



**Counsel for Canadian Federalism:  
Aboriginal Governments and the Council of the Federation**

Frances Abele and Michael J. Prince\*

Aboriginal peoples might be included in the Council of the Federation.

Our analysis proceeds as follows: we first sketch the constitutional basis of Aboriginal peoples as political collectivities in contemporary Canada; we then raise some concerns about the Council of the Federation, as proposed so far, from the standpoint of Aboriginal self-determination and the inherent right to self-government; next, we briefly make the case for determ

## **Concerns about the Council of the Federation**

What does the proposed Council of the Federation mean for Aboriginal peoples and their relations to federal, provincial and territorial governments? Will the Council help or hinder the pathways toward Aboriginal and treaty rights and the realization of self-determination?

From the perspective of Aboriginal rights and self-government, a number of concerns can be made about the proposed Council of the Federation.

The exclusive focus of the Council is to be on interactions among the provinces and territories and, in turn, with the federal government. To date, there is no mention of working together with Aboriginal governments and peoples.

The issues identified by the Premiers as crucial to the country and requiring leadership are health care, internal trade, the role of the provinces in international trade, and the fiscal imbalance between the federal government and the provinces and territories. Land claims, self-government and the situation of Aboriginal peoples in urban Canada are absent.

The model of federalism underpinning the Council is a mixture of cooperative and classical federalism: interdependence between the two distinct orders of government, “while respecting the Canadian Constitution.”

Together, these points convey a model of what Aboriginal-Canadian state relations are, and what they might be and might not be in the future. Our assessment is that the proposed Council of the Federation implies a view of Aboriginal self-determination as mini-municipalities. This is in contrast to other models that view Aboriginal self-determination as a third order of government or as sovereign communities with nation-to-nation relations with the Canadian federation. As it stands, the logic behind the proposed Council offers few, if any, intergovernmental spaces for Council



that is still gaining momentum. It is important to avoid institutionalizing practices that will prove to be obstacles to future democratization and development.

While these considerations might appear to argue for a postponement of any consideration of the question of how Aboriginal governments might be represented in Canadian federalism, we do not draw this conclusion. Leaving Aboriginal governments out of reforms to executive federalism and to the reform of fiscal federalism that might follow risks stalling and at worst undermining positive developmental processes now underway. Existing Aboriginal governments require participation in executive federalism for the same reasons other governments do: they need an opportunity for policy coordination, development of a sense of common understanding and common cause. And they require now the other benefits of federalism, especially fiscal stability and shared risk.

## **Truly revitalizing Canada's Federation**

Rather than avoidance or deferral, we argue for an experimental approach to finding a means to represent Aboriginal governments in the Council of the Federation. This spirit of experimentation would match the empirical reality. New forms of Aboriginal government and new Aboriginal-Canada institutional relationships are being developed with imagination and vitality, as we speak. Consideration of any potential role for Aboriginal governments in the federation might also have a salutary effect on the entire process of federal institution reform, which does tend to become mired in old battles, resentments and dilemmas.

Here are three options that are practical and non-constitutional reforms, offered for general consideration:

1. Consultation with the existing Aboriginal peak associations

One product of the massive mobilization of Aboriginal people in Canada in the period since the Second World War has been the creation of entrenched, articulate organizations to represent their interests on a Canada-wide basis. The Assembly of First Nations (AFN) represents

status Indians mainly on reserve; Inuit Tapirisat of Canada represent the Inuit on Nunavut, Nunavik and Labrador; the Métis National Council; the Congress of Aboriginal Peoples representing non-status Indians; the Native Women's Association of Canada, whose members include status and non-status First Nations women; and, quite recently, the Pauktuutit Inuit Women's Association representing Inuit women. Only the AFN explicitly represents Aboriginal governments: it is a federation of band governments. The other peak associations are federations of regional political organizations.

This model is basically a continuation of past practice, which has seen the peak associations drawn into federal-provincial-territorial conferences dating from those that preceded the constitutional patriation in 1982, whenever issues warranted. The practice has often been honoured in the breach (the peak Aboriginal associations were left out of Meech Lake, with disastrous consequences, and left out of the creation of the Social Union Framework Agreement although involved in some of its implementation).

The Council of the Federation presents a new opportunity in which to formally engage these peak Aboriginal associations with the provincial and territorial leaders and governments. The Council could meet with the leaders of the six peak Aboriginal associations annually. The Council could also establish a secretariat to support meetings between federal/provincial/territorial ministers responsible for Aboriginal affairs and the national Aboriginal leaders.

2. Representation of a Council of Aboriginal Peoples on the Council of the Federation

This model envisions the creation of a new institution, a Council of Aboriginal Peoples, comprised of members elected from the general population of Aboriginal people. This idea is comparable to somewhat different proposals in the Charlottetown Accord and in the final report of Royal Commission on Aboriginal Peoples.<sup>8</sup>

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<sup>8</sup> Canada, Royal Commission on Aboriginal Peoples. Final Report of the Royal Commission on Aboriginal

Electing individuals from across Canada to such a body would be quite a radical step, and would undercut the Aboriginal organizations. One variant of this option could be a mixed Council, with some representation from existing organizations and some directly elected people. Either model sets up a separate Aboriginal Council that would have to be then written into the Council of the Federation. It would be an aggregating device.

3. Protocols between Canadian and Aboriginal governments, associations or councils

Along with forming the Council of the Federation, the Premiers plan to establish protocols for interacting with the federal government. This proposal for a code of intergovernmental conduct could easily be enlarged, and should be, to address protocols with Aboriginal governments, organizations or any new council if established. The basis for such a protocol can be found in the 1997 consensus statement among national Aboriginal leaders of a framework for discussion on relationships between federal, provincial and territorial governments and Aboriginal governments and peoples. In addition, over the last five to ten years, emergent practices are apparent on the place of national Aboriginal organizations within intergovernmental relations.<sup>9</sup> These protocols and practices represent an avenue for strengthening the role of Aboriginal political organizations within Canada's network of intergovernmental relations, in other words, government-to-government working relationships.

## **Conclusion**

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