

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

Quebec and Interprovincial Discussion and Consultation

expansion of powers allocated to the provinces, the participation of the provinces in Canada-wide decision-making processes, and the need for more consultation among the provinces themselves. The division of powers and the provinces' participation in decision-making processes are crucial issues. However, due to a lack of space, this article will focus on the third issue, that is, interprovincial co-operation. This issue became more immediately relevant since the provincial and territorial premiers decided to create a Council of the Federation at their July 2003 annual meeting. In reality, this Council will be – at least until further notice – a Council of the Provinces and Territories. As these governments get ready to establish the council, it is useful to try to understand the historical context in which this body is emerging.

The idea of concerted action among the provinces dates back to the late 19th century. It was first put forward by Honoré Mercier, who became leader of the Liberal Party in 1883, leader of the *Parti national* (made up of liberals, conservatives and *Ultramontagnes* with nationalist leanings) in 1885, and finally, premier of Quebec from 1887 to 1891. Mercier was the “father” of what was commonly referred to as provincial autonomism. He was an uneasy witness to the increasing number of centralizing initiatives taken by the federal government during this period and criticized Prime Minister John A. Macdonald for having returned, after the death of Georges-Étienne Cartier, to his old dream of a legislative union. As early as 1886, to ward off this danger he advocated that the “provincial administration...be strong, effective, careful with public monies, independent from the central power and buttressed by national sentiment.”²[translation] He put forward a program focused on vigorously maintaining the

economic and social affairs. To this end, Ottawa thought that it should hold on to the expanded taxation powers that it had been granted to finance Canadian participation in the war. Using the substantial resources at its disposal, it put in place not only unemployment insurance, which had been introduced in 1940, but also a variety of income support measures such as more generous old age pensions, family allowance, financial assistance to post-secondary students, hospital insurance, health insurance, welfare assistance and the Canada Pension Plan. It

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and the Charter of Rights and Freedoms implemented.⁹ During this period, successive Quebec governments maintained that in any attempt to amend the Constitution the issue of the division of powers should prevail over the patriation of the Constitution, the adoption of a constitutional amending formula and the implementation of the Charter of Rights.

This analysis of the events of the period suggests that we should be realistic about the scope and limits of interprovincial co-operation and collaboration on fundamental issues. Quebec was not the only province to be apprehensive about federal proposals in the 1967-82 period. On several occasions, the other provinces even supported Quebec's positions. Thus, in 1976, Alberta's Premier Peter Lougheed wrote to the prime minister on behalf of his colleagues from the other provinces arguing that the Constitution should not be patriated without a consensus first being reached on issues of crucial importance to Quebec (provincial jurisdiction in the areas of culture and communications, the Supreme Court of Canada, the spending power, Senate representation and regional disparities).¹⁰ Subsequently, in 1978, the premiers agreed that the division of powers – a priority issue for Quebec – was “the key issue in constitutional reform, and should be addressed in conjunction with other matters.”¹¹ On a few occasions Quebec sided with the other provinces in constitutional reform measures. In April 1981 Premier René Lévesque signed, as one of eight provincial premiers, a draft proposal for a constitutional amendment formula. Quebec also took part in a judicial process set in motion by several provinces to thwart a federal government plan in 1980 to unilaterally patriate the Constitution. Nevertheless, in 1981-82 the other provinces did participate actively in the major constitutional process that excluded Quebec and its demands and ultimately led to the patriation
