

## **Intergovernmental Relations in Canada**

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### Overview of presentation:

- What kind of federation is Canada?
- What does this mean for intergovernmental affairs?
- How and why has the intergovernmental business grown?
- Examples of national and regional cooperation
- Best practices

This presentation is going to focus on certain features of Intergovernmental Relations in Canada in the period since 1968, a period of significant growth and development in intergovernmental affairs. Also period during which I have had opportunity to be a participant and an interested observer, working in Ottawa and New Brunswick.

My thesis is that functional federalism relies upon:

- 1) An effective structure or mechanism, and
- 2) Commitment to using those structures on a regular and frequent basis

But first want to talk a bit about federalism in Canada and offer a perspective on why having a federal structure works to our advantage. Let's begin by looking at the circumstances surrounding our creation as a country:

- No Revolution
- No Declaration of Independence

There was no great rallying cry or founding principle behind Canada's founding: Not liberty equality and fraternity, nor life, liberty and the pursuit of happiness. The single constitutional phrase that best sums up our founding philosophy is "peace, order and good government".

Canadians, in 1867 at the time of founding, and today, simply want something that works, to:

- a) Hold the country together, and
- b) Provide a stable environment in which Canadians can prosper and enjoy common benefits as a society.

This is not highly inspiring (but I believe happens to be what most people in developed world are wanting in terms of government).

Recent probes into our national psyche have found that the thing that Canadians prize most highly about their country is not freedom of religion, or freedom of speech, or equality of the individual, but rather our universal free medical care. Understanding guiding values is important to understanding a nation's political structure.

The theory or explanation I find most compelling to explaining Canada's orientation to government is the Hartz "fragment" theory. By this theory, the U.S. is a fragment, spun off from late 18<sup>th</sup> Century Europe in which the most compelling political philosophy surrounded the greater freedom of the individual

### **Federalism & Values**

#### Liberty

- Power is divided to maximum
- Series of checks and balances
- Separation of Executive and Legislative power
- "States' rights" vs. central government

#### Welfare

- Emphasis on outcomes
- Power is concentrated
- Executive and Legislative closely linked
- Unitary state

Thus, the United States' governmental structure is characterized by checks and balances. Theory about how you divide power in your governing structure depends upon the values you wish to maximize.

Comparing Canada and the US, I want to look at how power is divided at the centre between the executive and legislative branches, and in terms of area, i.e. between federal, state and municipal levels. The theory says that if you have a broad division of power, the value you will be maximizing is that of the liberty of the individual. On the contrary, if you keep power concentrated, you maximize welfare (or results) for the largest number of people. In the US, with the value preference for maximizing the freedom of the individual, you find a strict division of power at the centre between the executive (the President) and the legislature (Congress). In terms of an area or geographic division of power, freedom against the constraint of powerful central government was meant to be assured through "states rights" as a countervailing force against the federal government.

In Canada, which as the theory goes is a 19<sup>th</sup> century fragment of Europe (and Great Britain in particular), the values emphasis is understood to be on the maximization of the welfare or results side. This is about peace, order and good government or simply getting things done. This explains why Medicare is seen as our crowning achievement. At the centre in Canada we have little division of power between the executive (Prime Minister)

and the legislature (Parliament). Indeed, under our parliamentary system, the PM's control over his caucus, and hence the legislature, is legendary. Non-Canadians are surprised to learn that the Senate is appointed, virtually for life, by the Prime Minister. So how did we end up with a division of power by area through a federal system? Examined more closely, we find that Canada is a federation not by choice, but by necessity.

Canada is a federation because:

- There was a strong desire to see a “British North America” formed in response to (and in defence against) the expansionist republic to the south (our basic Constitution is actually called the British North America Act);
- There were principally two founding peoples, English-speaking and French-speaking. The French-speaking population (which also happened to be predominately Roman Catholic by religious affiliation) was concentrated in what is now Quebec. Indigenous peoples were an important presence but did not participate;
- The size and strength of the desire for cultural determination by the Quebec-based people prevented them from being subsumed as simply a minority in a larger country;
- There were already existing numbers of former colony “provinces”- Nova Scotia, New Brunswick, Prince Edward Island, British Columbia, and Newfoundland that had achieved representative government and exercised effective control over their territory;
- What is now Ontario and Quebec had been united into one province for a period of twenty-five years, but it wasn't working well and there was a strong desire to see them separated again.



So the desire on the part of many founders to see a strong unitary state to counter the American presence and to avoid the strife and conflict the “United” States was going through (the US Civil War) was not realized. Nevertheless, the advocates for strong

central government prevailed, bringing in a division of powers that left all residual power with the central government, together with the power to disallow provincial legislation.

In subsequent decades, the combination of the political power of the provinces, and a string of constitutional court decisions interpreting provincial powers more broadly, has led to a Canada where power is not concentrated at the centre, but is shared more evenly between the provinces and the federal government. The assertiveness of the provinces, led first by Ontario, then Quebec, and later joined by the Western Provinces has led to a federalism that is always a contest and occasionally a collaboration between the provinces and the federal government. The contest aspect of it is so prevalent in the media and the collaboration so less apparent to the public that Canadians, when asked to comment on federalism, will in most instances complain about all the bickering and ask “Why can’t our politicians just work together?”

I am going to suggest that the evidence of collaboration is real and that it can be greatly enhanced by:

- 1) The design of mechanisms for intergovernmental relations, and
- 2) A commitment to using them

Getting back to the theory of federalism in Canada, the dominant welfare orientation, the desire to see “peace order and good government”, to get things done, which led the founders to try for a strong central government, if not a unitary state, has, by one of the interesting turns of history, been better served by the existence of a federal state than it would have been in a unitary one. Federalism, initially entered into as a necessity, has become an advantage.

Modern governance, whether it be in the private world of corporations or in the very public realm of government, is seen to be favoured by the creation of:

- 1) Semi-autonomous units
- 2) Decentralized decision-making
- 3) Regional flexibility and responsiveness
- 4) Local innovation

It is interesting to note that some modern unitary states are moving towards variations on federalism, e.g., Italy and Great Britain. Having a federal system is one thing, making it work is another.

A major deficiency in the Canadian federal structure is the lack of direct representation of constituent units, the provinces, in the central institutions. Canada is one of only two federations where states are not represented in the Upper House. The Federal Cabinet has regional representation; it used to be a stronger factor, but with the rise of personality politics and domination by the Prime Minister, it is not as effective as it used to be in representing the interests of the provinces. As for the judiciary, there is no role for provinces in the selection of Supreme Court judges. Thus the role of representing provincial and regional interests falls mainly on the provincial governments.

Consequently, a large burden is placed on the process of federal-provincial relations, or intergovernmental affairs, to bring regional representation to central government.

In Canada, when we speak of intergovernmental affairs, generally we are not including relations with municipal government. Unlike Brazil, municipalities have no constitutional status, but are created by the provinces. The provincial government can create, dissolve, or amalgamate municipalities by legislative act. This is becoming a major issue in Canada, as cities are recognized as engines of economic growth, 80% of Canadians live in urban areas, yet they are not included in the intergovernmental process. We have a lot to learn from Brazil and other federations.

Circumstances have forced Canadians to invent mechanisms and practices for intergovernmental relations. The constitution tried to address division of powers through the traditional approach of creating “watertight compartments”; this hasn’t worked in Canada any better than anywhere else. The contest in Canada is today less about division of powers and more about recognition of roles and responsibilities. Modern society and economy are so complex that “powers’ have to be broken down into functions and those functions have to be allocated to the government best situated to carry them out, whether by reference to resources, location, or economy of effort.

The period I want to focus on is the last 35 years, a time of tremendous growth in intergovernmental affairs. The complexity of the issues has made growth necessary; advances in transportation and communications have made it possible.

Growth occurred in three sectors:

- The regular “business” of government – taxes, fiscal transfers, economic management, social issues, health, education etc.
- Constitutional development and reform
- Acknowledging the rights and status of Indigenous Canadians

Intergovernmental affairs has become a virtual industry:

- Federal –Provincial meetings and conferences involving Ministers, Deputy Ministers and senior officials grew to the point of about 400-500 per year when last counted.
- Governments established Departments of Intergovernmental Affairs to respond to the need to conduct and manage this activity. The size of these offices vary in accordance with the size of the individual governments and the degree to which they feel the need to project their special interests. Offices vary from one or two individuals within a Premier’s Office or Cabinet Office with responsibilities to coordinate central intergovernmental relations involving the First Minister principally to the other extreme of full departments monitoring all intergovernmental contacts and having legislative authority over all intergovernmental agreements.
- Centrally, a special purpose secretariat was set up to service the process of constitutional review; it had its mandate extended to provide support services to all First Ministers meetings and now services Ministers and Deputy Ministers meetings on sectoral issues. The secretariat is financed on an intergovernmental

- funding formula with the federal government paying half and the balance being divided among the provinces on a per capita basis. The secretariat was first housed in a government conference centre used exclusively for large and small meetings, with offices set aside for the use of government delegations.
- At the apex of this activity is the First Ministers Conference, a meeting of the Prime Minister of Canada, and the Premiers of the 10 provinces, and included more recently, the Government Leaders of the three Northern Territories. Conferences are 2-3 day events with a multiple subject agenda and are nationally televised.

In the already busy area of intergovernmental relations, a special sub-set of activity developed under the heading of Constitutional negotiations.

- Beginning in 1968 under the leadership of Prime Minister Pierre Trudeau, a full-scale review of Canada's Constitution was begun, functioned for three years and led to an agreement among all First Ministers on a variety of modernization measures including an amending formula.
- The election in 1976 of a Quebec government with a mandate to seek separation from Canada sent shock waves through the country and sparked a renewed effort at constitutional change aimed at responding to Quebec's imperatives.
- Efforts resulted in a patriation package, bringing Canada's Constitution "home" from Great Britain with an amending formula and a Charter of Rights (1982).
- A 1987 agreement on the Meech Lake Accord resolving Quebec's main grievances was reached unanimously but failed in the end to gain the ratification by all legislatures in the three year period.
- An effort was made to address Quebec's main points, plus the rest of the country's grievances, including the constitutional status of Canada's indigenous peoples in what was known as the Canada Round. This culminated in a 1992 agreement known as the Charlottetown Accord. After the most intense period of public consultation and detailed negotiations the country has ever seen, a very broad series of measures was agreed upon and then put in the form of a constitutional text. That agreement and text was put to the people in a referendum and failed to get majority support.

25 years of almost continuous efforts to reach constitutional peace resulted in a number of highly creative intergovernmental agreements. This demonstrates the intensity of effort on just this one intergovernmental front, and a high degree of success in finding accommodation among governments and indigenous leaders. Unfortunately, the same measure of success was not reached when it came to ratification of these agreements with only the patriation package getting entrenched. The point I make here is that the intergovernmental process itself was heavily engaged and produced a remarkable record of achievement in this particularly difficult realm. This record is testimony to the commitment to the process and the degree of investment in the mechanisms of intergovernmental relations.

It would be misleading, however, to give a single mark or grade to intergovernmental relations in Canada. The true test is in the extent to which the system produces the desired results in terms of maximizing the 'welfare' criterion as outlined in the theory explored earlier.

Phases of federal provincial behaviour have been variously characterized:

- In the late 60's, early 70's "cooperative federalism" was the watchword. This was a period in which governments sought accommodation, such as allowing Quebec to opt out of a single Canada pension plan and mount their own with comparable standards.
- This was followed by an extended period from roughly the mid-70's of what came to be known as "competitive federalism" in which governments contended with each other either for control over resource revenues in the case of oil-producing Alberta and the revenue equalizing federal government, or in the case of the competition for the allegiance of Quebecers between the provincial government and Ottawa.
- I like to think that we are currently in a period of "reciprocal federalism" marked by an effort to refine the way in which provincial and federal governments chose to define and play out their roles and responsibilities. Under reciprocal federalism, each government can rely upon the other to act in ways that supports the other.

It is true that political and other forces drive conflict or harmony. It is equally true that institutions can help determine how those forces get played out. The creation and effective use of intergovernmental institutions can work to reduce conflict and maximize results for the benefit of citizens. When there is a commitment to the using the mechanisms on a regular basis, patterns of behaviour result. To take the most obvious and prominent example, the First Ministers Conference, holding regular such events helps to create an environment favourable to cooperation. First Ministers themselves have the knowledge that they will have full opportunity to discuss their concerns with their colleagues. Not unimportantly, they come to know each other better. Of equal or possibly greater significance, their staff have to engage with each other in the preparation of such major events and in looking after the follow up. This dynamic helps to establish a network of individuals accustomed to working with each other, developing a level of familiarity, confidence and trust that enables them to engage in collaborative ways to help minimize conflict.

Looking at the pattern of First Ministers Conferences:

- Between 1968 and 1984 Pierre Trudeau chaired 23 FMC's;
- Between 1984 and 1993, Prime Minister Brian Mulroney chaired an Annual First Ministers Conference plus several special purpose conferences on Constitutional and Aboriginal (indigenous peoples) Issues;
- Since 1993 Prime Minister Jean Chrétien has chaired seven First Ministers Meetings, only three of which have had multi-item agendas; the others have been on single issues.

This reduction in the use of First Ministers Conferences has had an impact. Going by the comments of my former colleagues still working in the field, the degree of civility between intergovernmental officials has declined over the last decade. I would argue this is at least in part a result of less frequent use of the central intergovernmental mechanisms. In terms of results, there has been only one major intergovernmental agreement reached, the Social Union Framework. The lesson I would draw from this is that an investment in building good intergovernmental mechanisms and a commitment to using them regularly brings results.

The variability in frequency of First Ministers Meetings is not generally the case with regard to the great number of meetings of Ministers and officials in specific subject areas. These groupings generally meet at least annually. There is a range, however, in the extent to which they are organized and in the degree to which they are committed to collaboration. Whereas First Ministers meetings are chaired solely by the Prime Minister and are convened at his choosing, other Ministerial meetings tend to occur at a regular frequency. Some are chaired only by the Federal Minister, such as meetings of Ministers of Finance, while others are co-chaired federally and provincially, and agendas are set by consultation. The forum in which there is the closest degree of collaboration is actually incorporated as a Council of Ministers of Environment.

In the Canadian Council of Ministers of Environment, the chairmanship is rotated among the 14 jurisdictions on an annual basis, there is a permanent secretariat located in Winnipeg, one of the provincial capitals; that secretariat is funded on a pro-rated basis according to population, and the Council is a legally incorporated body. It is not surprising that the consistency and outcomes from this Ministerial grouping exceeds that of any other counterparts. The most significant body of work produced by the Council of Environment Ministers comes under the heading of harmonization. Where there is no constitutional assignment of authority to federal or provincial governments, Ministers and officials devised a complete architecture of roles and responsibilities based on two key principles: a single-window approach and the assumption that roles should be assigned to the government best able to carry them out. Not all of this architecture received final endorsement, but the philosophy has provided significant direction in what is a highly complex field of environmental regulation, research and management. Through cooperation, joint funding, and a science-based approach, common environmental standards have been established for a variety of pollutants.

Moving into the area of interprovincial as opposed to federal-provincial intergovernmental affairs, there are two national forums of long standing:

- The Annual Premiers Conference has been functioning since 1964, and while it has no funding or permanent secretariat, it is a significant political event on the intergovernmental landscape. Since the election in April of a non-separatist Government of Quebec, an old idea, that of a Council of the Federation has been revised and adopted by the provincial Premiers. The Premiers will meet next month to consider the permanent establishment of the body that would have funding, a permanent secretariat, and a concerted effort to coordinate certain

aspects of the provinces relationship with each other and with the federal government. The Council of the Federation was originally proposed over twenty years ago by the federal government to give greater effectiveness and legitimacy to the First Ministers Conference, and it is possible, if not probable, that it will yet be adopted as a federal-provincial council

- The other long-standing interprovincial Council is the Council of Ministers of Education. It too has funding, a permanent secretariat and a well-established program of collaboration among governments.

On the regional level, there is one significant permanent institution, the Council of Atlantic Premiers. Established in 1971, after the concept of union of the three Maritime Provinces was studied and rejected, the Council of Maritime Premiers was created to further regional cooperation and integration of services.



Atlantic Provinces

Aside from furthering cooperation across a broad range of responsibilities, the Council actually created some common institutions for the joint delivery of services. Included in this is:

- A common granting commission for the financial support of Maritime Province universities;
- A common information technology-based land registration service;
- Common non-discriminatory rules for purchasing and contracting.

In 1992, the Council expanded its membership to take in the easternmost province of Newfoundland. Again, the Council is incorporated, and is served by a permanent secretariat funded on a pro-rated shared cost formula.

Still on a regional level, but this time with an international element, is the Conference of New England Governors and Eastern Canadian Premiers.



Eastern Provinces & New England States

The Conference has taken place annually since 1973. Its perennial focus is on three issues, energy trade, and the environment. Its achievements are especially significant in the environmental field as the Premiers and Governors have outpaced their national counterparts by putting in place the first Canada –US Agreement on limiting acid rain (SO<sub>2</sub>), the first Canada-US agreement on limiting greenhouse gasses (CO<sub>2</sub>), and the first Canada-US Agreement on limiting mercury emissions. It bears repeating that the Conference is served by a permanent secretariat, is formula-funded and operates under a rotating chairmanship.

The lesson I draw from the forgoing is that if you are serious about getting significant results from intergovernmental relationships, the likelihood of success is greatly enhanced if there is a pattern of regular meetings (not at the whim of the chair), a secretariat to ensure that the necessary work is done, and a contributory funding formula. On the point of the secretariat, experience shows that if you want to have truly integrated efforts, you need the assistance of a dedicated staff, whose sole function is to prepare the Conference to do the work desired and to ensure there is follow up action to the meetings. The additional benefit of the presence of a secretariat is that it provides a responsibility point separate from the chair, and can provide the continuity needed in view of frequent changes of government and political leadership. In cases where sustained effort is required, a professional dedicated secretariat can be the ‘keepers of the flame’.

In summary, Canada finds itself with a federal system of government, not by choice but by necessity. In the modern world, however, federalism is proving to be the format of choice for many countries for the advantages it confers. Not only does it provide for the accommodation of linguistic, religious and geographic diversity, federalism encourages the most modern expressions of government through what it offers in terms of flexibility and gaining the advantages flowing from the concept of subsidiarity. In a country like Canada with its vast geography and diversity, in order to make federalism work

effectively there has to be a substantial investment in the intergovernmental machinery of federalism, and the commitment to use that machinery to meet the widest interests of the society it is designed to serve.

### **Conclusions**

- Canada was a federation by necessity, not by choice.
- Today, federalism offers the most modern approach to government.
- Effective intergovernmental machinery is required to make federalism work.
- Investment in machinery brings results.