



Pressures on Canada's "environmental" federation from inside & out

BY CAROLYN JOHNS

The recent announcement by US President George Bush of his country's abandonment of the 1997 Kyoto protocol on climate change may deal a final blow to Canada's commitments that have recently been the source of considerable friction between the federal and provincial governments.

Signals of a domestic unravelling became evident in November 2000, when 100 Canadian delegates made up of federal, provincial and territorial government officials, as well as representatives of industry and non-governmental organizations, returned from the United Nation's 6th Conference of the Parties on Climate Change in the Hague.

Days after the conference, domestic tensions were ignited by a press release from the environment minister of the richest and most populous province, Ontario.

Ontario's minister complained that the federal government did not go far enough towards creating national standards and "securing a coordinated North American approach to addressing climate change".

These comments followed Ontario's refusal to adopt the "First national business plan on climate change" at a joint ministers of environment and energy meeting in Quebec City one month prior to the meetings in the Hague.

All provincial and territorial ministers of environment and energy, except Ontario's, adopted the business plan as a central component of Canada's national implementation strategy that "recognizes and respects the jurisdictional authorities of each order of government".

No consensus for a climate change strategy

The national strategy calls for specific actions by federal and provincial

governments related to meeting Canada's target of reducing greenhouse gas emissions to 6% below 1990 levels within the 2008–2012 period.

In addition to federal initiatives, provincial and territorial contributions under the plan are expected to provide further reductions in greenhouse gas emissions.

The Ontario minister criticized the federal government for not demanding more trans-boundary emission reductions from the United States during talks that led to a draft agreement of the long-awaited Ozone Annex to the Canada-US Air Quality Agreement signed in 1991—an agreement designed to reduce trans-boundary smog. The future of this agreement is now in doubt.

The Annex is primarily targeted at reducing nitrogen oxide and volatile organic compounds from 18 northern US states and the resource-based, energy-intensive industries located predominantly in the Canadian provinces of Ontario, Alberta and Quebec.

Recent requests by New York State and Connecticut for the federal environment minister to conduct a review and environmental assessment of Ontario's coal-fired power stations add another wrinkle to inter-jurisdictional smog issues.

According to the federal environment ministry, the transportation and energy industries (petroleum, natural gas and electricity generation) accounted for 80 percent of the increase in Canada's greenhouse gas emissions between 1990 and 1997.

A more recent report by the federal natural resources department projected that if Canada continues "business as usual" the gap between projected emissions and the Kyoto target will be 26 percent.

A national implementation strategy is particularly contentious in the Canadian federation because the provinces have varied economic development agendas. And the costs of dealing with greenhouse gases vary greatly among the different sectors of the economy.

This is particularly challenging given rising costs in the energy sector.

Recent history: the ebb and flow of environmental co-operation

Constitutionally, jurisdiction over Canada's environment is shared between the federal government and the provinces. Some have called federalism in this policy area imbalanced in favour of the provinces. It has also been characterized as an exercise in "buck passing" between both levels of government.

Prior to the 1970s, there was little federal-provincial interaction concerning the environment.

With unprecedented public concern for environmental issues in the late 1960s, the federal government became increasingly active through numerous pieces of legislation and the establishment of a federal environment department in the early 1970s.

Simultaneously, the provinces were developing their own statutes and environmental ministries.

As a result, intergovernmental relations are a key element of Canadian environmental policy-making.

Since the 1960s the major intergovernmental forum for dealing with the environment has been the Canadian Council of Ministers of the Environment, which brings together the ministers from all ten provinces, three territories and the federal minister. The council meets at least annually to discuss

intergovernmental aspects of environmental policy.

In an attempt to give the provinces and territories a national perspective, the presidency of this intergovernmental organization is rotated annually among member governments. The CCME is also mirrored by a deputy minister committee and supported by its own administrative secretariat.

By the mid 1970s, federal-provincial harmony was restored through a series of bilateral agreements, as well as agreements facilitated by the International (ie, Canada-USA) Joint Commission related to water quality management in the Great Lakes.

Relations during this period were relatively cooperative, despite conflict over energy policy and the Constitution.

By the late 1980s tensions had again emerged, fueled by public concern about the environment.

The federal government's Canadian Environmental Protection Act (CEPA) in 1988 promised to renew federal regulatory activity in the area of environmental assessment. Provincial governments strongly objected to the federal initiative in this area.

Intergovernmental relations further deteriorated when environmentalists forced the federal government through legal action to undertake a broad range of environmental impact assessments previously left to the provinces—assessments that threatened key economic development projects in the provinces.

In 1990, the ministers of the environment signed a multilateral agreement to cooperate, followed in 1991 by a statement of environmental assessment principles intended to promote coordination and consistency in the federal and provincial environmental assessment process.

By the mid-1990s both levels of government faced declining budgets and waning public concern about the environment.

The "harmonization initiative" in 1993 shifted the emphasis to eliminating duplication and overlap in federal and provincial responsibilities. This signaled a departure from the implicit acceptance of

some overlap in the earlier multilateral agreement on the environment of 1990.

By 1993 the task of streamlining government operations had come to seem more urgent than the need to deal with environmental challenges.

But new impetus for intergovernmental cooperation came as part of the federal government's wish to bring the predominantly French-speaking province of Quebec back to the council of ministers' negotiating table (Quebec had withdrawn in protest against the 1988 federal Environmental Protection Act).

The federal government also wanted to produce some evidence that its new model of a "flexible federation" could work.

At the 1996 meeting of the council of environment ministers all provinces agreed in principle to work towards another multilateral framework based on Canada-wide rather than national standards—in other words standards negotiated between the two levels of government and not imposed by the federal government.

A contested "Accord"

In 1998, all provinces (except Quebec), and both territories signed the Canada-Wide Accord on Environmental Harmonization.

Through a series of sub-agreements between the federal and one or more of the provincial or territorial governments, the Accord attempted to address a number of environmental issues that require intergovernmental cooperation.

Initially, these included environmental standards for toxic substances, assessment and inspections. Additional sub-agreements were planned for inspections and enforcement, monitoring and reporting, emergency response, research and development, policy and legislation, state-of-the-environment reporting and international agreements.

Environmental groups were strongly opposed. They were critical of the potential of the Accord to improve environmental outcomes, given the significant cuts in the environment budgets of many provinces.

Critics see the implementation of the Accord, together with the decline of the

council of environment ministers, as symptoms of the fact that several important provinces and the federal government are much less committed to the environment than they were a decade ago.

In addition, the Accord is being challenged by developments on the international front.

New challenges to the "environmental federation"

Many emerging issues require joint action outside the institutional boundaries of ministers and departments of the environment and the council of ministers.

And if the multilateral framework embodied in the Harmonization Accord is going to address emerging challenges, a sub-agreement on international agreements may be worthy of reconsideration.

The federal government has recently stated that it will be setting up a parliamentary committee to examine the issue of bulk water exports. It is very likely that the commercialization of water could be a key intergovernmental issue in coming months.

A pending US lawsuit related to water exports under the North American Free Trade Agreement (NAFTA) will also challenge the ability of the Canadian federation to legislate against water exports—clearly viewed as a commodity by the Americans.

There is also the Canada-Yukon Oil and Gas Accord Implementation Act related to the Alaskan Highway Pipeline Project (an 1800 mile long natural gas pipeline). This will bring environmental issues related to natural resource development to the forefront of the intergovernmental agenda.

In the end, the fact that Canada has a flexible and adaptable federal structure may be a saving grace in dealing with complex questions of environmental jurisdiction.

There will always, it seems, be competing claims of environmental authority.

When it comes to the complex, interwoven nature of environmental issues, what Canada needs are networks of shared authority and new approaches that reflect this complexity. 6