. In other words, intergovernmental

relations do not really lend themselves to direct democracy, the fear usually being that citizen involvement and the majority rule prevailing in this form of democracy might worsen conflicts between majority and minority, between those on the "inside" and those on the "outside", between Quebec and the rest of Canada.

The representative democracy characterizing Canada is founded on the idea that the people's representatives, and more specifically their governments, must be accountable for their decisions and their management. This democracy must therefore be based on two main operating principles: transparency and accountability. *Transparency* implies that the public will be informed of the subject of intergovernmental meetings, at least those held at the political level, and of the results obtained. *Accountability* implies that the public will be informed of the responsibility link of each order of government and that the decisions arrived at, if not the negotiations, will be submitted to public discussion.

The democratic deficit alluded to in Europe's case could be applied to Canada's intergovernmental relations. In both cases, negotiations are conducted behind closed doors and dominated by the executive branch, comprising members of the government and senior officials, including those of central agencies. It would likely be counterproductive to conduct negotiations in the public eye. Governments, as I was told during interviews, want to be able to discuss the most difficult issues and most controversial subjects in complete confidence amongst themselves. They fear that being too open to the public will lead to paralysis rather than consensus. That is why they prefer discussing publicly these topics only when the time is right. On the other hand, progress reports could be issued in the event that negotiations drag on.

Above all, it is important to establish a *clear* responsibility link. It is difficult to maintain accountability when responsibilities are shared and governments spend funds that they are not responsible for raising (Simeon 2001, 60). To reiterate what we said at the outset, interdependence and cooperation among governments do not imply that each party's roles and responsibilities are intermingled or muddled. On the contrary, cooperation must be based instead on a clear division of responsibilities. That is required to avoid that governments constantly find themselves on the defensive and pitted as adversaries. A clear distribution of responsibilities, on the other hand, ensures that the parties will interact in complementary fashion.

In this regard, the use of the spending power by federal authorities serves only to further muddle the responsibility link of each order of government. A transfer of tax points or of any other adequate source of funding, coupled with greater respect for each government's jurisdictional areas and a clarification of its roles, can only result in increased transparency about its responsibilities and, hence, improved accountability to the electorate.

This necessary clarification of roles should therefore lead to increased accountability. As John Richards points out, a single order of government should generally be responsible for a particular field of social policy, and it should raise the necessary revenues through its own taxation sources. This would allow its constituents, better informed about their government's responsibility for social programs, to punish or reward it at the polls (Richards 1998, 72 and 82-92). In the meantime, the responsible governments would have to be accountable to elected bodies and parliamentary commissions, even if it means finding a better way (e.g. the

interpellation procedure of which Opposition MNAs can use in Quebec) to involve legislators in the debates on intergovernmental issues.

More and more, the Canada of today is characterized by less deference toward the elites and calls for greater citizen participation, as is also the case in other democracies (Nevitte 1996). In addition to responsible democracy, there is deliberative democracy. Citizens and groups must be given the opportunity to deliberate further, to become involved in the discussions surrounding intergovernmental relations and in parliamentary commissions. They must also be informed about the items on the agenda, the subjects under discussion, the distribution of responsibilities and the results obtained. More specifically, the administrative committees and working groups should find appropriate means of incorporating into their work the results of consultations with concerned groups and should outline this in their reports to their political masters.

Philips uses the term "instrumental federalism" to describe the new approach that seems to emerge in intergovernmental relations. For her, this type of federalism has three main elements: it puts the emphasis first on problem-solving, then on engaging citizens in the policy process, and last on using outcome-based measurement and public reporting to ensure greater accountability of governments (Philips 2001). Citizen involvement in the political process is in fact provided for under SUFA, as is greater government transparency and accountability.

However, examining SUFA's record on this over the first three years, Philips concludes that it has been "miserable", seeing as how the provinces have no incentive to tie their own citizen engagement activities to SUFA (they interact with citizens and have developed partnerships with organizations that deliver services and the citizens who use them). Rather, it is the federal government which has an interest in encouraging citizen engagement in view of the need to strengthen its ties with the population, without going through the provinces.

She also describes the difficulty of involving volunteer groups or associations, to wit: there is no true peak representing an entire sector, and there is poor vertical integration of local, provincial and national associations (Philips 2001, 14). Consequently, volunteer associations have often had a hand in their own exclusion from the political process.

In a nutshell, the intergovernmental relations process should constitute a trilateral (rather than a bilateral) relationship, involving dialogue among Ottawa, the provincial governments and the public (Cameron 1994, 443). This in no way means that all the discussions must take place in public.

And What of Interprovincialism?

Several provinces are amenable to cooperating amongst themselves on a number of subjects. They normally do so on an equal footing, either to develop increased cooperation or to resolve thorny issues. For example, Quebec and Ontario signed the Agreement on Public Procurement and Construction Labour Mobility in December 1993 and another on the Opening of Public Procurement for Quebec and Ontario, signed by both premiers in May 1996. This goes to show that the ITA did not resolve all of the problems that could arise between the two provinces.

Quebec also signed agreements with Manitoba, Saskatchewan and Ontario in the field of education, as well as agreements calling for cooperation and exchanges in education and culture with Ontario, New Brunswick and Prince Edward Island. Some of these agreements come with an additional protocol touching on other sectors, like tourism, health and social services, the environment, and science. In short, the provinces have reason to cooperate in several areas and, if need be, formalize this cooperation by signing memoranda of understanding.

This interprovincial cooperation also takes the form of numerous meetings bringing together all the provinces or the provinces and the territories represented by the sectoral ministers and deputy ministers. The annual conference of provincial (and now territorial) premiers is probably the best known and most widely covered by the media. Honoré Mercier, Premier of Quebec, convened the very first interprovincial conference in 1887 (Veilleux 1971, 31). There were many items on the agenda: adjustments in the subsidies granted to the provinces, limitation of the right of disallowance, status of lieutenant-governors, Senate reform, etc.

This formula then fell out of favour, only to be reintroduced by Jean Lesage, also the Premier of Quebec. The first annual conference of provincial premiers, in its current form, was held in Quebec City in December 1960. Since then, it has taken place every year in a different province, according to the premier whose turn it is to chair the meeting. During the first conference, the premiers agreed that any decisions taken over the course of their deliberations would not be binding, and that their talks would provide an opportunity to exchange viewpoints, would be informal and would be held behind closed doors (Quebec SAIC 2002).

One of the main differences between interprovincialism and federal-provincial relations lies in the fact that the former arouses less mistrust in the beginning. Agreements are concluded between partners who see themselves more as collaborators than as opponents and who willingly agree to work together in a horizontal relationship free of any form of subordination. This does not mean, however, that there are no rivalries between provinces, based on economic wealth, demographic weight or policy approaches. But a fundamental concept has governed interprovincial relations, especially since the 1980s: the *equality* of the provinces (Cairns 1991).

Federal-provincial relations arouse more mistrust, especially on the part of certain provinces such as Quebec (and this has not been confined strictly to PQ-led governments), Alberta and Ontario. Yes, federal-provincial agreements are concluded among partners, but partners who often see one another as rivals and who therefore perceive their relationship to be as much an adversarial as a complementary one. The feeling which seems to colour the discussions is not one of equality among the parties, but of *vertical* links, ultimately translating into a form of

subordination to which several provinces are resistant. This does not mean that everything must be analysed from this angle, but simply that it is harder to conclude agreements between the provinces and Ottawa when, on the one hand, a vertical dimension imposes itself on the discussions and, on the other, the stakes are high and a lot of money is involved.

As for interprovincial relations, while the stakes can be high, as in the case of conflicts between Quebec and Ontario on labour mobility in the construction industry, disputes can be eased if the parties grant each other mutual concessions on an equal basis. Also, provinces can live side by side, and even as squabbling brothers, but it is harder to accept living under the ever-watchful and reproachful eye of an older brother. Whether this accurately reflects the reality of the situation matters little, in that the perception of this reality counts as much as reality itself.

Conclusion

In a society, legitimacy is based on the belief that existing political institutions are the most appropriate for that society, and that they fulfil the role expected of them. Seen in this light, the Canadian Senate has lost all legitimacy in terms of its representative role for federated entities. At this point, the provinces feel that any reform of the Senate has no chance of going through, as is the case with any constitutional reform. Accordingly, provincial governments prefer to represent themselves and have their voices heard directly at federal-provincial conferences rather than through the Senate, even a renewed Senate.

The same is true of the party system. The current fragmentation of Canada's party system reflects a deep dissatisfaction with traditional parties. But this dissatisfaction can be mitigated by the extent of the support enjoyed by the governing party. If it has Canada-wide support, there is less conflict; if it fails to win this support, however, the situation is exacerbated as regions are excluded from power and must turn to their provincial governments to defend their interests (Simeon 2001, 59-60).

These situations happen repeatedly in Canada, which points to the shortcomings, if not failure, of the institutions in place as tools of intergovernmental cooperation. Consequently, solutions must be sought elsewhere.

In May 1964, Quebec Premier Jean Lesage outlined in Moncton his vision of cooperative federalism. In his view, it must respect provinces' autonomy and responsibilities. [translation]

> Cooperative federalism is not just about obtaining the provinces' support for centralizing policies. As far as Quebec is concerned, it marks instead the dawn of a new era in federal-provincial relations and the dynamic adaptation of Canadian federalism. Federalism should manifest itself in three ways: 1) regular cooperation when decisions are made about new policies; 2) ongoing consultation in implementing various policies; and 3) handing over to the provinces the financial resources they need to fulfil their increased responsibilities.
> (Québec SAIC 2001, 29)

Nearly 40 years later, these remarks still apply. Regular cooperation, ongoing consultation and the necessary financial resources remain on the province's political agenda. What Lesage was contemplating therefore was truly cooperative and collaborative federalism.

Every time Ottawa acts on its own by making direct payments to individuals or organizations in areas of provincial jurisdiction, as in the case of the Millennium Scholarships, several provinces, including Quebec, denounce the unilateral action by the federal government, insisting that it should either refrain from intervening in this sector, or should do so in consultation and cooperation with the provinces. And every time Ottawa forces the provinces to act in a given sector by using its spending power, many provinces call on the federal government to respect their jurisdiction and adhere to the spirit of collaborative federalism.

Collaborative federalism implies that the federal, provincial and territorial governments act collectively. Seen in this light, "national" policies that will result from this collective action can easily be conceived from the standpoint of diversity as opposed to uniformity. While it is possible to define a set of common, general objectives, the paths taken to meet these objectives can diverge considerably. Ultimately, one could say that collaboration appears less necessary when there is uniformity and more necessary when there is diversity. Moreover, since the provinces agree with the five broad principles underlying the *Canada Health Act*, one could envisage provincial laws that would include these principles without the need for a federal statute. Such a "revolution" would clearly indicate that the provinces have primary responsibility for dispensing health care.

Today's collaborative federalism stresses *equality* between Ottawa and the provinces (Simeon 2001, 56). This is crucial for cooperation to exist. True collaboration means that the players involved act as genuine partners on a level playing field. If there are occasions when the parties see themselves as adversaries, this simply means that one party must convince the other, and that both have to talk some more to reach a consensus. In either case, collaboration cannot succeed within a framework of hierarchical or subordinating federalism. Subordination implies a form of submission. If, in spite of everything, there is collaboration, it is forced collaboration. A truly collaborative federalism can only succeed when there is equality between partners.

This notion dominates interprovincial or provincial-territorial relations. It is reflected, for example, in annual conferences of provincial premiers chaired by one of them on a rotating basis—an indication that they are on an equal footing. We need to achieve the same at federal-provincial conferences: nothing prevents that they be convened and chaired by a premier (or sectoral minister, as the case may be). This "mini-revolution" would much better reflect the very spirit of collaborative federalism, namely equality in diversity.

In short, more than the interstate mechanisms in place, which largely seem adequate, it is a *mindset* that must be changed. Thus, we need to work on people's attitudes and on the individuals in place, which is a much harder task than inventing new mechanisms.

References

Bakvis, Herman. 1991. *Regional Ministers: Power and Influence in the Canadian Cabinet*. Toronto: University of Toronto Press.

Bakvis, Herman, and Grace Skogstad. 2002. Canadian Federalism: Performance, Effectiveness, and Legitimacy, in *Canadian Federalism: Performance, Effectiveness, and Legitimacy,* Herman Bakvis and Grace Skogstad, (eds.). Don Mills (Ont.): Oxford University Press. p. 3-23.

Bégin, Monique. 2002. *Revisiting the Canada Health Act (1984): What Are the Impediments to Change?* Montreal, Institute for Research on Public Policy, 30th Anniversary Conference (Ottawa), February 20 (revised 02-02-24).

Binette, André. 2000. Principes, in *L'union sociale canadienne sans le Québec : Huit études sur l'entente-cadre*, Alain-G. Gagnon (ed.). Montreal: Éditions Saint-Martin. p. 49-89.

Burelle, André. 1995. *Le mal canadien. Essai de diagnostic et esquisse d'une thérapie*. Montreal: Fides.

Cameron, David R. 1994. Half-eaten carrot, bent stick: decentralization in an era of fiscal restraint, *Canadian Public Administration* 37(3), 431-444.

Canada, Internal Trade Secretariat. 2001. *Strengthening Canada: Challenges for Internal Trade and Mobility*. Proceedings of the National Conference on Internal Trade (Toronto).

Cairns, Alan C. 1992. *Charter versus Federalism. The Dilemmas of Constitutional Reform*. Montreal and Kingston (Ont.): McGill-Queen's University Press.

Cairns, Alan. C. 1991. *Disruptions. Constitutional Struggles, from the Charter to Meech Lake*. Edited by Douglas E. Williams. Toronto: McClelland & Stewart.

Cairns, Alan C. 1977. The Governments and Societies of Canadian Federalism, *Canadian Journal of Political Science* 10(4), 695-725.

Carty, R. Kenneth, William Cross and Lisa Young. 2000. *Rebuilding Canadian Party Politics*. Vancouver: UBC Press.

Centre for Research and Information on Canada (CRIC). 2002. *Portraits of Canada 2001*. Ottawa: CRIC Papers.

Clarke, Harold D., *et al*. 1991. *Absent Mandate. Interpreting Change in Canadian Elections*, 2nd edition. Toronto: Gage Educational Publishing Company.

Commission sur le déséquilibre fiscal. 2002. *Rapport. Pour un nouveau partage des moyens financiers au Canada*. Quebec City: Government of Quebec.

Covell, Maureen. 1991. Parties as Institutions of National Governance, in *Representation, Integration, and Political Parties in Canada*, Herman Bakvis (ed.). Montreal: Wilson & Lafleur.

Doern, G. Bruce, and Mark MacDonald. 1999. *Free-Trade Federalism: Negotiating the Canadian Agreement on Internal Trade*. Toronto: University of Toronto Press.

Dufour, Christian. 2002. *Restoring the Federal Principle: The Place of Quebec in the Canadian Social Union*. Montreal: Institute for Research on Public Policy, Policy Matters Series (Vol. 3, No. 1).

Dupré, J. Stefan. 1985. Reflections on the Workability of Executive Federalism, in *Intergovernmental Relations*, Richard Simeon (ed.). Ottawa: Minister of Supply and Services Canada, p. 1-32.

Elazar, Daniel J. 1987. *Exploring Federalism*. Tuscaloosa (Al.): University of Alabama Press.

Elkins, David J. 1991. Parties as National Institutions. A Comparative Study, in *Political Parties in Canada. Representation, Integration and Political Parties in Canada*, Herman Bakvis (ed.), Montreal: Wilson & Lafleur.

Gagnon, Alain-G. 2000. Introduction: L'opposition du Québec à l'union sociale canadienne, in *L'union sociale canadienne sans le Québec : Huit études sur l'entente-cadre*, Alain-G. Gagnon (ed.). Montreal: Éditions Saint-Martin. p. 11-17.

Gagnon, Alain-G., and Can Erk. 2002. Legitimacy, Effectiveness, and Federalism: On the Benefits of Ambiguity, in *Canadian Federalism: Performance, Effectiveness, and Legitimacy*, Herman Bakvis and Grace Skogstad (eds.). Don Mills (Ont.): Oxford University Press. p. 317-330.

Gibbins, Roger. 2001. *Shifting Sands: Exploring the Political Foundations of SUFA*. Montreal: Institute for Research on Public Policy, Policy Matters Series (Vol. 2, No. 3).

King, Preston. 1982. *Federalism and Federation*. Baltimore: Johns Hopkins University Press.

Knopff, Rainer, and F.L. Morton. 1992. *Charter Politics*. Scarborough (Ont.): Nelson Canada.

Lazar, Harvey. 2000a. In Search of a New Mission Statement for Canadian Fiscal Federalism, in *Canada: The State of the Federation 1999/2000. Toward a New Mission Statement for Canadian Fiscal Federalism*, Harvey Lazar (ed.). Montreal and Kingston: McGill-Queen's University Press. p. 3-39.

Lazar, Harvey. 2000b. The Social Union Framework Agreement and the Future of Fiscal Federalism, in *Canada: The State of the Federation 1999/2000. Toward a New Mission Statement for Canadian Fiscal Federalism*, Harvey Lazar (ed.). Montreal and Kingston: McGill-Queen's University Press. p. 99-128.

Lazar, Harvey. 1998. Non-Constitutional Renewal: Toward a New Equilibrium in the Federation, in *Canada: The State of the Federation 1997. Non-Constitutional Renewal*, Harvey Lazar (ed.). Kingston (Ont.): Institute of Intergovernmental Relations. p. 3-35.

MacDonald, Mark R. 2002. The Agreement on Internal Trade: Trade-Offs for Economic Union and Federalism, in *Canadian Federalism: Performance, Effectiveness, and Legitimacy*, Herman Bakvis and Grace Skogstad (eds.). Don Mills (Ont.): Oxford University Press. p. 138-158.

Mandel, Michael. 1989. *The Charter of Rights and the Legalization of Politics in Canada*. Toronto: Wall & Thompson.

McRoberts, Kenneth. 1997. *Misconceiving Canada: The Struggle for National Unity*, Toronto: Oxford University Press.

McRoberts, Kenneth. 1985. Unilateralism, Bilateralism and Multilateralism: Approaches to Canadian Federalism, in *Intergovernmental Relations*, Richard Simeon (ed.), Ottawa: Minister of Supply and Services Canada. p. 71-129.

Monahan, Patrick. 1987. *Politics and the Constitution: The Charter, Federalism and the Supreme Court of Canada*. Agincourt (Ont.): Carswell.

Nevitte, Neil. 1996. *The Decline of Deference*. Peterborough (Ont.): Broadview Press.

Noël, Alain. 2001. *Power and Purpose in Intergovernmental Relations*. Montreal: Institute for Research on Public Policy, Policy Matters Series (Vol. 2, No. 6).

Noël, Alain. 2000a. Étude générale sur l'entente, in *L'union sociale canadienne sans le Québec : Huit études sur l'entente-cadre*, Alain-G. Gagnon (ed.). Montreal: Éditions Saint-Martin. p. 19-48.

Noël, Alain. 2000b. *Without Quebec: Collaborative Federalism with a Footnote?* Montreal: Institute for Research on Public Policy, Policy Matters Series (Vol. 1, No. 2).

Osberg, Lars. 2000. Poverty Trends and the Canadian "Social Union", in *Canada: The State of the Federation 1999/2000. Toward a New Mission Statement for Canadian Fiscal Federalism*, Harvey Lazar (ed.). Montreal and Kingston: McGill-Queen's University Press. p. 213-231.

Pelletier, Réjean. 2000. Constitution et fédéralisme, in *Le parlementarisme canadien,* Manon Tremblay, Réjean Pelletier and Marcel R. Pelletier (eds.). Ste-Foy: Presses de l'Université Laval. p. 47-87.

Pelletier, Réjean. 1999. Responsible Government: Victory or Defeat for Parliament?, in *Taking Stock of 150 Years of Responsible Government in Canada*, Louis Massicotte and F. Leslie Seidle (eds.). Ottawa: Canadian Study of Parliament Group. p. 53-72.

Pelletier, Réjean. 1998. From Jacques Parizeau to Lucien Bouchard: A New Vision? Yes, But…, in *Canada: The State of the Federation 1997. Non-Constitutional Renewal*, Harvey Lazar (ed.). Kingston (Ont.): Institute of Intergovernmental Relations. p. 295-310.

Philips, Susan D. 2001. *SUFA and Citizen Engagement: Fake or Genuine Masterpiece?* Montreal: Institute for Research on Public Policy, Policy Matters Series (Vol. 2, No. 7).

Québec, Secrétariat aux affaires intergouvernementales canadiennes. 2001. *Positions du Québec dans les domaines constitutionnel et intergouvernemental de 1936 à mars 2001*. Quebec City: Government of Quebec.

Richards, John. 2002. *The Paradox of the Social Union Framework Agreement*. Toronto: C.D. Howe Institute Backgrounder (No. 59).

Richards, John. 1998. Reducing the Muddle in the Middle: Three Propositions for Running the Welfare State, in *Canada: The State of the Federation 1997. Non-Constitutional Renewal*, Harvey Lazar (ed.). Kingston (Ont.): Institute of Intergovernmental Relations. p. 71-104.

Robson, William B.P., and Daniel Schwanen. 1999. *The Social Union Agreement: Too Flawed to Last*. Toronto: C.D. Howe Institute Backgrounder.

Royal Commission on the Economic Union and Development Prospects for Canada. 1985. *Report*, Vol. 3. Ottawa: Minister of Supply and Services Canada.

Savoie, Donald J. 1999. *Governing from the Centre: The Concentration of Power in Canadian Politics*. Toronto: University of Toronto Press.

Schwartz, Bryan. 1995. Assessing the Agreement on Internal Trade: The Case for a "More Perfect Union", in *Canada: The State of the Federation 1995*, Douglas M. Brown and Jonathan W. Rose (eds.). Kingston (Ont.): Institute of Intergovernmental Relations. p. 189-217.

Simeon, Richard. 2001. Recent Trends in Federalism and Intergovernmental Relations in Canada: Lessons for the UK?*, in *The Dynamics of Decentralization. Canadian Federalism and British Devolution*, Trevor C. Salmon and Michael Keating (eds.). Montreal and Kingston: McGill-Queen's University Press. p. 47-61.

Simeon, Richard, and David Cameron. 2002. Intergovernmental Relations and Democracy: An Oxymoron If There Ever Was One?, in *Canadian Federalism: Performance, Effectiveness, and Legitimacy*, Herman Bakvis and Grace Skogstad (eds.). Don Mills (Ont.): Oxford University Press. p. 278-295.

Smiley, Donald V. 1980. *Canada in Question: Federalism in the Eighties*, 3rd edition. Toronto: McGraw-Hill Ryerson.

Smiley, Donald V., and Ronald L. Watts. 1986. *Intrastate Federalism in Canada*. Ottawa: Minister of Supply and Services Canada.

Supreme Court of Canada. 1998. *Quebec Secession Reference*. 2 S.C.R. 217.

Tremblay, Guy. 2000. Le pouvoir judiciaire, in *Le parlementarisme canadien*, Manon Tremblay, Réjean Pelletier and Marcel R. Pelletier (eds.). Ste-Foy: Presses de l'Université Laval. p. 339-361.

Vaillancourt, Yves. 2002. *Le modèle québécois de politiques sociales et ses interfaces avec l'union sociale canadienne*. Montreal: Institute for Research on Public Policy, Policy Matters Series (Vol. 3, No. 2).

Veilleux, Gérard. 1971. *Les relations intergouvernementales au Canada 1867-1967. Les mécanismes de coopération*. Montreal: Presses de l'Université du Québec.

Watts, Ronald L. 1999. *Comparing Federal Systems*, 2nd edition. Montreal and Kingston: McGill-Queen's University Press.

Wheare, K.C. 1963. *Federal Government*. 4th edition. London: Oxford University Press.

Web Sites

Canada. Canadian Intergovernmental Conference Secretariat
<http://www.scics.gc.ca/menu_e.html>

Centre for Research and Information on Canada
<http://www.cric.ca/en_html/index.html>

Quebec. Secrétariat aux affaires intergouvernementales canadiennes
<http://www.mce.gouv.qc.ca/v/html/v0368002.html >

Internal Trade Secretariat
<http://www.intrasec.mb.ca/eng/main.htm>

Interviews

Seven people were interviewed, at both the federal and provincial levels. None wished to be formally identified.