

Constructive and Co-operative Federalism? A Series of Commentaries on the Council of the Federation

Managing Interdependencies in the Canadian Federation: Lessons from the Social Union Framework Agreement Harvey Lazar*

Heavily influenced by Quebec premier Jean Charest's proposals, the premiers' July announcement presented the Council concept as one component of a "plan" to "revitalize" the federation and "build a new era of constructive and cooperative federalism for Canadians." At that time, the premiers, amongst other things, also called for annual first ministers' meetings, an enhanced consultative role for the provinces and territories in key federal appointments, and "protocols of conduct" to guide the behaviour of all governments in their relations with one another to avoid unilateral actions. When put into this wider context, the Council of the Federation is seemingly intended to move the federation to a more collaborative set of relations between federal, provincial, and territorial governments.

What then are the prospects that the premiers' initiative will make a difference in the governance of the federation? And what kind of difference should be expected or is desired? Indeed, what do the premiers mean by "collaboration"? This is one of a series of articles that seeks to shed some light on these questions and does so by focusing on the record of federal-provincial-territorial (FPT) collaboration under the provisions of the 1999 Social Union Framework Agreement (SUFA). That agreement, signed by Ottawa, all provinces except Quebec, and the two older territories, calls for "mutual respect among orders of government and a willingness to work more closely together to meet the needs of Canadians." The agreement covers many of the issues that a Council of the Federation will presumably deal with, including health care and other social programs, as well as some aspects of the financial arrangements related to those social programs. Writing about SUFA about three years ago, I suggested that "if implemented effectively, it offers the promise of better social policy (in the sense of more coherent and betterinformed policy), more effective management of the federation and a better functioning democracy. The question that requires consideration, therefore, is whether it will fulfill these promises."¹

Now that we have four and half years of experience under SUFA, how should Canadians assess its record? What lessons have been learned from this instrument of intergovernmental collaboration? And what do these lessons suggest about the future prospects for a Council of the Federation?

Assessing SUFA: Impact and roadblocks

Let's begin by recalling that SUFA is mainly about the *process* of governing -- how governments should relate to one another and to citizens in the making of social policy. It has a section on principles and another on "mobility within Canada" (sections 1 and 2). Almost all of the rest is about how g

¹ Harvey Lazar, "The Social Union Framework Agreement: Lost Opportunity or New Beginning?" a paper presented at the conference "The Changing

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(2000 and 2003), the federal prime minister acted in a largely unilateral manner with respect to the amount of additional federal funding and the purposes for which that money should be spent. (The role of provinces seems to have been largely confined to saying "yes" or "no" to the amount and negotiating for enhanced flexibility on how it might be spent.) Where SUFA may have made a difference is in the still evolving accountability provisions in health care. Even there the slow pace of action by governments in fulfilling their accountability commitments (e.g. jointly agreed comparable indicators for public reporting, a new Health Council) speaks to the belief among some provinces that these FPT exercises were not sufficiently collaborative. This concern is perhaps best summed up in the understated language of the FPT Ministerial Council on Social Policy Renewal earlier this year when it observed in its report that "government to government consultation can be improved."³

To be sure, it inevitably takes time to turn the ship of state around and get governments to do business differently. In line departments, such as those responsible for health, social service and labour markets, insiders often argue that business is being conducted in a way that is increasingly respectful of SUFA's provisions. The recent intergovernmental review of SUFA pointed to the early childhood development and National Child Benefit files as examples of effective SUFA implementation, and others have suggested that recent social housing initiatives are a further illustration of an effective SUFAlike process.⁴ While it is hard to know whether these unquestionably collaborative initiatives would have been equally collaborative in the absence of SUFA, the fact that such claims emanate from a range of governments lends plausibility to this view.5

Nonetheless, it is difficult to conclude that there has been an improved climate in Canadian intergovernmental relations since 1999,

³ FPT Ministerial Council on Social Policy Renewal, Three Year Review, Social Union Framework Agreement, page 13, http://www.sufareview.ca/e_reports.htm a

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intergovernmental behaviour quickly. But if governments proceeded in good faith, then gradually there might be some improvements. Indeed, the three-year review of SUFA has led the FPT Ministerial Council on Social Policy Renewal to make recommendations for some clarifications to SUFA processes that could conceivably bring about such improvements.

Perhaps the last point to be made about SUFA is that enhanced intergovernmental collaboration, as called for by that agreement, is not necessarily synonymous with more harmonious intergovernmental relations. Collaboration suggests that governments have come to recognize their interdependence in certain areas and that they are willing to attempt to work together because of that interdependence. Working together does not mean, however, that governments will somehow magically reach agreement. As noted above, governments may come at issues with different interests, ideologies, party affiliations, and personalities. Indeed, differences among governments are normal and intergovernmental conflict can be constructive when it exposes competing ideas to public deliberation. In any case, conflict among governments almost always precedes agreement. In this sense, conflict and cooperation are not opposites but rather go handin-hand. Consequently, for those who believe that intergovernmental conflict is inherently undesirable, it is better to minimize areas of FPT collaboration and to have governments act as independently of one another as is practicable (what has been referred to as "disentanglement"). In this sense, interdependence and independence are the true opposites and not cooperation and conflict.

"yes." Provinces might find it efficient and less costly, for example, to create a single body to purchase pharmaceuticals for their varying drug programs. Or they might find it cost-effective to jointly develop tests to measure student achievement (an area they have worked on over the years through the horizontal Council of Ministers of Education of Canada). These types of measures could be especially useful to smaller provinces while in no way derogating from the needs of the larger ones. In such examples, an opting-in mechanism could allow some provinces and territories to participate while those that were not interested could stay out.

A horizontal council could also focus on inter-provincial learning and promoting best practices. As well, it might also serve as a spur are flourishing is across international borders and with this there is a growth in international governance. Much of this governance impinges directly or indirectly on items that are wholly or partly the responsibility of the provinces under the constitution. The federal government has the authority to negotiate and ratify international agreements in such areas but lacks the authority to implement them. For implementation it often requires provincial support.

Consider some of the extraordinary events of 2003 in Canada. The SARS virus appears to have entered Canada from Asia and managing it involved not only several layers of authority in Harvey Lazar, Managing Interdependencies in the Canadian Federation