



Foreword

Canada's Provincial and Territorial Premiers agreed in July 2003 to create a new Council of the Federation to better manage their relations and ultimately to build a more constructive and cooperative relationship with the federal government. The Council's first meeting takes place October 24, 2003 in Quebec hosted by Premier Jean Charest.

This initiative holds some significant promise of establishing a renewed basis for more extensive collaboration among governments in Canada, but many details have yet to be worked out and several important issues arise that merit wider attention.

The Institute of Intergovernmental Relations at Queen's University and the Institute for Research on Public Policy in Montreal are jointly publishing this series of commentaries to encourage wider knowledge and discussion of the proposed Council, and to provoke further thought about the general state of intergovernmental relations in Canada today.

This series is being edited by Douglas Brown at Queen's University in collaboration with France St-Hilaire at the IRPP.

Harvey Lazar
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Jean Charest's proposal to create a Council of the Federation, approved in principle by the premiers of the provinces and territories at their annual conference in Charlottetown last July, leaves unanswered the whole question of the goals and specific character they want to assign to this new institution.¹

An Interprovincial "Containment" Strategy

In its most benign form, the Council of the Federation sketched out in Charlottetown could be merely a formalizing of the Annual Premiers' Conferences that have been held for decades, and the consecration of the essentially defensive mission of these meetings in reaction to the unitary and domineering federalism as practised by Ottawa.

With a permanent secretariat and better equipped working groups, like the one that will be examining the fiscal imbalance between the federation's two orders of government, such a council would lend more intellectual and political weight to the traditional demands of the provinces and territories in their fight against the "take-it-or-leave-it" federalism à la Jean Chrétien. However, such a council would in fact only be a more dignified version of the "ganging-up" and "fed-bashing" strategy that has already been

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deployed without much success by the provinces for too many years.

In trying to make marginal changes to the management of the federation without calling into question the very nature of the unitary and domineering federalism practised by Ottawa, this council would only be a de facto recognition of a

Quebec, literally consented to being put into trusteeship in exchange for a tiny share of the money that the federal government had taken away from them with Brian Mulroney's "cap on CAP" and the Chrétien government's unilateral cuts in social transfers.⁵

A Responsible Affirmation of Sovereignty and Partnership

The *Pelletier Report*,⁶ from which Mr. Charest drew his inspiration in Charlottetown, offers provincial and territorial premiers a new opportunity to translate into action their will to rebuild the Canadian union on a "true partnership basis." But to do this, they will have to go beyond the strictly defensive strategy that they have been content to follow until now, and make the Council of the Federation, which they have decided to set up, an instrument of effective and responsible affirmation of the sovereignty of the provinces in their sphere of constitutional jurisdiction.

In order to shield them once and for all from Ottawa's unilateral funding cuts, Mr. Charest proposes that the provinces recover the tax points that are rightfully theirs in order to exercise their sovereign powers in the areas of health, education and social welfare. He also requests that the federal government refrain from intervening directly in these areas and that it focus instead on increasing its unconditional equalization payments to help the poorer provinces provide social services comparable to those of the richer provinces.

In this respect, Mr. Charest's views concur with those of the Commission on Fiscal Imbalance, chaired by Yves Séguin, his current minister of finance, who, in 2002, recommended "the elimination of the CHST and its replacement by a *new division of tax room*, because of the

assured and predictable nature of the source of funds to which the provinces would have access, its *unconditional* nature and the greater accountability that would result."⁷ All the premiers followed suit in Charlottetown. But if Mr. Charest and his provincial colleagues want to be taken seriously, they will have to demonstrate to all Canadians that the provinces can guarantee through their own means the integrity of social programs that is currently ensured by the federal

⁵ On this subject, see my article published in *Le Devoir*, February 15, 1999, entitled "L'union sociale: une mise en tutelle des provinces."

⁶ The report by the Special Committee of the Quebec Liberal Party on the Political and Constitutional Future of Quebec Society entitled *A Project for Quebec: Affirmation, Autonomy and Leadership* but commonly referred to as the *Pelletier Report*. It was followed by a second text in October 2001 entitled *An Action Plan: Affirmation, Autonomy and Leadership*.

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codecision with unanimity or qualified majority coordination, between the provinces themselves, on the one hand, and between the provinces and the federal government, on the other.

What seemed and still strikes me as modern and federative in the European model of codecision is that it allows:

1. for decisions on all coordination issues where

As a first step, the QLP *Action Plan* suggests to the rest of Canada that an administrative reform of the federation be carried out to ensure full respect of the autonomy of the two orders of government; a reduction of the fiscal imbalance through a transfer of tax points to the provinces and readjustment of equalization payments; a responsible joint management of the Canadian economic and social union through a Council of the Federation; and the conclusion of three agreements in areas of shared jurisdiction -- communications, the environment and international relations.

However, what is envisaged in a second round by the QLP *Action Plan* -- and this is seldom mentioned in the ROC, or even in Quebec -- is the following, and I quote:

Recognizing Quebec's specificity.

Granting a right of veto to Quebec, and possibly to several other provinces, according to a "regional veto" formula.

Increasing financial compensation for the exercise of the right to opt out in regard to constitutional change.

Integrating into the Constitution the MacDougall-Gagnon-Tremblay Agreement on immigration.

Inserting into the Constitution a mechanism for constitutionalizing administrative agreements, if required.

Ensuring provincial participation in the selection of judges to Supreme Court of Canada.

Constitutionalizing the composition of the Supreme Court of Canada, with at least three of nine judges coming from Quebec.

Instituting Senate reform.

Limiting federal spending power, but without questioning the principle of equalization.¹⁴

With very few exceptions, all the demands formulated by Robert Bourassa during the negotiations of the Meech Lake and Charlottetown accords are repeated on this list, but with two major differences. First, Mr. Bourassa made the signing of the Meech Lake Accord a precondition to the negotiation of the Canada round aimed at strengthening the Canadian union. Second, although he had discussed this matter in 1984, Mr. Bourassa never officially tabled the idea of a Council of the Federation empowered to ensure joint management of the federation through

¹⁴ *An Action Plan*, pp. 23-24.

Without being overly optimistic, it is my hope that the provinces will use the creation of the interprovincial Council of the Federation agreed upon in Charlottetown to truly regain their status as sovereign partners of the federation. Only once they have shed their image of “junior governments” will they be able to open the door to a federal-provincial council operating on a “true partnership basis,” and thus allow Canada to reconcile the right to cultural distinctness of its founding peoples with a joint management of the interdependence between governments that lives up to the spirit of our times.