

**FEDERAL-PROVINCIAL RELATIONS**

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N.B. Any substantive changes in this publication which have been made since the preceding issue are indicated in **bold print**.

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FEDERAL-PROVINCIAL RELATIONS\*

ISSUE DEFINITION

Federal-provincial relations affect most of the major activities of government in Canada, and are in a state of virtually continuous evolution. Important sources of change are:

- the election of new governments with new political priorities and conceptions of the federal-provincial process;
- the social and political environment, which continuously generates new problems and issues; and
- accumulated experience with ever more complex intergovernmental relationships, which propels both political and institutional adjustment.

This paper reviews major developments on the federal-provincial scene, and relates them to ongoing issues and trends. On this basis, it attempts to anticipate probable directions in federal-provincial relations and in evolving institutions.

BACKGROUND AND ANALYSIS

A. The Evolving System

The existing pattern of federal-provincial relations is the product of several related, and persisting, trends. The scope and scale of government has expanded steadily during this century. Governments have become involved in a range of policy fields never envisioned by the Fathers of Confederation and have, so to speak, occupied the “gap” between matters of national importance and matters of purely local significance expressed in sections 91 and 92 of the *Constitution Act, 1867*. As well, the expanded performance of traditional core activities has

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\* The original version of this Current Issue Review was published in February 1994; the paper has been regularly updated since that time. For a more detailed summary of federal-provincial relations between 1986 and 1993, see Jack Stilborn, *Federal-Provincial Relations (1986-1993)*, CIR 86-2E (archived), Parliamentary Research Branch, Library of Parliament.

revealed that, in practice, few local activities are entirely without larger national consequences and few of what were once seen as purely national matters are entirely unaccompanied by distinctively local significance. The result has been a tendency to replace, in practice, the constitutional division of powers and exclusive jurisdictions envisioned by early federalists with *ad hoc* and continuously negotiated arrangements under which each order of government employs the means at its disposal to attempt to discharge its fundamental responsibilities as it perceives them. Under such arrangements the electorate serves as an ultimate court of appeal, while appeal to the courts for decisions on jurisdictional questions is normally a strategic last resort of governments.

As the complex legislative and administrative arrangements of modern federalism have taken shape, federal-provincial relations have undergone a number of distinguishable phases. The 1950s and 1960s are widely described as the era of cooperative federalism, when steadily expanding resources and a broad federal-provincial consensus about priorities favoured technical cooperation by officials. Low levels of conflict and the rapid expansion of cost-shared programs were characteristic of this era. As the modern apparatus of coordinated activity took shape, however, strains began to appear. Provincial concerns about distorted priorities imposed by federal initiatives, visible particularly in the new assertiveness of Quebec, emerged both because newly achieved policy capabilities at the provincial level enabled the development of distinctive provincial positions and because new governmental roles raised new opportunities for federal-provincial divergence. There thus emerged a second phase of federal-provincial relations – widely termed executive federalism – characterized by:

- the politicization of intergovernmental relationships;
- extensive federal-provincial interpenetration and interdependence;
- provincial assertiveness; and
- growing levels of conflict.

Contributing to these tensions were the financial constraints which emerged during the 1970s, and the centralization of the administration of federal-provincial relations in the hands of process specialists, which tended to displace functional cooperation among officials sharing disciplinary specialties with forms of jurisdictional competition.

## B. The Early Eighties

The return to power of a Liberal government led by Pierre Trudeau in 1980 inaugurated a period during which many of the tensions characteristic of executive federalism erupted in overt conflict. During the early 1980s, the federal government showed an increased willingness to resort to unilateral action in the absence of federal-provincial agreement, notably in the threat to patriate the Constitution and in the introduction of the National Energy Program in 1980. The early 1980s also saw the application of federal financial restraint measures to provincial transfers, notably by an amendment of the *Fiscal Arrangements and Established Programs Financing Act* in 1984 (made without consultation of the provinces) which made federal cash contributions for health and post-secondary education subject to the “6 and 5” restraint program.

During this period, also, federal concerns about the lack of visibility of federal contributions to cost-shared programs fostered a preference for the direct delivery of federal programs rather than the less visible federal funding of provincially administered programs. This shift is illustrated by the umbrella Economic and Regional Development Agreements, emphasizing coordinated planning but parallel service delivery, which replaced the General Development Agreements of the 1970s, and their emphasis on joint regional development programs. An analogous shift occurred concerning federal funds. The *Canada Health Act* of 1984, for example, required that the provinces provide “appropriate recognition” for federal funding of provincial health insurance programs. This Act, furthermore, illustrated a renewal of federal concern about the maintenance of national standards, and a willingness to impose financial sanctions on provinces not meeting standards formulated at the federal level.

As the Trudeau era drew to a close, a fundamental question about federal-provincial relations remained unanswered. Were the high levels of conflict of the early 1980s, and continuing controversy over such issues as the *Canada Health Act*, primarily an inevitable result of structural developments that had occurred during the 1970s and thus, barring fundamental reforms, an indication of the probable future? Was conflict, on the other hand, primarily the result of a temporary conjunction of singular and intractable issues, as well as conflicting political personalities and agendas? The recurring attention devoted by the Trudeau administration to the possibility of major reforms of federal institutions, including the strengthening of regional representation within the federal government by means of an elected Senate, implied one response to this question. A contrasting response was apparent, before and after the 1984 election, on the part of the Progressive Conservatives.

## C. The Mulroney Years

### 1. 1984 - 1988

During the 1984 election campaign, Brian Mulroney and the Progressive Conservatives emphasized the importance of a renewed political commitment to federal-provincial cooperation, the value of skills of negotiation and conciliation, and the implicitly political (rather than institutional) objective of national reconciliation. These themes anticipated the initial focus of the new government.

During its first few months, the Mulroney government made substantial progress towards lessening federal-provincial tensions, notably in the area of energy policy agreements and the signature, with several provinces, of umbrella regional development agreements. As well, responsiveness to calls for federal assistance in the agricultural sector precluded significant conflict. Finally, the conciliation skills of Prime Minister Mulroney were widely credited with the achievement, at Meech Lake on 30 April 1987, of unanimous federal-provincial agreement on a package of constitutional amendments responding to long-standing demands from Quebec.

Newly harmonious relations did not, however, eliminate all areas of conflict. The 23 May 1985 budget, which proposed reductions in the rate of increase of certain federal transfer payments, began a cycle in which successive federal restraint initiatives prompted more and more strident provincial protest. Other issues, such as provincial participation in free trade negotiations, a cash crisis in the oil industry in 1986, and individual regional development decisions, also provoked conflict.

### 2. 1988 - 1993

The second Mulroney government followed the broad style of federal-provincial relations established by the first; however, a combination of systemic factors prevented a full return of the harmony achieved in the mid-1980s. Among these factors were lower levels of political support at the federal level (favouring provincial assertiveness), resentments arising from individual conflicts, and the diverging priorities of the federal government and some newly elected provincial governments.

Constitutional affairs, often a source of federal-provincial conflict, moved steadily to the forefront during this period. In 1990, governments in Newfoundland and Manitoba elected after the Meech Lake Accord denied the accord the support required for ratification, despite a massive

effort spearheaded by the federal government. Resentments arising from this process still echoed in 1992, although they did not prevent federal-provincial agreement on the wide-ranging “Canada round” package of amendments that was subsequently rejected in a national referendum.

Reductions in federal transfers prompted heightened provincial opposition during this period, including court challenges and the accusation from at least one premier that the federal government was guilty of “fiscal terrorism.” As well, there were major disagreements with some provinces over the merits of stimulative spending versus those of deficit reduction and tax restraint, and these disagreements were reflected in conflicting policies.

In other sectors, the second Mulroney government generally maintained the pattern established by the first. Agreements such as the Canada-Quebec Accord on Immigration, signed on 5 February 1991, exemplify the accommodative style that broadly shaped federal-provincial relations between 1984 and 1993.

### 3. Observations

The experience of the Mulroney governments sheds light on the respective merits of institutional reform and reconciliatory politics, an issue that had arisen in the early 1980s. There can be little doubt that the more conciliatory approach to federal-provincial relations practised after 1984 paid important dividends, most vividly in the speedy resolution of a range of issues that had been virtually at a stalemate in some policy sectors.

The federal government’s new spirit of accommodation did not, however, diminish the outlying provinces’ conviction that structural reforms were required to remove centrist biases within Canada’s federal system. On the contrary, these convictions rose to new heights during this period, as was seen among proponents of Senate reform during the “Canada round” discussions of 1992. Nor did the approach to federalism of the Mulroney governments apparently lessen frustrations in Quebec. Any positive impacts in that province’s approach appear to have been outweighed by unresolved constitutional dissatisfactions and economic concerns.

It is unclear whether the experience of the Mulroney governments illustrates the limits of accommodative federalism or, rather, the limited capacity of governments to practise this approach in a fiscal restraint environment. Either way, the pressures for structural reform that arose in the early 1980s continued to be salient in the 1990s, and opinions continued to differ widely on whether existing institutional arrangements could respond successfully to current pressures.



#### D. Developments and Prospects

Two fundamental issues not resolved during the 1980s have continued to affect decision-making across the range of federal-provincial relations. The first issue is national unity, which centres on long-standing dissatisfactions within Quebec, but has come to involve additional concerns, notably those of Aboriginal peoples and the West. Although this issue has propelled cycles of constitutional politics since before the patriation of the Constitution in 1982, it has also had consequences for a broad range of sub-constitutional legislative and administrative initiatives. These initiatives may, in some cases, reduce or defer pressures for constitutional change. They may also be seen as potential contributors to constitutional change, if by habituating Canadians to new principles or practices they contribute to the levels of consensus necessary to achieve constitutional amendments.

The second recurring issue in Canadian federalism has to do with money – in particular the consequences for federal-provincial relations of a series of reductions to federal transfers to the provinces. The original purpose of major health, education and welfare transfers was to ensure that nation-wide programs reflecting consistent standards could be established in these areas of provincial jurisdiction, despite the incapacity of many provinces to fund such programs. The reduction of the transfers has: increased pressures from the provinces for reductions in federal influence within these areas; provoked recurring cycles of federal-provincial conflict over which level of government is responsible for the cutbacks in programs; and fostered proposals for reform, ranging from “disentanglement” (whereby each level would raise the revenues it needed, thus minimizing transfers) to various co-management mechanisms. Furthermore, the drop in federal transfers to all provinces has highlighted the impact of redistributive transfers (flows of revenue from richer provinces through the federal government to poorer provinces), perhaps contributing to growing criticism of such transfers by “source” provinces.

Developments relating to national unity and fiscal federalism are dealt with separately below, although in practice there is a continuous interplay between the two. Attention is also given to the broader fabric of cooperative relations, outside the two perennial problem areas.

## 1. National Unity Politics

The 1993 election resulted in a national government committed to economic priorities rather than to further attempts at constitutional reform; however, developments in Quebec soon pushed the issue of that province's future status to the forefront of national attention. Major landmarks were:

- the 12 September 1994 election of a Parti Québécois government committed to independence;
- the formal launching of the sovereignty referendum process with the 6 December 1994 tabling of legislation in the National Assembly; and
- the extremely narrow federalist win, at 50.6% of the vote, when the referendum was eventually held on 30 October 1995.

Federal unity initiatives in the wake of the referendum were widely portrayed as combining elements of a "Plan A" (demonstrating the capacity of the federal system to evolve and respond to the needs of Quebecers) and a "Plan B" (responding to the possibility of a "Yes" win in a future Quebec secession referendum). Major developments included:

- Legislation establishing *de facto* regional vetoes over constitutional change was greeted dismissively by many Quebecers while provoking controversy in the West. (Bill C-110, now *An Act respecting constitutional amendments*, received Royal Assent on 2 February 1996.)
- A parliamentary resolution recognizing the character of Quebec as a distinct society was viewed as inadequate in the province, as it was not entrenched in the Constitution.
- The February 1996 Speech from the Throne announced that the federal government would not use its spending power to create new shared-cost programs in areas of provincial jurisdiction without the consent of a majority of the provinces, and that all new shared-cost programs would entitle individual provinces to opt out with compensation, provided they established "equivalent or comparable" initiatives.
- Federal willingness to devolve administrative responsibilities in the area of manpower training drew mixed reactions from the provinces, but was greeted positively in Quebec, following release of a formal proposal on 30 May 1996 (see below D. 3. The Broader Fabric, *Labour Force Training*).
- At the First Ministers' Conference of 20-21 June 1996, participants agreed that by placing the issue of the amending procedure on the agenda for brief discussion (during which Quebec Premier Lucien Bouchard made a highly publicized visit to the washroom), Prime Minister Chrétien had fulfilled a requirement of the 1982 Constitution for ministerial review by 1997.

- On 9 July 1996, the establishment of the Canada Information Office, mandated to inform Canadians about the federal system and promote Canadian unity, drew reactions in Quebec and elsewhere ranging from guarded scepticism to derision.
- On 26 September 1996, it was announced that three questions relating to the possible basis (both constitutional and in international law) for the unilateral secession of Quebec would be referred to the Supreme Court of Canada. The reference was denounced as anti-democratic by the government of Quebec, and drew criticism from a number of prominent Quebec federalists. Federal ministers defended it as being a response to Quebec government assertions that international law gives the Quebec government a right to secede from Canada unilaterally, and argued that it reflected the need for clear rules rather than an attempt to preclude a democratically sanctioned separation.
- **On 29 June 2000, the federal government passed Bill C-20 on referendum clarity, which stipulates that any negotiations following a proposal for secession must be subject to a favourable resolution of the House of Commons on the clarity of the referendum question and the majority obtained.**

During its first mandate (and subsequently), the government took the position that national consensus would have to be obtained before formal constitutional talks could be productive. However, the June 1997 federal election provided little evidence of a growth of consensus among Canadians on constitutional issues; pronounced regional variations were revealed in support for all political parties and the Liberals achieved minimal gains over the Bloc Québécois in Quebec while also failing to arrest the consolidation of support for the Reform Party in the West. The Liberals returned to power with a significantly reduced majority in the House of Commons, and with limited room to manoeuvre on constitutional issues. This situation may be reflected in the relative prominence of federal initiatives relying on other players (notably the provinces and the Supreme Court) since that time.

a. The Calgary Initiative

At a meeting on 14-15 September 1997, provincial premiers (absent Mr. Bouchard) agreed on a constitutional proposal to be presented to legislatures following public consultation processes within the various provinces. The main points of the proposal are:

- All Canadians are equal and have equal rights protected by law.
- All provinces, while diverse in their characteristics, have equality of status.

- Canada is graced by a diversity, tolerance, compassion and an equality of opportunity that is without rival in the world.
- Canada's gift of diversity includes Aboriginal peoples and cultures, the vitality of the English and French languages, and a multicultural citizenry drawn from all parts of the world.
- In Canada's federal system, where respect for diversity and equality underlies unity, the unique character of Quebec society, including its French-speaking majority, its culture and its tradition of civil law, is fundamental to the well-being of Canada. Consequently, the legislature and government of Quebec have a role to protect and develop the unique character of Quebec society within Canada.
- If any future constitutional amendment confers powers on one province, these powers must be available to all provinces.

Agreement on constitutional substance was unexpected, given that the purpose originally announced for the meeting of premiers had been to define a process of public consultation on national unity issues. The agreement reflects extensive federal contact with the provinces during the weeks preceding the meeting, and federal acceptance (as the meeting progressed) of provincial demands for a federal-provincial meeting on social issues later in the fall of 1997. During the remainder of 1997, provincial and territorial governments (excepting Quebec) launched public consultation processes, typically relying on legislative committees. (British Columbia established a government-appointed panel composed of elected politicians and others while Newfoundland relied on consultations by individual Members of the House of Assembly.)

These processes led to legislative debates during the early months of 1998 and, in most provinces, culminated in unanimous endorsements of the Calgary agreement. Aside from an outbreak of individualism in Ontario, where one legislator voted against the agreement, the central departure from this pattern was in British Columbia, where the legislature amended the agreement by adding three principles. The principles affirm a provincial role in setting national standards, per capita equality of federal transfers, and greater provincial responsibility in areas of special importance to each province (e.g., the fisheries in B.C.).

In Quebec, legislative hearings were held belatedly, during June of 1998. Widely portrayed as a device created primarily to publicize provincial Liberal support of a "less than Meech" proposal, the hearings were boycotted by the Quebec Liberal Party. At their conclusion, Premier Bouchard declared that the Calgary agreement had been clearly rejected by Quebecers for failing to recognize a Quebec people and for legitimizing federal intrusions into provincial jurisdiction.

Although opinion polls found 67% support for the Calgary agreement in Quebec during the spring of 1998, federal endorsement of the agreement would undoubtedly provoke strong reaction from the Quebec government as long as the Parti Québécois remains in power. Also, British Columbia's amendments suggest the limited likelihood of support from that province for a constitutional amendment reflecting the original wording. Faced with these realities, the federal government has refrained from seeking endorsement of the declaration by Parliament, and the Calgary declaration has ceased to attract significant attention.

b. The Supreme Court Reference

On 20 August 1998, the Supreme Court of Canada released its opinion in response to the questions referred in late 1996.

The Court found that the Constitution of Canada does not provide for the unilateral secession of a province. It added, however, that, according to the global system of rules and principles which, along with written texts, makes up the Constitution of Canada, Canadians outside Quebec would be required to recognize the democratic legitimacy of a clear majority vote in Quebec on a clear secession question, and that such an event would have to be followed by a negotiation process. Such a process would need to reconcile the legitimate rights and obligations of all parties, including what would then be two legitimate majorities – a majority of the population in Quebec and a majority of the population in Canada as a whole – neither of which would have the right to impose terms on the other.

Second, the Court held that, in international law, a right to unilateral secession exists only in the context of the colonial or alien subjugation of a people, or where a people is denied meaningful self-determination within a state. Otherwise, peoples are expected to achieve self-determination within the framework of existing states, and states are entitled to maintain their territorial integrity. The Court went on to recognize the possibility that unilateral secessions can take place regardless of international law, and noted that the ultimate success of these depends on whether or not the international community accepts or recognizes the new political entities that have emerged.

Finally, the Court took the view that there is no conflict between the Constitution of Canada and international law with respect to secession rights, and therefore no need to determine which should take precedence.

Following the release of the Supreme Court opinion, both the federal and Quebec governments claimed vindication of their constitutional positions. Quebec Premier Bouchard claimed that the ruling gave a boost to sovereignists, because voters in a future referendum would know that the federal government was required to negotiate with Quebec in the event of a majority vote in favour of secession. At the federal level, Prime Minister Chrétien declared that the ruling was a victory for federalism, and Minister of Intergovernmental Affairs the Honourable Stéphane Dion argued that, according to the Court, the Government of Quebec does not have the right to impose unilaterally the process and terms of a secession (including, for example, future boundaries). He also claimed that the international community would not support a unilateral secession, thereby making it unworkable.

The ultimate impact of the Supreme Court opinion remains to be seen, but it is noteworthy that assertions of a right to secede grounded in international law have largely disappeared from the statements of Quebec nationalists in recent months. Emphasis has shifted, instead, to the argument that the international community would accept a secession that clearly expressed the democratic will of Quebeckers.

### c. The Quebec Election

On 28 October 1998, it was announced that Quebeckers would go to the polls on 30 November. The provincial election, temporarily at least, reinforced the tendency of the federal government to avoid potentially controversial direct initiatives, or statements. The main exception was a highly publicized interview by Prime Minister Chrétien, shortly before the election, in which he downplayed the need for constitutional change and claimed that Quebec's traditional demands had already been met. These remarks provoked a strong reaction from Quebec Liberal leader Jean Charest, who asserted that pressures for fundamental change in the federation are an underlying fact of Canadian politics, and that individual politicians need to respond to them or step aside.

As the campaign unfolded, and polls began to indicate a softening of Liberal support, Mr. Charest shifted emphasis away from early calls for a reduced governmental role in the economy to health care issues and to heightened criticism of the Parti Québécois commitment to hold a future secession referendum. With polls indicating solid approval for the P.Q. record in government, or at least no confidence that a Liberal government could do significantly better, Mr. Bouchard focused on broadening P.Q. support. He repeatedly stressed that the focus of a

re-elected P.Q. government would be on creating “winning conditions,” without which a referendum would not be held. The final phase of the campaign saw increased emphasis on working within the federation to achieve benefits for Quebec, notably implementation of the social union principles that Quebec and other provinces had endorsed earlier in the year (see section “National Standards and the Social Union” below).

The election gave the P.Q. 42.7% of the popular vote and 75 seats, versus 43.7% of the vote and 48 seats for the Liberals, and 11.8% and 1 seat for the Parti Action Démocratique led by Mario Dumont. These results do not demonstrate a significant shift in favour of any political party since the 1994 election.

#### **d. The Federal Referendum Clarity Act (Bill C-20)**

**Following the Supreme Court’s decision on the reference by the Governor in Council regarding Quebec secession, the Canadian Minister of Intergovernmental Affairs, the Honourable Stéphane Dion, tabled in the House of Commons Bill C-20 on referendum clarity (17 December 1999). After being passed by the House and the Senate, the Bill received Royal Assent on 29 June 2000. The key provisions of the act are as follows:**

- **The House of Commons shall, within 30 days after the government of a province tables in its legislative assembly or otherwise officially releases the question that it intends to submit to its voters in a referendum relating to the proposed secession of the province from Canada, consider the question and, by resolution, set out its determination on whether the question is clear.**
- **In considering the clarity of a referendum question, the House of Commons shall consider whether the question would result in a clear expression of the will of the population of a province on whether the province should cease to be part of Canada and become an independent state.**
- **The Government of Canada shall not enter into negotiations on the terms on which a province might cease to be part of Canada if the House of Commons determines, pursuant to this section, that a referendum question is not clear and, for that reason, would not result in a clear expression of the will of the population of that province on whether the province should cease to be part of Canada.**
- **Where the government of a province, following a referendum relating to the secession of the province from Canada, seeks to enter into negotiations on the terms on which that province might cease to be part of Canada, the House of Commons shall, except where it has determined pursuant to section 1 that a referendum question is not clear, consider and, by resolution, set out its determination on whether, in the circumstances, there has been a clear expression of a will by a clear majority of the population of that province that the province cease to be part of Canada.**

- **The Government of Canada shall not enter into negotiations on the terms on which a province might cease to be part of Canada unless the House of Commons determines, pursuant to this section, that there has been a clear expression of a will by a clear majority of the population of that province that the province cease to be part of Canada.**
  
- **No Minister of the Crown shall propose a constitutional amendment to effect the secession of a province from Canada unless the Government of Canada has addressed, in its negotiations, the terms of secession that are relevant in the circumstances, including:**
  - **the division of assets and liabilities;**
  - **any changes to the borders of the province;**
  - **the rights, interests and territorial claims of the Aboriginal peoples of Canada; and**
  - **the protection of minority rights.**

Although the Bill was fairly favourably received in Canada, where it was seen as a supplementary safeguard against any move toward secession on Quebec's part, a number of commentators criticized the Chrétien government for having taken a hard line toward Quebec, and accused it of having pursued its "Plan B." Despite passage of the Bill, a number of senators energetically protested the fact that only the House of Commons would be empowered, in the event of a referendum, to pronounce on the clarity of the question and the majority obtained.

In addition, many Quebec federalists deplored the idea that the Liberal government was closing the door to renewed federalism through constitutional means. The Liberal Party of Quebec also opposed the Bill, and continued to assert that it was working toward a reform of the federation rather than pursuit of Ottawa's Plan B.

**e. The Quebec Government's Response (Bill 99)**

The Quebec government was not slow in vigorously condemning Ottawa's initiative. It launched a huge publicity campaign in Quebec newspapers against the federal measure. Premier Bouchard said that his government would be responding to Bill C-20 in the form of legislation of its own. On 15 December 1999, the province's Minister for Canadian Intergovernmental Affairs, Joseph Facal, tabled Bill 99 in the National Assembly: *the Act respecting the exercise of the fundamental rights and prerogatives of the Québec people and the Québec State*. After consideration in committee, the Bill was amended to include certain provisions recognizing Aboriginal rights. Only passed a year later, in December 2000, the Act reasserts various political prerogatives and principles



**inhering in Quebec society and the National Assembly. Given the lack of outcry in Quebec over passage of Bill C-20, Bill 99 was not the object of sustained attention on the part of Quebec or Canadian media, and its passage went almost unnoticed. It should be noted that the MNAs belonging to the Liberal Party of Quebec, and the leader of the ADQ, Mario Dumont, voted against Bill 99.**

**f. The Federal Election (November 2000)**

**Only 40 months after being elected, Prime Minister Jean Chrétien decided to call another general election. On 22 October, despite the advice of a good many of his advisers and MPs, Prime Minister Chrétien went to Rideau Hall and asked the Governor General, the Right Honourable Adrienne Clarkson, to dissolve Parliament. The lightning campaign, lasting only 36 days, was dominated by the debate on health care, with the other parties accusing the Canadian Alliance of wanting to create a two-tier system. The campaign was marked by heated personal attacks.**

**The Liberal Leader led his party to a third straight majority, repeating the achievement of an earlier Liberal, Sir Wilfrid Laurier. The Liberals won 172 seats, or 17 more than in the previous election. The Canadian Alliance now has 66 Members in the new Parliament, or six more than the former Reform Party. The Bloc Québécois lost six seats and has 38 Members; the New Democratic Party lost eight seats and has 13 Members; and the Conservative Party also lost eight seats and has 12 Members. Voter turnout was just above 60%.**

**2. Fiscal Federalism and its Influence**

**Fiscal arrangements between the federal and provincial governments involve transfers of money to the provinces, and other matters such as the collection of taxes. The two major transfers are equalization payments, intended to ensure that all provinces have the fiscal capacity to provide minimally acceptable service levels, and the Canadian Health and Social Transfer (CHST), which combines federal contributions to support post-secondary education, health care and social assistance. At roughly \$30 billion per annum, payments under the CHST are the major federal transfer to the provinces, because equalization payments amount to the much lower figure of about \$10 billion per annum.**

**In an era when all governments remain under considerable fiscal pressure, the issue of intergovernmental transfers is predictably sensitive. It acquires additional sensitivity within the context of Canadian federalism, however, because the federal government has traditionally used its**

spending power to foster programs reflecting federal priorities within provincial jurisdictions and to ensure that these meet national standards. As federal spending has been proportionally reduced in recent years, provincial pressure has been increasing for a corresponding diminution of federal influence.

a. Transfer Issues

The sensitivity of transfer issues was amply demonstrated by provincial reaction to the 1995-1996 budget. This announced that existing EPF and Canada Assistance Plan transfers would be replaced by a single block-funded program, i.e., the Canadian Social Transfer (later known as the Canada Health and Social Transfer), entailing overall reductions of about \$2.5 billion in 1996-1997 and an additional \$2 billion in 1997-1998. Although initial reaction from most provincial governments was harsh, generally positive reception by the public had the effect of muting such criticism (in open at least) in the weeks following the Budget. An additional factor here was undoubtedly the increased provincial discretion over the allocation of funding among the various programs that was enabled by the new transfer.

The impacts of these reductions, notably on provincial education and health care spending, have been a continuing source of federal-provincial tensions since 1995. Recurring provincial demands for the restoration of funding have been met with federal insistence on provincial guarantees that additional funding would actually be spent on health care and schools (and not on tax cuts, for example, which a number of provinces have implemented while simultaneously protesting reduced federal transfers).

Since mid-1997, improvements in the fiscal position of the federal government have added fuel to provincial pressures concerning transfers. As the federal position has continued to improve, provincial demands have expanded to include the full restoration of transfers. Thus, at the 15 June 1998 meeting of federal and provincial finance ministers, the provinces (excepting Quebec, which was not participating, and Newfoundland) pressed for either a \$6.2 billion increase (full restoration) or a more moderate amount incorporating cuts claimed to be similar to those Ottawa had imposed on itself. Similar demands were made at the 7 August 1998 annual premiers' conference in Saskatoon.

**In August 1999 in Quebec City, at their annual meeting, the provincial premiers and territorial leaders expressed their concern about the provision of health care services and their belief that these services should be accessible to everyone and be publicly funded.**

**In the course of the meeting, the premiers and leaders established three priorities for the health care sector:**

- **sustainability, with its components of adequate and predictable federal funding, reliable staffing to meet projected needs, and improved information systems in support of decision-making;**
- **population health, including the improvement of health of all Canadians; and**
- **clear roles and responsibilities.**

**The provincial and territorial leaders also called on the federal government to fully restore Canada Health and Social Transfer (CHST) funding to 1994-1995 levels with an appropriate escalator for the CHST cash transfer that would keep pace with cost and special demand pressures.**

**At their August 2000 meeting in Winnipeg, the premiers remained very concerned about the growing imbalance between the federal and provincial/territorial governments' ability to finance their respective program responsibilities. In their view, efficiency and equity in the provision of programs and services imply that both the long-term vertical fiscal imbalance between the federal government and provinces and territories, and the horizontal fiscal imbalance among provinces and territories, need to be addressed.**

**The premiers noted that because of the way revenues are currently structured, the federal government's surpluses are projected to rise quickly over the next 20 years, while the provinces and territories will collectively be hard pressed to keep their budgets in balance over this same period. They expressed their concern that their governments' finances are particularly vulnerable if cost pressures in key public services increase even moderately or in the event of a slowdown in economic growth.**

**The premiers also called on the federal government to strengthen its commitment to the Equalization Program so that the Program can meet its constitutionally mandated objectives. In addition to restoration of the CHST and adoption of an appropriate escalator, the premiers reiterated that the federal government must immediately remove the ceiling on equalization payments.**

**The premiers agreed that the question of fiscal imbalance is an urgent financial challenge facing the federation today. They instructed their Finance Ministers to advance their work on these issues and to identify reform proposals which would address the vertical and horizontal fiscal imbalance in Canada in a more lasting manner.**

**The meeting concluded with recognition of the need for adequate, predictable and sustainable federal funding in support of post-secondary education and skills development, and with the formulation of a detailed action plan for early childhood development.**

b. National Standards and the Social Union

Restraints on federal transfers have since 1995 coincided with growing provincial experimentation with alternative delivery mechanisms, notably in the health care field. In a number of cases, provincial initiatives prompted federal counter-actions to uphold federally prescribed standards or practices, leading to major conflict with individual provinces.

A prominent example was the disagreement between the federal and Alberta governments during 1995 and 1996 over the charging of “facility fees” by private clinics; this resulted first in federal penalties and ultimately in the provincial government’s agreement to absorb the charges on behalf of clinic users. **Tabled in Alberta’s Legislative Assembly on 2 March 2000, Bill No. 11 also stirred some controversy vis-à-vis federal-provincial relations. A number of commentators argued that the Bill did not respect the spirit of the *Canada Health Act* and that in the long term it opened the way to a two-tier system. The federal government, although it did not publicly oppose the Bill, did voice certain reservations. Federal Health Minister Allan Rock wrote to his Alberta counterpart setting out Ottawa’s position.**

**The primary aim of the legislation is to allow regional health authorities, with the Minister’s approval, to contract out minor surgery, which would be considered an insured service for which benefits would be paid – pursuant to the *Alberta Health Care Insurance Act* – to private surgical facilities approved by the government. The Bill’s other important aspect is the greater regulation of private surgical facilities that offer uninsured services involving hospitalization lasting more than one day.**

Differences over whether the federal government should have an exclusive role in applying national standards within areas of provincial jurisdiction have since proven to be a major element in a more general discussion about roles and responsibilities in the social policy field. The provincial position was laid out comprehensively in a December 1995 report endorsed by the premiers of all provinces except Quebec as a basis for renewing the federation, and

forwarded to the Prime Minister for response at the 1996 First Ministers' Conference. The report calls for:

- subjection of federal activity in areas of provincial responsibility to intergovernmental consultation and provincial/territorial agreement;
- fiscal disentanglement (resources to be shifted to the provinces to allow them to perform their responsibilities without depending on federal transfers);
- acceptance of the principle that federal spending within provincial or shared jurisdictions should not allow the federal government to dictate program design; and
- replacement of the current federal role as the sole interpreter and enforcer of the *Canada Health Act* with some form of federal-provincial power-sharing.

At the Annual Premiers' Conference of August 1997, a Progress Report on themes set out the previous year was approved. Premiers agreed to seek a broad framework agreement with the federal government to deal with cross-sectoral issues such as common principles, use of the federal spending power, and new dispute resolution mechanisms. The following month, as a *quid pro quo* for their agreement on the Calgary initiative, the provinces obtained a commitment that federal representatives would meet with them on social union issues in the fall of 1997.

On 12 December 1997, First Ministers agreed that a Framework Agreement on the Social Union would be developed, using the Federal-Provincial-Territorial Council on Social Policy Renewal (an ongoing forum for intergovernmental social policy discussions) and with July 1998 as a target date. The framework talks were formally launched on 13 March 1998, under the joint chairmanship of federal Justice Minister the Honourable Anne McLellan and Saskatchewan Minister of Intergovernmental and Aboriginal Affairs Bernhard Wiens.

By June 1998, the provinces (absent Quebec) had developed a proposal relating to the "process" part of a possible framework. The proposal provided for a range of collaborative practices, and would also have subjected new or changed national programs in areas of provincial jurisdiction (cost-shared or not) to the consent of a majority of provinces. As well, it would have required the federal government to compensate any province or territory not participating in such a program, provided that the province or territory established its own program addressing the priority areas of the national program.

In mid-July 1998, a scheduled meeting of federal and provincial ministers at which the federal government had been expected to respond to provincial proposals was cancelled. Later in July, the federal government rejected restrictions on the spending power beyond those to which it had committed itself in 1996, and asserted the continued need for an exclusively federal role in the interpretation and enforcement of national standards. The federal position did, however, indicate receptivity to more extensive consultations with provincial governments over the design and implementation of new social programs, including 12 months' notice of the introduction of such a program.

At the 5-7 August 1998 Annual Premiers' Conference, premiers reaffirmed the position on the social union framework announced in June, and called for a draft agreement by the end of the year. A significant development at the conference was the endorsement of the provinces' framework proposals by Quebec Premier Lucien Bouchard. Before this date, Quebec had rejected power-sharing proposals on the grounds that the federal government has no role within areas of provincial jurisdiction.

**c. The Social Union Framework Agreement (February 1999)**

**On 4 February 1999, the Prime Minister, the premiers of all the provinces except Quebec, and the territorial leaders signed a new framework agreement on the social union. According to the federal government, the Agreement, which will be reviewed after three years, is intended to encourage equality of opportunity among Canadians, no matter where they live in Canada, and to improve their mobility. In it, the federal government makes a commitment not to introduce new Canada-wide initiatives in the social sector without the consent of a majority of the provinces, and to work with them to determine what goals to pursue. The framework agreement sets out the need to increase transparency, and governments' obligation to be accountable. It also provides for dispute prevention and resolution mechanisms.**

**Despite the Quebec government's refusal to sign, the Social Union Agreement between the federal government and the other provincial and territorial governments marked an important step in the evolution of intergovernmental relations in this country, notwithstanding its administrative nature. In its follow-up report on the Agreement, submitted to the First Ministers on 10 August 2000, the Provincial/Territorial Council on Social Policy Renewal voiced certain reservations about its implementation.**

**Among other things, the Council criticized the federal government for not respecting the spirit of the Agreement when it launched its assistance program for the homeless, the first major announcement to follow the signing of the Agreement.**

**The Quebec government's refusal to sign was based on the following main reasons: the legitimizing of the federal spending power in the social programs sector; and the federal government's recourse to direct transfer payments to individuals and organizations to launch new Canada-wide social initiatives.**

#### **d. The Health Care Funding Agreement**

**On 11 September 2000, at a federal-provincial conference, the First Ministers agreed on a vision, principles and an action plan to guide their intervention in the coming years in the fields of health care and early childhood development. The Quebec government chose not to give its support to the agreement on early childhood development, regarding it as an exclusively provincial area of constitutional jurisdiction. It did, however, agree to accept the additional funding for health care.**

**Through the agreements concluded by the First Ministers, the federal government made a commitment to invest \$23.4 billion over the next five years. Of this amount, the government will invest \$21.1 billion in the CHST. The CHST legislation has been extended so the provinces and territories can benefit from stable and predictable financial assistance until 2005-2006. The federal government will also provide targeted financial assistance of \$2.3 billion to enable the provinces and territories to cope with the specific challenges confronting them in the area of health care.**

### **3. The Broader Fabric**

As the modern federal system has taken shape, federal and provincial governments operating under their respective constitutional heads of power have both become involved in a range of policy fields never envisioned by the Fathers of Confederation. Governments have entered into formal agreements in many of these policy sectors in order to coordinate activities, clarify roles, and ensure the meeting of objectives. Thus, while tensions over national unity issues, fiscal issues and social policy roles continue to be widely publicized, there is also an extensive area of functional cooperation.

Since shortly after the election of the current government, a process involving the review of federal and provincial responsibilities across a range of policy fields, clarification of roles, reduction of duplication and increasing efficiency, has gone forward steadily. The process has achieved tangible results, such as:

- agreements between the federal government and several provinces for the co-funding of business information centres;
- agreements with Ontario and Alberta to eliminate overlaps in international trade promotion; and
- a ground-breaking agreement between federal and provincial agricultural, health and fisheries ministers (those of Quebec excepted) to move toward a single food-inspection system.

Agriculture: Negotiations for establishing a federally and provincially cost-shared national farm safety net provide a more recent illustration of the intergovernmental agreement process, including vicissitudes that can protract it. During 1996, agreements were signed by the federal government and Alberta, Ontario, Prince Edward Island, New Brunswick, Newfoundland and Nova Scotia. As 1996 drew to a close, however, Alberta reacted to long-standing criticism of the program among farmers in that province by withdrawing participation. On 7 January 1997, federal Minister of Agriculture the Honourable Ralph Goodale responded by committing the federal government to pick up Alberta's share of the funding, thus enabling the program to continue to be fully funded. Since then, a Canada-Manitoba agreement was announced on 3 April 1997 and a Canada-Quebec agreement emerged on 24 November 1997.

**On 24 February 1999 in Victoria, the federal government and the provinces reached agreement on setting up an assistance program for farmers, 60% financed by Ottawa and 40% by the provinces. At a two-day federal-provincial Agriculture Ministers' meeting, nine provinces agreed in principle to participate in the Agricultural Income Disaster Assistance (AIDA) program, subject to provincial approval where necessary. Nova Scotia was not able to make a commitment at the time, but indicated that it would be continuing to work with the federal government toward participation. The federal government agreed to contribute up to \$900 million over two years, under the 60:40 cost-sharing principle. Because AIDA is a demand-driven program, the ultimate expenditure will depend on the extent of income problems over 1998 and 1999. On 10 March 1999, an agreement between Saskatchewan and the federal government was concluded, providing for an additional \$85 million for farmers in that province.**



**In July 2000 in Fredericton, the federal, provincial and territorial Agriculture Ministers reached a three-year framework agreement on farm income protection. This new agreement is designed to give greater financial stability to the agriculture sector. It paves the way for a series of programs designed to solve various problems related to farm income and resulting from a number of factors, notably price fluctuations, poor weather, and foreign subsidies. Under the agreement, the federal government will pay out up to \$3.3 billion over the next three years. The provinces will invest up to \$2.2 billion. Shared program costs will be divided between the federal and provincial governments in the usual 60:40 ratio.**

**Assistance for farmers was still making headlines through the end of 2000 and into early 2001.**

National Child Benefit (NCB): Discussions on a coordinated approach to child poverty, integrating federal tax benefits and provincial welfare assistance, commenced in late 1996, as a sub-set of continuing social union talks. By early 1997, governments had reached agreement on the parameters of the benefit, and federal and provincial roles. The level of federal funding proved more controversial; provincial pressure for increases persisted until the February 1997 budget fixed the federal commitment at \$600 million per annum, in addition to the \$250-million Working Income Supplement announced a year earlier. Up to 1998, governments jointly established implementation arrangements (including an innovative accountability regime which will involve annual publication of performance data). As well, the 24 February 1998 budget announced additional federal payments of \$425 million by July 1999, and another \$425 million by July 2000. The National Child Benefit went into effect on 1 July 1998 in all provinces except Quebec (which will administer its own child income support regime).

**Since its introduction, the federal government has continued to invest considerable sums in this program with each successive budget. In its February 2000 budget, it announced that it would be injecting \$2.5 billion by 2004.**

Labour Force Training: The process of discussions and agreements concerning the devolution to the provinces of responsibilities for manpower training, launched by the federal government in the wake of the Quebec referendum, has continued. The first agreement was with Alberta, on 6 December 1996; and agreement was reached between the federal government and

Quebec on 21 April 1997. The most recent is the Canada-Saskatchewan agreement of 6 February 1998, which, like the others, focuses on giving the province responsibility to design and deliver employment programs and services funded through the Employment Insurance Account. On 7 April 1998, formal negotiations were announced between the federal government and Ontario, the only province or territory still without such an agreement.

The Environment: The Canada-Wide Accord on Environmental Harmonization, signed on 29 January 1998 by the federal government and all provinces except Quebec, provides another noteworthy example of intergovernmental cooperation. The Accord provides for the coordination of existing jurisdictional authorities in order to enhance environmental management. It also launched a process that resulted in 11 September 1998 sub-agreements on principles for public accountability and for stakeholder participation in setting environmental standards.

#### 4. Concluding Comments

Federal and provincial governments in Canada engage in a complex pattern of simultaneous conflict and cooperation, propelled by both political and functional imperatives.

In recent years, national unity politics, in combination with tensions resulting from fiscal constraints, have had a pervasive impact across the sphere of federal-provincial relations. Most recently, as illustrated in agreements on environmental harmonization and continuing social union talks, there appears to be a new emphasis on the formal definition of roles and responsibilities.

If successful, this trend may result in the strengthened management of federal-provincial relations using sub-constitutional norms, rules and principles. Such an approach could replace the relatively *ad hoc* arrangements of the past with a system more conducive to the accountability of both levels of government to citizens. Less positively, this trend could impede established practices of functional cooperation by subjecting them to protracted debates about quasi-constitutional issues of power, recognition and status.

#### PARLIAMENTARY ACTION

Federal-provincial relations are conducted centrally through executive contacts that, from time to time, produce initiatives requiring ratification by legislatures. Once intergovernmental agreements have been achieved, however, the scope for parliamentary

influence is normally extremely limited. Changes by one legislature could result in significant delay, or cause intergovernmental agreements to unravel.

Several mechanisms permit “front-end” input by Parliament. These include the pre-budget consultations of the Standing Committee on Finance, the special committees periodically established to consult the public on constitutional proposals, and studies by standing committees of policy issues having an intergovernmental component. Governments may, however, accept or reject such input.

## CHRONOLOGY

- 21 December 1993 - Federal and provincial first ministers agreed to cooperate in a global review of federal and provincial roles and responsibilities, intended to identify areas of duplication and overlap.
- 21 January 1994 - Provincial governments reacted positively to federal revisions to the equalization formula.
- 14 April 1994 - The Quebec National Assembly passed a resolution, supported by both the Liberals and the Parti Québécois, asserting exclusive provincial jurisdiction over manpower.
- 27 February 1995 - Reductions to provincial transfers announced in the federal budget drew strong criticism from provincial premiers.
- 30 October 1995 - The federalist side won a narrow 50.6% victory in the Quebec referendum.
- 25 September 1996 - The referral to the Supreme Court of three questions relating to the legality of unilateral secession by Quebec was announced by Minister of Justice the Hon. Allan Rock.
- 2 June 1997 - The federal election resulted in a (reduced) Liberal majority, and left relatively unaltered the pattern of political fragmentation that had emerged in 1993.
- 15 September 1997 - Provincial premiers (absent the Premier of Quebec) agreed on a set of principles (the Calgary Agreement), to be used as a basis for national unity consultations.
- 13 March 1998 - Talks were launched on a general framework agreement for the social union.
- 20 August 1998 - The Supreme Court of Canada issued its opinion responding to the 1996 reference of questions relating to unilateral secession.

- 4 February 1999 - An agreement on the social union was signed by the Prime Minister, nine provincial premiers and the territorial leaders (Quebec refused to sign).**
- 1 April 1999 - The territory of Nunavut was created.**
- 29 June 2000 - Bill C-20 on referendum clarity received Royal Assent.**

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