A Council of Futility?

The Council of the Federation's Inability to Alter
Intergovernmental Dynamics

Brandon Hillis

Within the Canadian federal system, there are two chambers of representation: the House of Commons, which represents the will of the Canadian electorate, and the Senate, an appointed body, which was created to provide, among other things, provincial and regional representation. However, given the well-documented deficiencies of the Senate, which stem from its lack of legitimacy as a result of it being an appointed body, and from its inequitable distribution of representation throughout the country, the Canadian federal system operates without an effective central institution to advocate for and represent regional interests and concerns. As such, much of the responsibility for such representation has fallen to the governments of Canada's provinces and territories. From

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1960 to 2003, the Annual Premiers' Conference (APC) - a relatively informal gathering of provincial (and eventually territorial) premiersserved as the chief organizing body for the provinces to fulfil their responsibilities and to respond to federal initiatives in a unified manner. In 2003 the premiers, sensing the need for a more institutionalized arrangement, ratified an agreement to create the Council of the Federation, an organization that would "transform the APC from an annual meeting into a permanent organization with staff and a budget." The council would be better equipped to put forth challenges and responses to federal government initiatives, thus creating a more unified front and altering the balance of the federal-provincial relationship. Additionally, institutionalization would help to improve inter-provincial relationships.² Has it worked? Much of the existing literature maintains that it has, or that it will. However, an analysis of the effectiveness of the Council in addressing issues such as equalization payments and internal trade, combined with an analysis of more critical literature, suggests that the Council has failed to distinguish itself from the APC, and has thus failed to significantly alter intergovernmental dynamics at any level.

Background

By 2003, the concept of a Council of the Federation was not a new idea: "[ideas date] back at least to the work of Québec Liberal leader Claude Ryan in his [1980] Beige Paper." However, the proposal most similar to what was agreed upon in 2003 was released in 2001 as part of an electoral platform created by Québec Liberal Minister Benoît Pelletier. 4 In this document, the Council was envisioned as a much stronger body than it would become in 2003. It would be "an intergovernmental body within the executive branch of government," including in its membership the prime minister.⁵ Additionally, it was proposed that the organization be given constitutional status and veto powers, and also suggested that the Council may become an "alternative to the Senate."6

The main impetus for the establishment of the Council likely came from the fact that, with the exception of the Mulroney government, the voices of the provinces had long been viewed by the federal government as little more than trifling annoyances.7 Chrétien's distaste for working with the provinces and his lack of concern for provincial needs was exemplified by his statement on equalization: "sometimes on Monday I feel like giving the provinces more money, and then on Tuesday not."8

Unfortunately, the other provinces, especially Ontario, feared that Québec's proposal would only result in the provinces "ganging up on Ottawa," and thus Charest could convince "the premiers to accept [only] a watered-down version of the [initial proposal]." The Council created in 2003 thus differed from the Québec proposal in that it had no federal membership, and there were no mentions of vetoes, constitutional entrenchment, or Senate replacement. 10 Despite the diluted nature of the final product, Canada's premiers proudly proclaimed on December 5, 2003, that they were equipped and ready to usher in a "new era of constructive and cooperative federalism."11

The Literature to Date

Not surprisingly, much of the literature published by the provincial governments holds the Council in high regard. There is also strong support within academia for the Council as an organization and as a departure from the APC, notably from Peter Meekison, the pre-eminent authority on Canadian federalism, and from academic and Québec civil servant Marc-Antoine Adam. It should be noted that Meekison's optimistic assertions were speculative, given the time in which he was writing. Adam, however, writing in 2005, asserts that the council will be able to bring necessary balance to the Canadian federal system.¹²

Others have adopted an openly critical view of the Council. Scholars Alain Noël and André Burelle represent two examples of this, with the latter arguing that the Council is little more than "a new lobby

by provinces and territories to obtain... fiscal resources." ¹³

Despite the fact that improving relations among the provinces and territories is a primary objective of the Council, discussion on this subject is sparse. However, the main critique of the literature is the ceiling on research; discussion on the Council has been largely absent since 2003. As such, there is little recent academic research on the Council on which to base a discussion of its effectiveness as an organization and the validity of the claim that it is a significant departure from the APC.

A Departure from the Annual Premiers' Conference?

Despite the sanguine statements of many of the organization's supporters, a comparison of the Council of the Federation and the Annual Premiers' Conferences suggests that the former is, as suggested by Noël, "little more than a light institutionalization" of the latter, and thus presents little evidence to justify itself as a significant departure from prior practices. 14

The most significant alteration has been the creation of a permanent secretariat. The secretariat and several steering committees operate year-round to compile and provide information to Council members. 15 Such tasks were the responsibility of whichever province was hosting the APC until 1975, when they were given to the Canadian Intergovernmental Conference Secretariat. 16 Other than this "light institutionalization," however, there is little to suggest that the Council represents a significant departure from its predecessor.

While there are numerous similarities between the two organizations, two stand out as exceptionally detrimental to the operation of the Council of the Federation. The first regards the Council's membership. As previously mentioned, the agreed-upon model of the Council precluded the membership of the prime minister. 17 While this may not have overt effects on the discussion of issues that are solely of interprovincial concern, such an absence certainly diminishes the Council's effectiveness as an institution tasked with improving relations between the two levels of government.

Without the prime minister as a member of the Council, meetings between the first ministers occur only at the behest of Ottawa. The premiers, despite repeated calls for change, the most recent being the 2003 APC – where, ironically, they called for annual first ministers' meetings, but rejected a proposal to include the prime minister in the council – have been unable to alter this practice. 18 This problem continues, as despite his stated intentions to meet with the provincial leaders on a regular basis, Stephen Harper has yet to convene a first ministers' meeting during his time in office.¹⁹ With Stéphane Dion leading the federal Liberals, it appears that reprieve from this intergovernmental dynamic is unlikely. Given Dion's actions while serving as the Minister for Intergovernmental Affairs during the Chrétien era, it is likely that the status quo will persist regardless of which party emerges victorious in the next election, and first ministers' meetings will continue to be held at Ottawa's whim.20

The second similarity is the consensus requirement. Adopted "to [portray] an image of provincial solidarity," this condition has become a constraint on the council's decision-making abilities, something that will be shown later in this essay to have considerable effects on the Council's attempts to put forth a policy statement regarding the equalization program.²¹ As asserted by Ian Peach of the Saskatchewan Institute of Public Policy, "a consensus rule gives tremendous bargaining power to holdout

jurisdictions, which can use the threat of disagreement to seek more favourable terms, generally at the expense of [an agenda] that reflects Canadians' policy preferences and desires."²² Furthermore, and more relevant to the council's struggles with equalization, this condition will be shown to extend discussion on time-sensitive matters and lead to the council's exclusion from discussion on pertinent issues.

Altering the Federal-Provincial/Territorial Dynamic

In failing to evolve from the APC, the Council of the Federation has proven to be largely ineffective at altering the dynamics of federalprovincial relationships. Positive developments have been short-lived and have been overshadowed by the council's overarching ineptitude within this arena.

The 2004 First Ministers' Conference chaired by then-Prime Minister Paul Martin and the subsequent actions of the Harper government in 2006 provide an example of the short-lived nature of the Council's positive achievements. The agenda for the meeting, which was focused on health care transfers, was determined by the Council, something previously unseen in the Canadian political system. This alone represented a significant shift in the intergovernmental dynamic in favour of the provinces. Furthermore, at the conference, the members of the Council were able to secure a ten-year, \$41 billion accord on health care, a considerable gain from the six-year, \$12 billion plan that Martin put forth at the beginning of the conference.²³

However, any feelings of jubilation among the members of the Council proved to be fleeting, as the Harper government announced that they would not be honouring the Martin health care accord.²⁴ While this may not have been done to spite the provinces and the Council (in the 2007 budget, the Conservative government provided for an accord on health care very similar to the Martin plan; this suggests that the goal of the Harper government was not to take away health care funding but rather to put a Conservative stamp on the accord), the very fact that the Council failed to issue an official response condemning these actions suggests that it lacks the political muscle to stand up to federal actions.

Additionally, and as previously alluded to, the consensus decision-making rule of the Council has hindered its attempts to alter the intergovernmental dynamic, something most clearly seen in its handling of the federal government's proposal to address the fiscal imbalance by reworking the federal equalization program. Given the Harper government's commitment to engage in consultation with the Council on this

issue, and given the program's provincial significance, it became the issue of discussion between the premiers in the lead up to the 2007 federal budget.²⁵ In March 2006, an independent commission struck by the Council of the Federation published its report on the fiscal imbalance, titled Reconciling the Irreconcilable. The document confirmed the existence of the fiscal imbalance and, more importantly, provided several recommendations on its reconciliation. The most substantial and controversial recommendation was "that the equalization program... [be calculated] with [the] inclusion of 100% of natural resource revenues," including non-renewable natural resources, which have long been excluded from the calculations.²⁶ As could be expected, this issue quickly became the focal point of disagreement between the council members.

Newfoundland, Saskatchewan, and Alberta quickly-with the exception of Alberta's brief flip-flop on the issue-rejected the commission's recommendation, as such an inclusion would increase the amount of money from their provinces sent to "have-not provinces," and would reduce or eliminate the amount of money received by Newfoundland and Saskatchewan in the form of equalization payments.²⁷ Conversely, and not surprisingly, provinces that would have benefited from this change pushed for its inclusion (led by Nova Scotia, New Brunswick, and Ontario), with Ontario desperately seeking any changes in the equalization program that would reduce the amount of money that leaves the province as a result of equalization transfers.²⁸ Because of the hard-line stances taken by these provinces, and because of the requirement for consensus rather than a simple majority, the Council has been unable to develop an official and unified stance on equalization.²⁹

During a February 7, 2007, conference call that replaced a Toronto meeting to discuss the equalization issue, the premiers chose to abandon discussion on the program, instead preferring to discuss "issues that [stood] a chance of yielding a consensus." 30 It was "touched on only briefly," and the Council managed only to agree to a vague and general statement that they "expect the federal budget to include measures on equalization."31 Rather than attempt to put aside their different views on this (admittedly contentious and difficult) issue, and through that use their combined influence to force the federal government to acquiesce to their demands, the premiers decided to negotiate bi-laterally with the federal government. By supporting bi-lateral negotiations, the council is negating one of its primary objectives: the creation of a unified front to respond to federal initiatives. The purpose of this unified front is to "make it [difficult] for the federal government to [use its] divide-andrule tactics" of the past. 32 As a cohesive unit, the Council would, ideally,

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put an end to bi-lateral negotiations, thus preventing provinces from being overwhelmed by the larger and more powerful federal government.³³ However, the Council has now failed to achieve this objective in the face of one of the most important issues faced by the provinces in recent years. Furthermore, by failing to put forth an official stance on equalization, the Council of the Federation was excluded from discussion regarding the federal equalization program.³⁴

By failing to develop a position on equalization and by abandoning the Council in favour of bi-lateral meetings with the federal government, the Council of the Federation has proven itself ineffective in its attempts to alter the intergovernmental dynamic, not simply because it has been ignored or treated as a lobby organization, as some scholars contend, but as a result of ineffective internal operating procedures and inflexible Council members.

Issues of Interprovincial Concern

In committing itself to "strengthening interprovincial-territorial cooperation," the Council pledged to focus its efforts, at an early date, on the "[enhancement of] internal trade... [and] labour mobility" throughout the country.³⁵ To this effect, at the February 2004 meeting in Vancouver, the Council released an ambitious "workplan" aimed at improving the Agreement on Internal Trade (AIT). To date, this topic has been largely ignored by the media and by the academic community, both of which have instead preferred to focus on the council's actions in the federal-provincial sphere.

Signed into existence by Canada's first ministers, the AIT came into force on July 1, 1995.³⁶ The agreement's primary goal is the "elimination of barriers to trade and economic mobility between the provinces."³⁷ The AIT has been less than successful since its inception. This can largely be attributed to the frail enforcement mechanisms made available to the Internal Trade Secretariat, the organization tasked with administering the dispute resolution process.³⁸ The dispute resolution, in brief, works as such: following a meeting with the disputants, which arises only after a variety of "negotiation, consultation and alternative dispute resolution mechanisms" have been exhausted, the judicatory panel releases its verdict.³⁹ However, the enforcement methods hinge on the consciences of the provincial and territorial governments, as governments can choose—and have chosen—not to abide by the panel's findings.⁴⁰ As a result, the AIT is largely unenforceable, and as such, many of its aims have yet to be met.

Recognizing a wide range of criticisms of the AIT dispute resolution mechanisms, the Council set out to fix these procedures in their 2004 work plan. The plan also included commitments to "address labour mobility issues" between provinces, as some governments had failed to "meet the... 2001 deadline for eliminating residency-based policies re (sic) occupational mobility" and to "accelerate the harmonization of regulations and standards" between provinces and territories. **

By the release of its 2006 progress report on internal trade, the Council had made little headway in achieving the goals of its 2004 work plan. The discussion on enforcement procedures has failed to progress substantially, as the Council has yet to agree to any new compliance mechanisms. 43 With regards to labour mobility issues, only a survey had been completed, with the results suggesting that "labour mobility issues merit higher priority." 44 Similar progress had been achieved concerning the harmonization of regulations and standards between provinces and territories, and in many other areas. As may be indicative of committee work, much of what was presented at the 2006 meeting regarding the 2004 work plan consisted of commitments to further meetings and reviews; the 2006 progress report contained few references to objectives that had been reached and dishearteningly states that complete labour mobility will not be reached until 2009.45 Analysis of a recent press release from the Council suggests that little has changed since the 2006 progress report; the Council continues to recommend further meetings and reviews and fails to make significant changes to the state of interprovincial trade in Canada.46

Several provinces appear to have abandoned the prospect of waiting for the Council to improve internal trade issues and have sought resolution through entering into bilateral agreements with other provincial governments. Most notable are the "recently [restructured] Québec-Ontario Cooperation Agreement on construction labour mobility, [and] the Trade, Investment and Labour Mobility Agreement recently signed by Alberta and British Columbia." Signed in 1999, and amended in 2006, the Ontario-Québec agreement allows for unfettered mobility between the two provinces for a variety of trades people. 48 The BC-Alberta agreement, which came into effect on April 1, 2007, seeks to remove impediments to trade in a variety of sectors, including labour mobility, transportation and agriculture, effectively replacing the AIT as the dominant internal trade agreement between the two provinces.⁴⁹ This agreement has dispute resolution mechanisms superior to those found in the AIT and in the Council's 2006 recommendations; "non-compliance can result in [fines] of up to \$5 million." 50

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While neither agreement explicitly states that the Council has failed in its attempts to deal with labour mobility and internal trade in a timely fashion, it can be strongly inferred. Were the provinces confident that the Council would be able to resolve the problems associated with internal trade, they would have chosen not to enter into bilateral agreements. As a result of the council's poor handling of the AIT, and the subsequent actions of several of its member provinces, it is difficult to believe that the Council has been, or can be, effective in meeting its objective of improving interprovincial and territorial relations.

Conclusion

The Council of the Federation was created amidst great hope; the provincial premiers believed that the Council would become an organization for which the provinces could unite in their responses to federalprovincial and interprovincial-territorial issues. Unfortunately, for the provinces, the premiers, and for supporters of a decentralized federation, it has quickly become apparent that the Council is ill-equipped for its task, and is actually little more than a "light institutionalization" of the old Annual Premiers' Conferences. The only significant development has been the establishment of the secretariat. Since its inception, the Council has been unable to engage some of the most significant issues on the intergovernmental agenda, i.e., equalization and internal trade and labour mobility. Thus, the Council has failed to alter intergovernmental dynamics beyond what existed during the reign of the Annual Premiers' Conferences. However, there may still be hope, as the Council recognizes that it will need to "evolve, as required, in order to ensure its maximum effectiveness."51 It is possible that, in order to become an effective appendage of Canada's federal system, the Council may have to change its aims significantly. As evidenced by the publication of reports such as Reconciling the Irreconcilable and the existence of the secretariat, which is tasked with gathering and compiling information for the Council members, the Council has shown itself to be an apt organization for research and development. It has failed, however, in the implementation of programs, largely due to the inhibiting consensus requirement. It is possible that the Council may be a more useful body if it restricts itself to the fields of research and development and distances itself from the implementation field, thus becoming something of a "think tank" for provincial governments and an arena for dialogue and the exchange of ideas. If the Council is to evolve into a more effective institution, it must occur soon, as the Council is presently ineffective, and is in danger of being cast aside and forgotten.

Notes

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American Identity and the "Grand National Philosophy"

The Shift of the United States from Republic to Liberal Empire

Jonathan Hopkins

Under the duress of a prospective military intervention by the United States of America, beleaguered Dominican president Juan Isidro Jiménez resigned his post in May, 1916. Within a matter of weeks "U.S. warships were located off every major port city of the republic." The U.S. initially deployed its armed forces to the Dominican Republic to provide security for its legation amid internal political unrest; however, this evolved into a stabilizing mission, taking the form of direct military rule. A newspaper editorial aptly captures the overarching validation for the armed intervention by the U.S. in the affairs of this Caribbean nation: [the military occupation] is to be done in the interest of peace...to enable the Do-

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