

Quiet Cooperation: Relations Among Labour Ministries in Canada

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INTRODUCTION

Stories about the workings of Canadian federalism are often filled with battles over jurisdiction and/or money. Provinces jockey among each other for a fairer (=larger) share of federal dollars. Provinces, either individually or as a group, seek more federal transfers, with fewer strings attached, as well as constraints on the direct exercise of federal spending power.

However, where money is not involved, and where the jurisdictional divides are clear, more harmonious relations ought to be possible. This is the case for labour standards in Canada. Jurisdiction is clear in this area, and there are no (or minimal) federal-provincial transfers.

This paper looks at the current state of relations among labour ministries/departments, proposes some criteria for evaluating these relations (drawing on the work of Lazar, and 1998) and assesses these relations against those criteria. Unlike some more publicized areas of federal-provincial interface, it appears that labour ministries have been able to cooperate effectively, sharing knowledge, undertaking joint projects, and learning from each other's "experiments".

SCOPE OF ANALYSIS

What do we mean by a labour ministry or department? For purposes of this paper, we are interested in the government body responsible for developing and administering regulatory frameworks in the following four areas: labour relations, employment standards (minimum wage, hours of work, minimum vacation entitlements, etc.), occupational health and safety, and workers' compensation. In some jurisdictions, a single ministry will have responsibility for more than this. For example, at the federal level, the labour program is part of Human Resources Development Canada, which

has a broad mandate regarding labour market programs. Alberta's Human Resources and Employment ministry has a similarly broad mandate. In Nova Scotia, environment and labour have been merged into a single department. In many provinces, some of the administration and even policy development with respect to the four areas will reside in an agency.¹ However, there are well-defined mechanisms for interaction among governments that are designed around the four areas identified above.

~~In particular,~~ This paper does not examine relationships with regard to labour force development programs, such as youth employment measures, training and apprenticeship programs, or initiatives designed to help displaced workers to obtain new employment. There are quite distinct mechanisms and relationships among governments in these areas (even where the labour standards and labour force development responsibilities reside within the same ministry), and a very different jurisdictional context.

JURISDICTION OVER LABOUR STANDARDS

About 90 per cent of the labour force in Canada is subject to provincial jurisdiction over labour standards. The federal government has the labour responsibility for the federal public service, federal Crown Corporations, and for certain federally regulated industries, such as banking, interprovincial transportation, and telecommunications.

This provincial paramountcy resulted from a 1925 decision of the Judicial Committee of the Privy Council, then the supreme judicial body for Canadian constitutional matters. The JCPC found the *Industrial Disputes Investigation Act* to be ultra vires the Parliament of Canada on the grounds that it dealt with matters that involved property and civil rights, which were powers of the provinces under the *British North America Act*. Federal legislation has granted the territories the same jurisdiction over labour standards as the provinces.²

The jurisdictional divide is clear. There have been no recent disputes directly about this demarcation. However, federal action can indirectly affect provincial jurisdiction. An example would be the initiative by the Government of Canada to extend the duration of parental benefits under the Employment Insurance Program (first announced in the fall of 1999; effective January 1, 2001). In practice, employees could only take advantage of these benefits if they could be confident that their job would be held for them during their leave. Since such job protection lay in the realm of employment standards, the federal initiative required legislative change by the provinces in order to be effective. However, the federal plan was announced without any consultation with the provinces, which was arguably a violation of the Social Union Framework Agreement. There was an expression of concern about this by some provinces. Ontario, for example, when it introduced legislation to amend its *Employment Standards Act*, initially indicated that it might not match the federal initiative and complained about the lack of consultation. However, ultimately Ontario did extend the duration of job protection for parental leave, as have most other provinces.

THE APPARATUS OF COOPERATION

There a number of ways that labour ministries connect to each other. These include meetings of ministers, a deputy-level association and various committees established under its auspices, processes related to the labour side agreement to the North American Free Trade Agreement (NAFTA), consultations regarding issues being examined by the International Labour Organization (ILO), and many informal connections.

Ministers' Meetings

Ministers of Labour have met occasionally, but not regularly, to discuss issues of general interest in the development or administration of labour standards. Recent meetings have looked at such issues as alternative service delivery and work and family balance. These have not been decision-making meetings, but they have at

times included resolutions to undertake some joint action. For example, the meeting held in Winnipeg in February of 2000 led to further research on work-life balance and the development of an options paper on the protection of workers' wages in bankruptcies. It was also an opportunity for the federal government to consolidate support for ratification of the ILO Convention on the Worst Forms of Child Labour.

Canadian Association of Administrators of Labour Legislation

The principal formal mechanism for co-operation among labour ministries has been the Canadian Association of Administrators of Labour Legislation (CAALL). Founded in 1938, CAALL is an association of federal-provincial-territorial ministries/departments of labour. In jurisdictions where occupational health and safety policy is developed through an agency, those agencies have also been granted membership.

The objectives of CAALL, as set out in its constitution, are as follows:

- to encourage co-operation among members of the Association;
- to provide a forum for study and exchange of views and experiences on administration and enforcement of labour legislation;
- to encourage research on subjects related to the work of Labour Departments; and
- to encourage high standards of administration of labour legislation.

There are two annual deputy-level meetings of CAALL: a one-day meeting usually held in Ottawa each May, and a two-day meeting each September hosted by one of the member jurisdictions. These are chaired by the elected President. Between these meetings, an executive consisting of the President, four Vice-Presidents, and the Secretary oversees the business of the association. The President and Vice-Presidents are provincial deputy ministers. The federal government provides a supporting secretariat.

The Secretary of CAALL is a senior official of the federal labour program.

The deputy level meetings involve reports on major developments in each jurisdiction, discussion of policy or program delivery issues of general interest, and follow-up on any action items arising from meetings of ministers. The meetings of CAALL deputies have in recent years given considerable attention to international labour issues. This is particularly the case for the May meetings, which take place just prior to the annual conference of the ILO. The May 2001 meeting included a report on a conference on "Globalization of the Economy: The Implications for Labour Markets, Society and the State".³]

Much of the collaborative work of CAALL takes place through Standing Committees. Currently there are five such committees, dealing with labour relations, employment standards, occupational safety and health, statistics and research, and women in employment. Ad hoc committees are also established from time to time. A senior official from a member jurisdiction chairs each CAALL committee. The committees have an annual workplan that typically involves research projects (usually assigned to a lead jurisdiction), information sharing (especially on administrative practices), and sometimes, joint human resource development activities (such as a recent professional development conference for labour relations mediators).⁴

CAALL has also re-established links recently with its American counterpart, the National Association of Government Labor Officials (NAGLO). Representatives of CAALL and NAGLO attend each other's meetings.⁵

NAFTA-Related Processes

When Canada, the United States, and Mexico, entered into the North American Free Trade Agreement, they also concluded a labour side agreement known as the North American Agreement on Labour Cooperation (NAALC). As its title indicates, NAALC is primarily a vehicle for information exchange on labour

administration. It also includes provisions for complaints, consultations, and dispute resolution regarding the failure by a member state to enforce its own labour legislation, but these processes are lengthy and the possibility of sanctions very limited.

In light of the fact that labour jurisdiction in Canada is largely in the hands of the provinces, some of the dispute resolution features under NAALC come into play only if the province in question has agreed to be bound by NAALC's provisions. For matters that would be under provincial jurisdiction, Canada may not initiate complaints unless enough provinces have signed on to account for at least 35 per cent of Canada's labour force. Where the matter relates to a specific industry or sector, at least 55 per cent of the workers in that industry or sector must be employed in signatory provinces.

A framework has been established, the Canadian Intergovernmental Agreement (CIA), that sets out roles and responsibilities of the federal government and any signatory provinces with respect to NAALC. To date, only Canada, Alberta, Manitoba, Quebec, and PEI have signed on. The framework includes a Governmental Committee of ministers of signatory jurisdictions as well as a Committee of Senior Officials. (Decision-making under the CIA is generally by consensus. However, if a signatory government is subject to a request for an arbitral panel under the dispute settlement procedures, that government takes the lead.) However, the CIA also provides that non-signatory provinces may participate in the meetings of both committees and may participate in cooperative activities under the NAALC. Meetings of the Committee of Senior Officials have often been held in conjunction with the spring meeting of CAALL, to facilitate the participation of deputy ministers in these discussions.

Consultation Processes Related to the ILO

In the Labour Conventions case of 1937, the Judicial Committee of the Privy Council (JCPC) made a ruling that had an important impact on Canada's approach to international labour issues. The JCPC determined that, while the federal

government could enter into treaties with other countries on matters relating to provincial jurisdiction, it could not pass legislation to implement those undertakings. Thus, with respect to Conventions of the International Labour Organization, implementation on matters of provincial jurisdiction was up to each province to decide. The approach that has evolved as a result of this decision is that Canada will only ratify an ILO Convention if:

- it lies wholly within federal jurisdiction (such as the Conventions affecting maritime workers), or
- all provinces and territories (as well as the federal government) agree to ratify and implement the Convention in question. (For an elaboration of the development of this practice, see Torobin (2000).)

The federal government, therefore, consults actively with the provinces on all ILO matters.⁶ It has also adopted the practice of inviting senior provincial officials to represent Canada (with the support of federal officials) on ILO committees engaged in the development of new or revised Conventions. Moreover, the responses to any complaints about non-compliance by a province with ILO Conventions are drafted by the affected province.

This is not to say that there has been no federal-provincial tension on ILO issues. Positions that Canada takes on ILO committees do not always reflect consensus among Canadian jurisdictions, which may generate some concern at times.⁷ However, any ratification of Conventions does involve consensus.

Informal Connections

In addition to these formal channels for connection among labour officials of the various jurisdictions, numerous informal contacts frequently occur. For example, a jurisdiction developing a new policy proposal will often confer with officials in other jurisdictions to see how the issue is handled there. CAALL has facilitated this process by maintaining a database of contacts by policy area for each jurisdiction.

DECENTRALIZED FEDERALISM AND INNOVATION

It has been argued that decentralized federalism ought to allow for greater experimentation in both regulatory and program initiatives than one would find in a centralized state. The idea is that decentralization allows for programs to be pioneered at the provincial level that do not yet have national support.⁸

An example of a policy innovation would be Ontario's *Pay Equity Act*, which came into effect in 1988, and broke new ground in the extent to which it prescribed requirements to achieve gender neutral compensation in workplaces. In 1996, Quebec adopted a very similar model.

Are innovations in one jurisdiction eventually adopted elsewhere? Perhaps the clearest evidence of this arises from comparing, across Canadian jurisdictions, the key elements of the four principal fields of labour law outlined at the beginning of this paper: labour relations, employment standards, occupational health and safety, and workers' compensation. While there are important differences in details (such as the level of the minimum wage, whether or not unions may be certified without votes, and the rate of compensation for workplace injury), there is remarkable similarity in these frameworks across Canadian jurisdictions.

Experimentation is evidenced not only by innovation in one jurisdiction that is later copied elsewhere, but also by initiatives that are introduced and then reversed when the results are not what was expected. For example, Alberta introduced a mechanism for private delivery of employment standards inspection services, but later reversed this.⁹

It is difficult to assess, however, the extent to which such changes would have also occurred in a more centralized system. One can compare with other, more centralized countries, but many variables may affect the observed differences.

The argument has been made that the decentralized nature of jurisdiction over labour

policy tends to produce lower labour standards than would a more centralized regime. For example, DiGiacomo (2001), citing, among others, Fudge (1991) argues that one way that the provinces compete among each other for investment is to maintain low employment standards. This seems to be a domestic version of the "race to the bottom" argument about the direction of labour standards internationally. However, it is difficult to reconcile DiGiacomo's theory with the observation that the much more centralized federation to the south has labour standards that are generally substantially weaker than those of the Canadian provinces. More generally, Noel (1999) notes that there is little empirical evidence of the "race to the bottom" phenomenon.

DiGiacomo also notes that Canada has ratified only 30 of the ILO's 183 Conventions, and refers approvingly to the fact that in the U.S., the power to implement ILO Conventions lies wholly with the federal government. However, Canada's rate of ratification is superior to that of the U.S., which has ratified 14 ILO Conventions.

Is decentralized jurisdiction over labour policy problematic for Canada? Noel's comments about labour market policy seem pertinent in this regard.

The labour market in Canada is local, regional, and provincial, and it is primarily at the local and provincial levels that the concertation necessary for active labour market measures can take place effectively. The call for a "national" policy only makes sense if we assume that anything we deem important becomes a "national" issue. In the labour-market case, decentralization is necessary to promote effective and progressive social policies. (Noel, 1999, p.209).

ASSESSING THE CURRENT MODEL

What type of federalism is observed in the relations among labour ministries? What criteria might be applied in assessing how effective

these relationships are? How well is the current model performing against these criteria? This section of the paper attempts to shed light on these questions, using a framework developed by Lazar (1998).

Lazar posits a spectrum of federalist regimes. At one end of the spectrum is "unilateral federalism", a regime in which the federal government acts in an area of exclusive provincial jurisdiction by attaching conditions (unilaterally determined) to financial transfers. At the other end of the spectrum lies "classical" or "disentangled" federalism, characterized by watertight compartments where the federal and provincial governments act independently in the own jurisdictions. In the middle, there is "collaborative" federalism, in which the two levels of government choose to work together to solve a problem because it is mutually beneficial to do so. Another middle type is "interprovincial collaboration", which involves the provinces working together to achieve pan-Canadian objectives without federal involvement.

The labour field in Canada arguably lies between collaborative and disentangled federalism, but closer to the latter than the former. The two levels of government operate largely independently in their clearly demarcated jurisdictions. However, an innovation in one jurisdiction will be examined and sometimes adopted (or modified) by others. Harmonization of standards is difficult and rare, but did occur with respect to information requirements regarding hazardous chemicals. Moreover, the jurisdictions learn from each other regarding best practices in the administration and enforcement of labour legislation.

There is, necessarily, federal-provincial consultation on international labour issues, since the federal government has the seat at the table but cannot bind the provinces to implement initiatives that lie within their jurisdiction.

How effective has this manifestation of federalism been? Lazar suggests three sets of evaluation criteria. With respect to **policy goals and outcomes**, he lists several factors that relate to equity and efficiency considerations. With

respect to **democratic values or goals**, Lazar suggests we consider such factors as: an effective role for legislatures in decision-making; citizen consultation and involvement; and transparency and accountability. Finally, with reference to **federalism principles** or characteristics, the criteria include respect for the formal division of powers contained in the Constitution and commitment to legal and political processes to resolve conflicts and disputes and to improve outcomes.

Applying these criteria to our review of the state of relations among labour ministries suggests the following.

- Federalism principles are well respected. The jurisdictional divide is clear and is not challenged by the federal government. For example, Canada's engagement in international labour matters, and its internal consultation processes regarding them, have been designed to reflect the predominant jurisdiction of the provinces.
- Policy outcomes in the labour field are difficult to assess. Labour market performance in Canada and other OECD countries has been the subject of much debate over the past decade. Some (e.g., OECD 1994) commentators suggest that labour standards here (and to a greater extent in Western Europe) have created rigidities in labour markets that weaken productivity and competitiveness. Others (e.g., Betcherman 2000) argue that Canadian labour markets are actually quite flexible, and that labour standards have helped promote fairness objectives at little cost to efficiency. Moreover, as Freeman (1998, 2000) has pointed out, there is no clear dominant model of labour market institutions. The decentralized nature of labour policy has contributed to experimentation. Noel has argued persuasively that the decentralized nature of federalism in Canada does not necessarily work against progressive social policy.
- As to democratic values, these are generally well respected in each jurisdiction

individually. Not every consultation process is as inclusive as some would like, but that arguably has little to do with the nature of federalism, and more to do with the nature of the Canadian parliamentary system. CAALL could do more to promote transparency. The recently launched National Website for Labour Jurisdiction Information Exchange does include some basic information about CAALL's origins and structure. It also provides links to data in each jurisdiction, such as information on occupational injury rates and collective bargaining outcomes. It does not, however, include, CAALL agendas or committee workplans, nor is there much active engagement of external communities in CAALL processes. Those additions would be helpful in furthering the transparency of inter-jurisdictional collaboration in the labour field.

CONCLUSION

Jurisdiction over labour policy in Canada is clearly demarcated, and it lies predominantly with the provincial and territorial governments. The federal government does not exercise its spending power to act in the provincial jurisdictions. (There is limited scope for this, given the regulatory nature of the field.) There are no transfers of funds from the federal government at issue. In this relatively disentangled context, labour ministries have developed mechanisms for information-sharing and joint research projects and have learned from each other's policy and program experiments. Federalism principles and democratic values are respected. Unlike some other areas of federal provincial relations, the labour field is characterized by a constructive cooperation among the various jurisdictions. This has been done quietly, perhaps too quietly. There is scope for greater transparency and engagement of external stakeholders in the operation of collaboration in this area.

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Endnotes:

¹ In those cases, the agency typically reports to the minister responsible for labour policy.

² Accordingly, references to provinces below are also generally applicable to the territories.

³ This conference, organized by the Canadian Workplace Research Network and sponsored by the Labour Program of HRDC, was held in Ottawa immediately prior to the CAALL meeting. The conference proceedings have been recently published. See Chaykowski (2001).

⁴ CAALL is very much a vehicle for cooperation among government officials. There is little engagement of external interests, such as business or labour groups, directly in CAALL processes. The various labour jurisdictions in Canada consult with external groups individually, not collectively.

⁵ U.S. standards may be canvassed by individual Canadian jurisdictions as part of the policy development process, and the growing importance of international competitiveness has undoubtedly influenced some labour policy reforms in Canada. However, there is little evidence that Canadian standards are much affected by those in the U.S. There is more commonality between standards of say, Ontario and British Columbia, than there is between Ontario and Michigan.

⁶ As the ILO is a tripartite organization, Canadian labour and business interests participate directly in its activities. In developing Canada's position on ILO matters, the federal government also consults with the Canadian Labour Congress and the Canadian Employers Council.

⁷ Given their different viewpoints on many (but not all) ILO issues, either business or labour groups will

also often find fault with particular positions taken by Canada at the ILO.

⁸ See, for example, Trudeau (1968), cited in McRoberts (1993).

⁹ It is noteworthy that the Alberta experiment was both introduced and rescinded under the Klein Conservatives, so that the reversal cannot be explained as merely a shift in political values.