

19th Century Division of Powers, 21st Century Problems:

Understanding Canadian Intergovernmental Relations



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TABLE OF CONTENTS

INTRODUCTION	4
1. WHY SHOULD CANADIANS CARE ABOUT INTERGOVERNMENTAL RELATIONS?	6
2. FRICTION POINTS IN THE IG WORLD	7
3. IMPROVING CANADA'S INTERGOVERNMENTAL MACHINERY	11
4. CONCLUSION	17

INTRODUCTION

2014 should be a busy year for those responsible for managing the Canadian federation. Three major intergovernmental agreements – the Canada Health Transfer (CHT), the Canada Social Transfer (CST) and equalization – are set to expire. Add to that the existing work on energy and climate change, new developments in job training, and the ongoing issues in the immigration and refugee files, the intergovernmental agenda is jam-packed.

Intergovernmental relations (IGR) – or the interactions of federal, provincial, and territorial (FPT) authorities – are what keeps the Canadian federation rolling. Thanks to these relations, Canadians enjoy a vast array of essential programs, like health care, employment insurance and education, critical infrastructure like highways and airports, and are party to a host of accords and agreements that govern affairs in such things as tax collection, labour market regulations, food safety, and the environment. Put simply, IGR touches the lives of all Canadians.

While IGR is critically important, this world has generally remained shrouded from the view of Canadians. Citizens are, as J.R. Mallory observed, “as far away from the real decisions of government as they were two hundred years ago” (1974, 208). Furthermore, it is not even clear the extent to which Canadians are even interested in IGR. When FPT relations are reported in the news, more often than not Canadians hear their elected officials complaining about broken promises, insufficient funds, or ineffective programs that fail to meet the goals of an intergovernmental initiative. Perhaps disinterest is the best approach.

This paper answers three questions:

1. Why should Canadians care about intergovernmental relations?
2. Why are intergovernmental relations often fraught with conflict?
3. What can we do to make intergovernmental relations run more smoothly?

To help us answer these questions, we went right to the source and interviewed people with first-hand experience of the IG world – those who work exclusively in the dedicated IG “shops” from coast to coast. Throughout 2012, we spoke to more than two-dozen current and former officials from all 14 jurisdictions (federal, provincial, and territorial). Most of the semi-structured interviews were conducted over the phone and lasted approximately one hour. Due to the diminutive number of officials across the country, all our conversations were granted on the condition of strict anonymity. Any statements are thus attributed only to such generic titles as “intergovernmental official”.

The opening section answers the question why we should care about IG affairs, highlighting the reality of addressing complex problems in a context of divided powers. The second section explains why IG relations often appear to be so tense and conflicted, exposing four enduring friction points in the Canadian federation. Finally, the third section sets out five recommendations to help Canadian IG relations run more smoothly, distilled in the following paragraph.

Success in the IG world requires capable public servants, committed politicians, and an effort by all parties to strive for the win-win. Frequent and open communications are vital to hammer out a sense of shared goals, which can be pursued in different ways, as agreements are being crafted. Mutual recognition of the various roles and responsibilities of all the various players must be maintained while simultaneously acknowledging the legitimacy of alternative strategies to resolve a common problem or achieve a shared objective. On the one hand, stringent requirements and inflexible restrictions encoded into FPT agreements often spell disaster in the intergovernmental world. On the other hand, overly vague agreements are just as unlikely to garner success. Managing intergovernmental relations is thus perhaps best described as a mission to find the Goldilocks Point – achieving an ideal balance that is neither too hot nor too cold but just right.

Before delving into the meat of this paper, a caveat needs to be made. Here we focus on federal-provincial-territorial relations, largely excluding provincial-provincial or provincial-territorial initiatives and completely ignoring municipal activity. Given the rising significance of intergovernmental relations that occurs without federal engagement, such as the New West Partnership, the Ontario-Quebec Trade and Cooperation Agreement, and the Yukon-Northwest Territories Transboundary Water Management Agreement, future studies will need to fill this gap.

1

WHY SHOULD CANADIANS CARE ABOUT INTERGOVERNMENTAL RELATIONS?

“We have a 19th century division of powers trying to operate in a 21st century world – and that’s not always easy.”

– IG OFFICIAL

When the Fathers of Confederation drafted Canada’s constitution in the 1800s, they did so with the idea of creating a “water-tight” model of federalism. The idea was seductively simple: each order of government would exercise independent authority in their respective policy areas free from the interference of the others. Today, however, this model of federalism – if it ever even existed – has been completely eclipsed. Canada’s federation is one of intergovernmental interdependence. To secure key objectives across many policy areas, collaboration, coordination, and cooperation among the orders of government are vital.

The governments of the federation have to be able to work with each other in virtually every policy area. Now we need to be able to answer collective questions on jurisdiction, responsibility, accountability, policy objectives, and the allocation of public resources to address our issues of the day.

This fact is perhaps nowhere more apparent than in the various arenas of social policy. The establishment and maintenance of social programs – from the Canada Pension Plan to health care, employment insurance to education, – requires the active engagement and enduring commitments of officials from federal, provincial, and territorial governments. The crux of the situation is straightforward, if its effects more complex.

Due to the division of powers, the federal government has greater revenue-raising capacity than its provincial and territorial counterparts, but lacks the necessary policy authority to shape most of the programs that constitute the social safety net. In the meantime, the provinces (and to a

growing degree the territories) enjoy the lion’s share of policy authority but lack the necessary fiscal resources to fund the various programs.

To correct for this imbalance, the federal government uses its spending power to invest in the social safety net, intervening in areas that constitutionally fall under PT jurisdiction. Using this fiscal carrot, the federal government can attach conditions that provinces and territories have to meet and create programs that are aligned with “national” priorities. Due to fiscal constraints, the provinces are incapable of independently discharging their responsibilities without financial support from the federal government. In other words, the ‘water-tight’ model of federalism does not exist.

Beyond this constitutionally rooted paradox, interactions among the orders of government are also required to address many of the complex problems that face Canadians today. Labour mobility, environmental protection, policing, transportation, food inspection and public safety are all issues that neither respect our artificially constructed political borders nor can be addressed by one government on its own.

From the day-to-day interactions among IG officials to the formalized summits for the elected ministers, “a continuous process of federal-provincial [and territorial] consultation and negotiation is at the heart of the Canadian federal system” (Smiley 1987: 86). Known as “executive federalism”, it is through these activities of the elected officials and the bureaucrats who work under their direction, often shrouded in secrecy, that the policies and programs to benefit Canadians are crafted.

Here we throw open the black box that has concealed the intergovernmental world so that Canadians can better appreciate how it has been working and consider what can be done to improve it.

2

FRICION POINTS IN THE IG WORLD

Why does it seem that intergovernmental relations in Canada are so often fraught with conflict? We hear far more about the skirmishes than we ever do about the cooperation that occurs among the different orders of government. These fights, however, are not simply attributable to immediate issues of the day. Rather, there are four enduring points of friction that pervade Canadian intergovernmental relations, which contribute to the conflict:

1. Canada's multinational population and the asymmetry that demarcates the constituent jurisdictions;
2. Determining the allocation criteria for funds and devising the accountability requirements for initiatives;
3. A phenomenon known as the 'nested game'; and
4. The uncertainty that runs through the IG world.

First, Canada is a multinational federation with two internal nations – Quebec and Aboriginal Peoples – that coexist with the rest of Canada (Gagnon and Tully, 2001). Furthermore, within these three broad groups is a wealth of diversity that defies any notion of a singular, homogenous, identity. Canada is populated with a multiplicity of communities living within a shared territory, which calls into question the idea of a singular vision for the country as a whole. Notions on the culture of the country, the legitimate and appropriate roles and responsibilities for the respective orders of governments, and visions of the constitution itself vary across both space and time.¹ Canadians have in fact been described as “schizophrenic patriots, people who divide their loyalties between country and provincial community” (Black 1975). These ideas and identities are not simply irrational or irrelevant constructs that can be glossed over or dismissed; they are salient conceptualizations that influence the position of negotiators, politicians, and Canadians themselves. Failure to acknowledge and recognize the significance and validity of these alternative ideas and interpretations can have damaging consequences in the Canadian intergovernmental world.

What is more, there are considerable asymmetries in the features of the provinces and territories, spatially, socially, and economically. Think about the raw population numbers.

According to the most recent data from Statistics Canada, Canada ranges from the Yukon Territory with 36,700 people to Ontario with a population of 13,537,994. In terms of population profiles, in Ontario and British Columbia, more than one person in four is foreign-born, the strongest concentration of immigrants is found in the large urban centres of four provinces, New Brunswick is the only formally bilingual province, while Newfoundland and Labrador is the province with the oldest population. Now consider the relative provincial contributions to Canada's collective Gross Domestic Product. At 37.7 percent, Ontario makes up the largest share of Canada's GDP while Prince Edward Island only adds 0.42 percent.

Furthermore, as Ron Kneebone and Margarita Gres declare: “There is no ‘Canadian’ labour market. Rather, Canada is made up of many smaller labour markets which rise and fall in response to different factors. (2013)” Such asymmetries translate into considerable differences in the needs and interests for those nested within the Canadian federation.

Official acknowledgment and recognition of this asymmetry is a time-consuming and laborious process. “While we do get recognition for unique circumstances, we have to remind people of our situation on a regular basis”, reported an IG official. In recent years, asymmetry in the IG world has further increased with the inclusion of the territories as participants around the table where population density is less than 1 percent, the sizes of their respective economies considerably smaller, but the costs of delivering services is markedly higher. “A key priority for us is achieving some arrangement, often unique, that allows the northern jurisdictions to ensure that the level of services are comparable to southern Canadians.” As one official bluntly stated: “Asymmetry is the norm.”

Marked asymmetry in capacities, sizes, and economic profiles translates into appreciably different needs and interests

¹ For an excellent discussion of the various interpretations of the Canadian constitution see: Francois Rocher, “The Four Dimensions of Canadian Federalism” In *New Trends in Canadian Federalism*, 2nd Ed. Francois Rocher and Miriam Smith, eds. (Peterborough: Broadview Press, 2003), 21-41.

around the bargaining table that can be a challenge to reconcile. Perhaps nowhere is this more apparent than in climate change policy.

Provinces that have invested heavily in the oil and gas industries and other GHG emission-intensive sectors, like petroleum extraction and refinement, manufacturing, and mining, are firm opponents policies like hard caps on emission as a means for Canada to address climate change. In the meantime, provinces that have invested in other forms of energy production, such as hydro, take an alternative stance for addressing climate change, supporting hard caps and carbon taxes. Furthermore, as one official stated: “Canadians themselves don’t know what they want on climate change – and a key part of what puts decision-makers on a common path is the population itself.” Put together, what’s missing in climate change is a clear vision or shared principles to bring intergovernmental actors together. The result of these differences: a long-standing pan-Canadian stalemate on what to do about climate change with a number of provinces pursuing markedly different strategies.

Second, because intergovernmental agreements almost always involve money, determining who gets how much is fraught with conflict. Provinces with larger populations, for example, will jockey for per-capita funding while provinces with smaller populations and the northern territories will lobby for cost-based allocations.

With money comes the need to delineate roles and responsibilities for each jurisdiction so that they can be held accountable for their actions. But developing legitimate and effective accountability regimes has proven to be a considerable challenge.

“The federal government is always establishing guidelines or reporting requirements”, reported one official, “and it is a constant battle to try and find common ground. If you can’t find it you agree to disagree and try to move on. Nevertheless, it is the stickiest wicket for us in IG affairs.”

Provinces argue that as a constitutional order of government, their own residents hold them to account through their respective legislatures and existing accountability practices. Federal reporting and monitoring requirements thus put the other governments into an awkward position of subservience to Ottawa, which does not reflect the idea of intergovernmental partnerships.

This fact was highlighted in the report from the Blue Ribbon Panel on federal transfers, *From Red Tape to Clear Results*.

According to provincial respondents to the Panel, accountability requirements are an area in which individual federal departments fail to interpret and apply the transfer payment policy uniformly. “Some federal departments inform their provincial counterparts that highly detailed, rigorous reporting, audit and evaluation measures are required for compliance with their policy before program parameters are revealed... (o)ther departments adopt the position that the policy affords them a substantial degree of flexibility in negotiating which measures should apply, resulting in substantially looser federal requirements.” (2006: 15) This inconsistency makes it difficult for provincial and territorial negotiators to make informed decisions about what kinds of reporting protocols are reasonable or required.

In the meantime, however, the federal government has its own obligation to account to Canadians for the budget and for the effectiveness of the public programs it supports. Furthermore, as some segments of Canadian society call for uniformity and national standards that are enforceable by the federal government, a dilemma is created for policy-makers and political actors. Hence the “sticky wicket” to which the IG official referred.

Third, admittedly abstract, intergovernmental relations are what social scientists call a “nested game” (Tsebelis 1990). Each person at the negotiating table is simultaneously involved in a series of other processes – with other departments, governments, stakeholders, citizens, etc., each of which has its own set of rules, objectives, and priorities.

Some respondents offered their own accounts of this nested game phenomenon and its effects on the IG world:

“There are two sides: the internal side – ensuring that you’ve got buy in from the political players, and then the outside – which can be split into negotiations at the table and those behind the scenes/outside of the table with any or all of the players. You’ve got to shore up your own position because it is impossible to go into negotiations with a position that is completely different from everyone else.”

Another described it as a “stylized dance” where IG officials must always avoid “overstepping their ground for an IG issue versus a program issue.”

The nested game nature of the IG world also means that there are vastly different interpretations of what constitutes a successful negotiation and the subsequent outcomes that

emerge – particularly between those that work exclusively in IG and those working in a traditional line department.

As one official said: “A line department might say that success is when they get the money on time, the project gets done, and there are few administrative headaches. From our perspective in IG, the three general principles we use are: (1) is the agreement equitable? Are all the jurisdictions treated similarly to one another; (2) does the agreement respect the notion that we are sovereign governments; and (3) does the wording and reporting requirements reflect these principles.”

Adding further complexity to the IG world are the vagaries of electoral cycles, reorganizations in the public service, and the ever shifting political and policy environment. Intergovernmental agreements can take years to achieve and, in the meantime, the players change, government priorities reshuffle, and the nature of the problem itself evolves (see box: Anatomy of a Failure).

Events during a round of social policy renewal illustrate how complex the negotiation process can be. The Ministerial

Council on Social Policy Renewal started formal negotiations in 1996, and drafted an agreement that was initially supported by all provinces, including Quebec. The agenda was driven by the recognition that while social services consist of complex interconnected programs with both orders of government active in every field, they act without clear agreement on each other’s respective roles and responsibilities. During the negotiation process, however, elections across the provinces brought about major personnel changes, three of which saw different parties claim the reins of government. The elections thus opened a window of opportunity for a new version of the agreement to emerge, which culminated in the signing of the Social Union Framework Agreement (SUFA) in 1999 – almost four years after the process began. Unfortunately, this new version of the agreement failed to sufficiently capture what Quebec had originally agreed to. And so, the final agreement was approved by all jurisdictions, except Quebec, critically compromising the legitimacy of the initiative and its long-term prospects for success.

ANATOMY OF A FAILURE

Signed with considerable fanfare, the Social Union Framework Agreement (SUFA) was universally identified by all the IG officials we spoke to as a disappointment. “SUFA!?” quipped one. “Only academics talk about SUFA anymore.” Four factors underpin the failure.

First and foremost, despite the province’s initial leadership and engagement on the file, Quebec did not end up signing the final agreement with the other governments. Quebec’s isolation undermined the legitimacy of the initiative and critically weakened SUFA’s credibility.

Second, when asked to explain why SUFA had failed to live up to its expectations, some officials noted that the agreement was extremely ambitious with an expansive mandate that proved

unmanageable. Furthermore, it was difficult to explain to the public and, thanks to a major economic slump in the early 2000s, there was a major shift in the political environment immediately after it was ratified. As such, decision-makers could not marshal the necessary political support to keep SUFA going.

Third, the agreement was seen in completely different ways by the signatories and those in the affected policy sectors. “It’s like the proverb of the blind men grabbing different parts of the elephant”, described one official. Some provinces saw SUFA as an opportunity to clearly delineate what the federal government could and couldn’t do in the social sphere; others thought it would assure certain spending commitments from the federal government; while others saw it as a step

to some concrete definition of social citizenship in Canada. Consequently, there was very little consensus on what SUFA was trying to do.

Finally, a number of officials felt that the federal government was never really committed to the initiative, as political leaders did not support the goals and objectives being pressed by provincial representatives. “The federal government didn’t like it,” declared one official. “They were dragged into it kicking and screaming and the [federal] staff made sure that what was finally presented was a second rate document.” It therefore seemed clear that the federal government had no intention of adhering to SUFA, leading to its subsequent shelving with little substantive effects realized for Canadians.

Fourth, and finally, the IG world is both nebulous and unclear. The legal status of agreements, for example, is amorphous and undeniably fragile. There are serious debates regarding whether or not any of them should be viewed as binding contracts. Added to which, the rules of the IG world are vague, largely un-codified, and are thus highly malleable. If there is a lone constant in the IG world, it is that trilateral

meetings only occur when the federal government decides to call them, with Ottawa setting the agenda. Put together, this means that IG officials find themselves situated in highly unstable machinery where circumstances can change with little notice.

THE IMPORTANCE OF ORGANIZATIONS

Observers of the Canadian intergovernmental machinery frequently comment on how amorphous and unstructured it is. Intergovernmental agreements are not legally binding and cannot be enforced by the courts. In fact, the very principle of federalism itself antagonizes the idea of binding contracts between the orders of government. The member governments of a federation, writes federal scholar Alan Fenna, “are accountable first and foremost to their own political communities and not to each other or to the wider national community” (2010: 8). Put simply, if intergovernmental agreements were binding contracts, governments would no longer just be accountable to their citizens; instead, they would suddenly need to answer for commitments made by previous governments in previous years to other governments.

Even when federal and provincial officials are in regular contact,

negotiations can become quickly derailed if federal priorities shift. One IG official bluntly described how the federal government informed them of a major policy change:

“We had been in regular negotiations to re-sign our agreement for two years – and there had been no sign from the federal government that they weren’t going to re-sign the agreement. Then we got a call. The federal official on the line informed us that our minister would be getting a letter in 48 hours saying that the federal government was cancelling the agreement. That was our notice.”

Similarly, in 2007, the federal government had assured the provinces that the provisions of the renewed equalization program would be maintained until the end of 2013-14. Less than two years later, however, when faced with the economic slowdown, the federal government announced that it needed to modify the

arrangements and reduce the transfers being allocated to the other orders of government. These changes were made without consultation, despite the major implications for provincial finances (Government of Quebec, 2010: 4).

To help increase stability and predictability in the IG world, the federal, provincial and territorial governments can use permanent and dedicated committees to encourage constant discussions among the orders of government. In the area of finance, for example, there are three committees composed of deputy ministers, assistant deputy ministers, and specialists on equalization and other transfers that used to meet regularly to coordinate action. While these forums exist, in recent years they have been mothballed. It seems the time is ripe to re-engage and strengthen this piece of intergovernmental machinery.

These four friction points are the source of much of the conflict in the Canadian IG world. Acknowledging them is the first step to understanding why we hear of so many battles rather than consensus and cooperation. Just because they are enduring features, however, does not mean that we cannot find some ways to address them or work around them. Certain strategies exacerbate conflict while others can potentially help mitigate it. The next section lays out

five recommendations to help us transcend the friction and secure more fruitful relations.

3

IMPROVING CANADA'S INTERGOVERNMENTAL MACHINERY

Five strategies could help forge a more productive IG world: focus on finding common ground; pursue targeted initiatives; clarify and respect the roles and responsibilities; institutionalize the machinery; and increase transparency and participating in IG affairs.

R1: Find common ground

“The agreements and initiatives that are most likely to succeed are those that are seen as a priority amongst many governments. If there is public interest and buy-in, if we can agree on common principles, and if there is good consultation and dialogue beforehand. Sounds simple – but it can be difficult to find.”

(IG OFFICIAL)

According to interviewees from all of the jurisdictions, save Alberta and Quebec, the starting point for a successful agreement is a shared understanding of the central goals and priorities that the various parties are trying to achieve. For Alberta and Quebec, a shared consensus is less significant because these two provinces prefer to act alone. Representatives from Alberta and Quebec nevertheless acknowledged that there must be a solid consensus regarding the specific problem that is the target of a developing FPT initiative. Among other things, a solid consensus ensures that you “Avoid situations where someone else throws spikes under your tires,” as one IG official put expressively.

Securing this shared problem definition requires face-to-face contact and officials who have considerable experience in IG relations. “You can’t underestimate the importance of face-to-face contract”, pressed one official. “It’s vital to allowing people to get creative about a problem and work through differences.”

Ideally, officials with considerable experience in the inter-governmental arena should lead the negotiations. Experienced negotiators are necessary for two reasons: trust and memory. “If you know someone for 10 years, it’s easier to trust them than if you just met a week ago. The other thing is the institutional knowledge that accrues when you have people in IG for a long time. Those people can say, with some authority, ‘we tried that in 2007 and it didn’t work.’ This kind of knowledge can be invaluable to help us avoid wasting precious time.”

Such trust-ties among officials become particularly important if there are tensions between elected officials. It was well known throughout the IG world, for example, that Ontario Premier Mike Harris and Prime Minister Jean Chrétien were not the best of friends. Through the efforts of their respective officials, however, lines of communication remained open and good working relations maintained.

Public servants in both line departments and dedicated IG shops must be engaged and committed to the processes and the intended action: “If you sign a five-year agreement and spend three years overcoming resistance to the agreement, you are not going to get very far.” All the people involved must therefore see the initiative that accompanies an agreement as a priority to ensure its success.

Bureaucrats alone, however, cannot forge this common ground. “A big part of success usually starts with the right political environment. You need to have the provincial government motivated at the elected level, and the federal government the same, otherwise you can use up years as a bureaucrat doing work that gets you absolutely nowhere.” Another official even declared: “One of the great weaknesses in the system, Canada-wide, is an assumption that in the absence of quite clear political guidance, officials should be able to work it out anyways.” Politicians must see an initiative as a key priority to lend the necessary political support to ensure the successful ratification and implementation of intergovernmental agreements.

R2: Pursue targeted initiatives

'The more discrete, the more measurable, the more focused, there is less noise associated with what you are trying to achieve – surgical agreements versus broad frameworks are certainly far more preferable.'

(IG OFFICIAL)

All of the respondents noted that the size, scope, and duration of agreements are particularly important elements for success. The larger the agreement, that then cuts across multiple sectors, engages a variety of departments, and seeks to simultaneously address a plethora of problems, the higher the likelihood of failure (see box: Anatomy of a Failure). Such agreements can be extremely difficult to determine ways to assess effectiveness and link the investments being made by governments with substantive outcomes.

While calling for focused agreements, officials nevertheless indicated a strong preference for increasing stability by avoiding extremely short or rigid timelines. "Generally speaking, agreements that have longer terms seem to be more successful than ones that are shorter term. It gives them enough time to get them off the ground and get it done smoothly."

SUCCESS UNDER DURESS? CANADA'S ECONOMIC ACTION PLAN

In 2009, to respond to the global economic crisis, the federal, provincial, and territorial governments worked together to develop Canada's Economic Action Plan. Their efforts translated into a series of initiatives that totaled about \$40 billion of federal funds, supplemented with an additional \$12 billion provided by the provinces and territories (Auditor General of Canada 2010).

IG officials noted that negotiations were expedited because everyone was unanimous that something needed to be done. Furthermore, there was already a solid foundation for rapid mobilization under the auspices of the existing infrastructure agreements, which had just been completed between 2007 and 2008, the labour market enhancement agreements, and the regional development agencies. "People were aware of the issues, everyone had the same goals, and the right people came together and got it done in a timely manner," said one IG official who was involved in the whole process.

What is more, PT officials affirmed that representatives from the federal

government demonstrated a clear willingness to adjust funding conditions to reflect differences in the respective state of readiness of each jurisdiction. Additionally, federal officials shaped the agreements to reflect pre-existing plans that had already been rolled out in certain provinces, like Alberta and New Brunswick. On the provincial side, certain provinces were willing to give more information to their federal counterparts on the infrastructure projects that were going to be supported in recognition of "the special environment we've had in the economy for the past two years, and knowing that the federal government had to report to the House of Commons on the Action Plan." In other words, the friction that often appears in the defining of roles and responsibilities was set aside, thanks to the clear commitment and significant needs of each of the partners in the federation.

Despite the positive commentary, some blemishes may nevertheless mar the success of Canada's Economic Action plan. Some provincial auditors have observed a number of distortions in

local priorities stemming from the federal stimulus. The Ontario Auditor General, for example, found that one municipality submitted 150 applications of which 15 were funded (2010, 179). However, 11 of those 15 were ranked at or near the bottom of the municipality's actual priority list while other, more highly ranked, projects were left to languish. Furthermore, the same reported noted that as of March 31, 2010, less than \$510 million, or only 16 percent of the total \$3.1 billion committed by the federal and provincial governments had actually been spent. These blemishes that marks Canada's Economic Action Plan further confirms the challenges of constructing effective intergovernmental agreements that successfully address the needs of Canadians in a timely fashion.

Hard expiry dates can also complicate things, particularly if one government finds itself going into an election just as an agreement is set to expire. Instead, most officials indicated a strong preference for open-ended timelines with renewal or systematic rollover clauses that offer far more flexibility than hard expiry dates.

One example of an agreement with such clauses was the Winnipeg Core Area Agreement (CAI) originally signed in 1981. "Spanning a decade and reflecting unprecedented tri-level governmental cooperation, the CAI was considered to be a unique and notable experiment in public policy" (Layne 2000: 250). While many factors contributed to the success of the agreement, including a hospitable political climate, a cooperative approach to policy development, and a principled approach to urban regeneration efforts, the agreement also benefitted from rollover clauses that allowed it to evolve organically over time (IG Official).

Targeted initiatives are nevertheless accompanied by an important trade-off. If overly piecemeal and uncoordinated, focused agreements can contribute to major incoherence and fundamental contradictions among the different initiatives. Targeted agreements must therefore be undertaken with a broader appreciation for and clear understanding of government-wide priorities.

This recommendation should also not be interpreted as a call for what has come to be known as boutique federalism. Boutique federalism refers to one-off programs funded on a project-by-project basis with seed money

from the federal government to drive a new initiative that is a priority for Ottawa. Such programs are extremely attractive for federal politicians because they provide targeted funds to specific projects with short time horizons. This means that those responsible for the funds can quickly gain recognition for their efforts, hopefully translating into votes come election time. The problem, however, is that if federal priorities shift or when the funding cycle completed, the provincial and territorial governments are faced with a difficult decision: either step in and fill the funding void or cancel the program. It is also not clear how such piecemeal programming translates into sustained policy action that is beneficial for Canadians as a whole. Consequently, the temptation to engage in such boutique agreements should be avoided.

R3: Respect roles and responsibilities

"Sometimes there is a disconnection between the interests of the public at large versus the interest of officials. The officials feel that they have to protect their jurisdiction in certain sectors. The Canadian public, however, generally doesn't care about these jurisdictional issues – what is a Canadian fish versus a provincial fish?"

(IG OFFICIAL)

Although the Canadian public might get frustrated with the jurisdictional issues, at the end of the day, the federal, provincial, and territorial governments are responsible for particular areas and have built up significant expertise in those areas. It is important that both this expertise and these different constitutionally-guaranteed responsibilities are adequately recognized in intergovernmental interactions.

Agreements must neither hogtie governments to inappropriate tasks nor disregard the constitutional division of powers. Achieving this balance is one of the most challenging aspects of the IG world.

Determining appropriate roles and responsibilities should start early in the IG process and the engagement of all the jurisdictions involved is necessary to hammer out these aspects.

"From the provincial perspective, if it's an initiative that the federal government develops without consultation with the provinces – and if they are far along in terms of setting down terms and conditions, the agreement is likely to be highly inflexible and not reflect provincial priorities nor our existing expertise in the area." (IG Official)

Mutual respect is a keystone for the workability of IG relations and the subsequent agreements that are achieved. At times, however, federal politicians have indicated that they do not regard the provinces as equal partners: "We're not interested in devolving services to the junior level of government", then

Minister of Citizenship and Immigration Jason Kenney declared (Regg Cohen, 2011). The former Minister of Citizenship and Immigration should not be singled out here. There is a long list of federal politicians, officials and some citizens themselves who similarly view the provinces and territories in this light, calling for federal leadership in areas of provincial jurisdiction to create “national” programs that stretch from coast to coast to coast.

Provincial IG officials expressed major concern about this kind of interpretation of their authority: “They [federal officials] view provincial governments as junior levels of government. The issue for us is we are another order of government, we have our own areas of responsibility, our own funding, and if you want to be our partners in an initiative, then that’s great.”

The Blue Ribbon Panel similarly concluded that provinces and territories should be viewed as “partners” in agreements rather than as “recipients” of federal funds. Perhaps semantic to some, the choice of words and the ideas that accompany them are significant in intergovernmental relations. Here the media plays a major role. Headlines that refer to prospective IG initiatives as a “mission impossible” (Iverson 2014) or those depicting IG negotiations as battles to be won as if they are a zero-sum game, serve to reinforce the competitive and hierarchical norms that permeate the IG world.

At the same time, provinces and territories need to recognize that the federal government is responsible for the monies that it allocates. Consequently, one of the key aspects of roles and responsibilities that need to be addressed are reporting requirements and program evaluation.

To improve efficiency and effectiveness in public accountability, the Blue Ribbon Panel on federal transfers and contribution grants to the provinces and territories came to the following conclusion: “In the case of a provincial or territorial government, for example, where audit standards and capacities may well be as high as those of the federal government, it seems pointless and, indeed, redundant for the federal government to impose audit obligations in addition to those of the recipient government” (2006: 9). Provinces and territories must therefore fulfill their own obligations and ensure that adequate and effective reporting schemes are devised to realize successful monitoring of the results from intergovernmental initiatives.

R4: Institutionalize the machinery

“Many of the recent developments in the IG world, it has become clear that the lack of a formal architecture around the fundamentals of inter-governmental relations is a serious liability. Right now, we are in a state of heightened mistrust and a sense of amplified vulnerability that needs to change.”

(IG OFFICIAL)

Over the past fifteen years, the federal government has increasingly preferred a bilateral approach to intergovernmental relations. This approach presents a number of strategic advantages for federal officials. They can negotiate individually with certain provinces or territories, hammering out a deal that acts as the basic framework for all the other jurisdictions. Furthermore, provinces and territories themselves sometimes prefer bilateralism: “one size does not fit all, and sometimes we’re just as happy to have bilaterals as well” (IG Official). Bilateralism offers the chance to build flexibility into agreements allowing provinces and territories to pursue similar objectives with different means.

This bilateral approach to negotiating agreements would not necessarily be a problem, were not accompanied by another trend. The federal government has walked away from the multilateral platforms. One key mechanism for IG capacity, for example, used to be the First Ministers’ Conferences (FMC) called by the prime minister. Although often critiqued for just producing photos and thin communiqués for the media rather than substantive policy direction, FMCs called by the federal prime minister nevertheless brought the leaders of all the governments together in a common space. Since Prime Minister Jean Chrétien, however, FMCs have declined in popularity and are no longer being convened. This trend is not universally applauded. “We don’t have joint institutions,” lamented one official. H/she then provided the following recommendation: “We need to pull new federal-provincial-territorial teams together” (quoted in Inwood, Johns and O’Reilly 2011, 90).

What is more, dedicated working groups, like the Continuing Committee of Officials (CCO) composed of the deputy ministers of finance from across the country, the Fiscal Arrangements Committee (FAC) made up of the assistant deputy ministers in charge of federal-provincial policies in each of the finance departments, and the Sub-Committee on Transfers (SCT) with government specialists on equalization and other transfers that discussed the technical issues related to these transfer programs, have all been mothballed. As a result, federal, provincial, and territorial elected politicians and officials no longer regularly meet face-to-face in multilateral forums. But without face-to-face contact and regular exchanges, politicians and officials run the risk of becoming increasingly isolated from the conditions at work across the country, aggravating the enduring friction points that complicate IG relations in Canada.

The rules of the Canadian IG world are vague, largely uncodified, and extremely malleable. Over the past few decades, the provinces and territories have taken some steps to address this issue. For example, under the auspices of the Council of Atlantic Premiers, the eastern provinces have created a solid set of intergovernmental organizations that have garnered a number of positive results. And, in 2003, the provinces and territories created the Council of the Federation (COF) to speak with a strong voice to the federal government while also managing activities that involve all 13 jurisdictions. Two problems mar these efforts. First, due to their territorial demarcation, the regional initiatives cannot bring all the governments together. Second, the federal government has demonstrated little willingness to engage with the COF, undermining its full entrenchment as a permanent feature of the Canadian intergovernmental machinery. Consequently, these initiatives are not addressing the increasing isolation of the federal government from the other members of the federation.

FPT politicians and officials should re-engage with these dedicated platforms and re-invigorate the pursuit of formal organizations and standardization of practices. This does not necessarily mean creating entirely new bureaucratic structures and secretariats with their own interests and agendas. Instead, the FPTs could commit themselves to regularly scheduled meetings with an agenda developed collectively to provide a common space for information and ideas to be exchanged. These forums would then provide the critical opportunity to find common ground while reinforcing the legitimate roles and responsibilities of all the players at the table.

Formal organizations and permanent committees, moreover, can help grapple with the problems of management and oversight, tracking the progress of agreements over time, gathering and disseminating important information on the outcomes that emerge from intergovernmental initiatives, allowing governments to make adjustments when necessary or abandon agreements if they fail to produce the desired results.

R5: Increase transparency and public engagement

“One of the biggest problems in the IG world is an obsessive preoccupation with secrecy, the skeletal amount of material that is made public, and the rather poor quality of it – frankly the final information that is released often looks like Pablum.”

(IG OFFICIAL)

Transparency is one of the fundamental failings of the IG world and it is directly related to the processes of intergovernmental relations as they have developed in Canada. Canadian intergovernmental relations is often characterized in the following way: “the elitism of closed-door negotiations, the lack of transparency and citizen input and the absence of any role for legislatures in debating intergovernmental agreements” (Kanojia and Simeon 2007: 135-136). The mix of parliamentary democracy with federalism fostered the rise of what Donald Smiley called “executive federalism” (1987), which has isolated the IG world from the various legislatures and citizens of the country.

How would transparency and engagement help increase Canada's IG strengths? One official started our conversation off by emphasizing the ways in which transparency can alleviate some of the conflict surrounding reporting regimes and accountability requirements. “The degree of transparency helps the agreement – transparency from where the money comes from, transparency on what the goals are, and transparency on what the responsibilities are. That all helps intergovernmental agreements.” (IG Official)

If the various partner governments can be assured that the costs and achievements of the initiatives will be sufficiently monitored and broadcasted to the public, it would reduce the tension that has often beset accountability in the IG world.

Despite numerous commitments to improve transparency, public reporting remains problematic. The information given by governments in reports varies dramatically across the country and agreements are often silent on reporting provisions: “the 2000 ECD agreement includes no requirement for governments to track spending against a particular baseline so there is no ability to judge whether the baseline shifts from year to year” (Kanojia and Simeon 2007: 140).

Provincial and territorial governments are insistent that agreements reflect a relationship of equals – meaning that PTs will report directly to their own publics rather than reporting to the federal government. This principle, however, must be put into practice.

All the orders of government must make their actions and activities more publicly transparent and strengthen reporting arrangements so that Canadians are made consistently aware of the results that come from intergovernmental agreements. This will simultaneously help improve the outcomes of intergovernmental initiatives while serving to increase governmental compliance with agreements.

Furthermore, the IG world is notoriously closed, largely sealed off from non-governmental stakeholders and the members of the public. But it does not have to be this way.

The achievement of the three early childhood development (ECD) and early learning and childcare (ELCC) agreements

reached between 2000 and 2005, although unilaterally cancelled by the Conservative government in 2006, used a number of strategies to increase public engagement. Specifically, the FPTs formed the Early Childhood Development Working Group in the late 1990s before entering into formal negotiations. This group “engaged with key national and regional stakeholders and exerts in the field... the process was characterized by consultation beyond government” (Kanojia and Simeon 2007: 137). These processes provide a tangible example of public engagement that can be used in the establishment and management of other intergovernmental agreements.

Public activities, including intergovernmental initiatives, have considerable impact on citizenship, justices, and discourse. However, there is a critical democratic shortfall in the world of Canadian IG affairs. Public policy scholars Helen Ingram and Anne Schneider contend that one of the most important conditions for democracy is “open arenas for public discourse in which all relevant points of view are expressed” (2006: 172). No such forums exist at the intergovernmental level. Creating the space for multiple parties to engage in the process would help transform the intergovernmental world from one of hierarchy and competition into one of partnership and collaboration that produce responsive and effective programs to meet the needs of Canadians from coast to coast to coast.

4

CONCLUSION

In November 2012, Canada's 13 premiers met in Halifax to discuss the state of the national and global economies. Concerned about Canada's capacity to deal with the looming crises that surrounded the country – the 'fiscal cliff' in the US, the Eurozone sinking back into a recession, and the slow contraction of China – the premiers held an intergovernmental meeting to hear collectively from then Bank of Canada Governor, Mark Carney.

Invited but noticeably absent from the meetings was the federal prime minister, Stephen Harper. The Prime Minister's absence from the meeting was not surprising. Since taking office, the Conservative Government has pursued a bilateral approach to intergovernmental relations, preferring to meet premiers and other representatives from the provinces and territories one-on-one. Bilateralism in intergovernmental relations, however, did not start with the current federal government and the pattern stretches back well into the 1990s.

One of federalism's biggest assets is that by dividing powers and responsibilities among different governments, space is created for policy experimentation and creativity. Provincial

and territorial governments can pursue different ideas, without forcing the whole country to follow suit. If something proves to be successful, the others can draw inspiration. The federal government can even create incentives to encourage the other jurisdictions to pursue similar initiatives. If the idea fails, moreover, everyone can learn from the experience and avoid making the same mistakes.

Such benefits, however, are precluded on two assumptions. First, that there are open lines of communication among all the governments of a federation. Second, that the relations among the governments are based upon the principle of mutual respect. Unfortunately, however, this paper has suggested that these are not features common to Canadian IGR. But, with some small adjustments, political leaders and officials that support them can gradually refashion the IG world to secure these conditions and enable Canadian to more fully realize the benefits of federalism.

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