

THE CREATION OF THE COUNCIL OF THE FEDERATION

Marc-Antoine Adam¹
Directeur de la réflexion stratégique
Secrétariat aux affaires intergouvernementales
canadiennes,
Gouvernement du Québec

The current Quebec government, when it took office in the spring of 2003 made the revitalisation of Canadian federalism one of its main objectives by seeking to enhance the role of the provinces on national issues and have them reassume leadership in their own fields of jurisdiction. As demonstrated by the «plan to establish a new era of constructive and co-operative federalism» adopted at the 44th annual premiers' conference in Charlottetown in July 2003, this objective was also shared by the other provinces. For a reminder, in addition to the creation of a Council of the Federation proposed by Quebec, this plan featured items such as the request for an annual first ministers conference, consultation of the provinces on federal nominations and the establishment of guidelines in the conduct of federal-provincial-territorial relations.

Why a Council of the Federation, why annual first ministers' conferences, why more meetings between the executive branch of governments one might ask.

Well, in Canada, according to the numbers provided by the Canadian intergovernmental conference secretariat (the CICS), they were 117 federal and provincial-territorial conferences in 2003; these were attended by first ministers, ministers and deputy ministers and they covered fields as varied as health, housing, sports, and feminine condition. And this figure only accounts for those meetings where the CICS was involved. It does not include senior nor lower ranking officials meetings, nor does it include the numerous bilateral and regional meetings... let alone the conference calls! I do

¹ This short paper is based on a presentation made on May 14, 2004 at Queen's University. The views presented here are those of the author.

not have any data but my guess is that if we were to add all these instances we would be well into the four digits...annually!

Yet, in spite of the creation over time of these numerous federal-provincial-territorial bodies, forums, work groups and meetings intended to facilitate relations between governments, especially the federal and the provincial, there is a sense, particularly among the provinces, of dissatisfaction with the state of intergovernmental collaboration. And maybe some understandable confusion on the part of the public also. Somehow quantity does not seem to be synonymous with quality.

In this setting, it is felt, at least in Québec, that the federal government has the upper hand and is able to drive the agenda and ultimately impose its own priorities and vision of policy development, even in areas of provincial jurisdiction, not to mention its propensity to bypass the provinces altogether with direct initiatives or treating them as mere lobbies. This in turn has led in recent years to a number of unsettled disputes and a certain amount of frustration. Why is this so? Well perhaps it is because the provinces arrive at these meetings separately, and it makes it easy for the federal government to divide and rule. Perhaps it is because the bulk of this intergovernmental activity only involves sectorial departments trying to address the issues of the day with little horizontal co-ordination. Perhaps it is because of the lack of formal rules governing intergovernmental relations. Perhaps it is all of the above. Then if we add on top of this the state of financial dependency in which the provinces find themselves more and more due to the fiscal imbalance between the two orders of government, we have at least a partial explanation of this unsatisfying federal-provincial dynamics.

Ronald Watts has said that in comparative terms, «Canada has been less well-equipped to manage the contemporary challenges of interdependence than most federations. Federations elsewhere, therefore, illustrate possible improvements, including formal federal-provincial and interprovincial councils,

which Canadians would do well to consider carefully.»²

In 1960, Jean Lesage, then newly elected premier of Quebec, convened all the provinces for a premiers' conference in Quebec City, the first such meeting in over 50 years. At the time, Mr Lesage wanted to establish a permanent mechanism for interprovincial relations that would, he hoped, lead to a better dynamics with the federal government. His short term objective was to put in place a council of the provinces which was to be supported by a permanent secretariat and which would foster exchanges and collaboration on issues of provincial jurisdiction and facilitate co-ordination on issues of common interest when engaging dialogue with the federal government. In the end, as the participants were pressed by other issues, Mr. Lesage's ambitious plan was put aside. However, what emerged out of that meeting was the principle of holding an annual premiers' conference.

Over its 44 years of existence, the APC evolved from rather informal summer gatherings to more formal and intensive work sessions. The agenda gradually became more ambitious and, at the same time, more focussed. In recent years, the premiers also acquired the habit of meeting twice a year. This led the APC to tackle more complex structural issues related to the functioning of Canadian federalism. The elaboration of SUFA, which started as a provincial-territorial initiative, is a good example of this. However, as we know, the end result proved to be, at least from Quebec's perspective, disappointing. And I would suggest that this failure is not entirely unrelated to the shortcomings mentioned above.

The Council of the Federation, officially created on December 5, 2003 by the execution of a founding agreement between all the provinces and territories, represents a significant

step forward designed to replace the APC with a permanent institution. This institution is composed of the governments of the provinces and territories as represented by their premiers. It is assisted by a committee of ministers responsible for intergovernmental relations that meets on an ad hoc basis. This committee is a important innovation when we take into account the fact that up until now such ministers, paradoxically, have been rather absent from intergovernmental gatherings, which, as mentioned, are almost entirely sectorial in nature.

The Council is also supported by a steering committee composed of the deputy ministers responsible for intergovernmental affairs and by a secretariat, based in Ottawa with permanent staff. Two other specific bodies are put under the direct authority of the Council: these are the Premiers' Council on Canadian Health Awareness and the Secretariat for Information and Co-operation on Fiscal Imbalance. It is also important to stress that one crucial aspect of the Council's mandate is to reinforce the work of sectorial intergovernmental forums by providing direction on key issues. The Council will meet at least twice a year.

It is expected that this institution will enable the provinces and territories to be better prepared and to work together more efficiently on more elaborate and complex issues, as well as to insure a better follow up on decisions taken in interprovincial meetings.

The goal is to achieve more structured and coherent intergovernmental relations in order first to be able to reach common understanding among provinces and territories whenever possible, and second, to improve the latter's position vis-à-vis Ottawa. In this regard, you will find in the founding agreement that great emphasis has been put on the equal status of

Canada's two orders of government, neither subordinate to the other, and on the need to respect the constitution and the division of powers as well as the diversity within the federation.

² Ronald L. Watts, *Intergovernmental Councils in Federations*. 2003 Special Series on the Council of the Federation, Institute of Intergovernmental Relations. http://www.iigr.ca/publication_detail.php?publication=304.

CONCLUSION

I think we can summarise all this by viewing the Council of the Federation as a call for a more rules-driven federation. The work plan adopted at the Council's first meeting held in Vancouver on February 24, with items such as solving the structural fiscal imbalance in our federation or putting in place a formal mechanism to insure provincial participation in the negotiation of international treaties in areas of provincial jurisdiction, gives a good indication of that. By formalising interprovincial relations in a framework agreement, the creation of the Council in itself is a reminder of the importance of rules in a federation, something that has sometimes been neglected in past years.

Of course abiding by rules can sometimes be cumbersome and as we know, for many, when it comes to the distribution of powers, there is a strong temptation to criticise them by arguing that citizens do not care much about which government is responsible for what, they simply want the services to be delivered. In other words, it is suggested, people care about results, not process. One might wonder what would happen if this line of reasoning were applied to the rules articulating the democratic features of our form of government, the other topic of the conference for which these notes were initially prepared. Would we be so quick to say, for instance, that it does not matter whether Parliament or a cabinet minister has the authority over a given issue as long as the issue is dealt with? Is due process not essential to democracy, at least as it is understood in the classical sense of the term? This does not mean to suggest that results do not matter. But there is an underlying assumption that in the long run a healthy democratic process will yield preferable results even if it may sometimes require more time and energy to achieve them. I believe that what is true of democracy is also true of federalism. In my opinion, as much as they are important for democracy, clear rules are important for the sake of a good healthy federalism because they allow for transparency, predictability and accountability. And this also is one of the objectives of the Council of the Federation. In that sense there may be more

consistency than meets the eye between the two reform agendas at the root of the theme of the conference organised by Queen's Institute of Intergovernmental Relations in May 2003.