

The Social Union Framework Agreement: Lost Opportunity or New Beginning?

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The Social Union Framework Agreement of 1999 has the potential to be the most far reaching reform in the workings of the federation since the changes associated with the *Constitution Act, 1982*. Whether it will in practice turn out to have that effect is still unknown. Successful implementation will require a sustained and intensive effort on the part of signatory governments to learn new behaviours. In particular, they will have to learn to work with additional constraints on their room for maneuver.¹ And while it might be presumed that governments had made that decision when they signed the Social Union Framework Agreement (SUFA), it is not yet clear that they are in fact conducting themselves in ways that reflect those commitments.

The SUFA was about 18 months old when this chapter was being finalized. SUFA is to be reviewed by the end of its third year by the participating governments. These governments should have therefore begun to think about how they might conduct such a review. This chapter focuses on the future prospects for SUFA as a way of helping to think about some of the challenges that such a review process will encounter.

Key Elements in SUFA

SUFA is a political agreement between the federal government, nine provincial and two territorial governments about improving the social union for Canadians. Quebec decided not to sign the Agreement and is most unlikely to do unless it is renegotiated to fit more closely with Quebec's position. Nunavut is, however, planning to sign soon. SUFA does not change the constitutional powers of any governments. Nor is it legally binding. If governments do not fulfill their obligations, there is no recourse to the courts.

consistent with SUFA requirements. And even where the behaviour is consistent, it is unclear whether this compliance is because of, independent of, or in spite of SUFA. However, since there is little public record of these activities, it is hard for any outsider to have a full appreciation of events, let alone evaluate them.

Adding to the challenge in assessing the future prospects of SUFA is that some people believe that SUFA is to be judged mainly by *what* it achieves in terms of improved social policy – a view sometimes associated with the federal government.⁴ But there is an alternative view, which is that SUFA is to be judged more by *how* governments behave, how they relate to one another - a view that appears more common among provincial governments. While SUFA is no doubt about both the *how* and the *what*, the fact that the relative weights attached to these two criteria differ between federal and provincial governments is illustrative of a central theme of this paper. For if, in fact, there is tension in the social union it is because there are a *series of tensions* associated with the meaning of SUFA and its surrounding political and economic environment. The main body of this paper will therefore focus on these tensions as a partial report card on SUFA implementation. And it is implicit in these remarks that the effective implementation of SUFA will require considerable skill and good-will by both orders of government in dealing with these tensions. In some cases, political compromise will be essential by one or more governments if SUFA is not to become irrelevant to the workings of the federation.

Nine tensions will be examined, grouped under four headings: the interpretation and nature of SUFA, the spending power, governance, and the paradox of attempting to build a stronger Canada with one of the founding nations not at the table.

A. THE INTERPRETATION AND NATURE OF SUFA

Tension 1: Federal and Provincial Governments Weight the Individual SUFA Commitments Differently

One of the most fundamental tensions in SUFA is that the two orders of government attach markedly different degrees of importance to its different provisions. Provincial governments attach great weight to section 5, which provides some constraints on the federal government's use of its spending power. They are perhaps equally concerned to have clear procedures for implementing the section 6 provisions relating to Dispute Avoidance and Resolution. As for the federal government, its prime focus is on the Mobility provisions of Section 2 and the Accountability provisions of Section 3.

The reasons for the provincial priorities are straightforward. The provinces were motivated by the desire to ensure that the federal government would never again be able to de-stabilize provincial finances and programs to the extent that it did when it cut its transfers in association

provincial critics. That is, provincial governments wanted to ensure that there were rules constraining the use of the federal spending power to introduce new social programs, whether through intergovernmental or direct transfers. They also sought stability in federal funding once such programs were in place. Moreover, recognizing that there could be differences of opinion between federal and provincial governments concerning appropriate behaviour under the provisions of SUFA, provinces wanted a clear and relatively formal set of rules for Dispute Avoidance and Resolution. In this respect, their wishes were analogous to the policies that the federal government pursues in matters related to international economic relations. In that forum, the federal government has long preferred a rules-based multilateral international trading system rather than a series of bilateral relationships where it would lack the power to deal with larger and more powerful trading partners, like our southern neighbour. In the same way, provinces prefer a rules-based multilateral approach for managing disputes with the much larger government in Ottawa.

As for the federal government, it was not the initiator of SUFA. But once it decided to come to the table, it established objectives of its own. These included affirming the legitimacy of the federal government in social policy and promoting the removal of barriers to mobility, both to strengthen the rights inherent in Canadian citizenship and to promote economic efficiency. And it concentrated on public accountability as a way of putting pressure on the provinces to meet their social policy obligations.

There is thus a tension in SUFA implementation associated with the different priorities of the two orders of government. While it might be argued, in response, that all agreements of this type entail compromises between different viewpoints, nonetheless, the vastly different priorities of the two orders of government constitute a major challenge to successful SUFA implementation. This difference is reflected at the moment, for example, in the strategy of provincial governments in pressing for firmer rules and procedures on dispute resolution, a position which Ottawa has been resisting. This example leads in turn to a second and related tension.

Tension 2: A Formal or an Informal Agreement

A second tension in SUFA implementation reflects the differing views about the degree of formality implied by this agreement. It was noted immediately above that provincial governments attach considerable weight to having an effective dispute avoidance and settlement set of arrangements. From the perspective of at least some provinces, SUFA is an agreement between two sovereign orders of government (each with their own sphere of legislative competence) and there is a need for clear rules about when a dispute has been triggered and how it is to be resolved. It is implicit in this approach that there is a need for consistency between sector departments in the way in which they interpret SUFA rules. It may also be implicit in this approach that the precedents created in interpreting the rules by one sector should be binding on all other social ministries. To achieve this kind of consistency and coherence in SUFA interpretation, therefore, requires an overarching coordinating body. For provinces, the Ministerial Council that is referred to in Section 6 of the SUFA is the appropriate body to play this role.

running surpluses, as it was when it was poor? In this regard, it is well to recognize that the more left-wing members of the federal Liberal caucus have found their years in power since 1993 to be frustrating, as the government tacked to the right to deal with the huge federal budgetary deficit. Now that Ottawa is in surplus, for this group, the time is opportune to re-establish the Liberal Party's social credentials.

Whether in fact the SUFA can survive prosperity is, of course, an unknowable question. Only the future will tell. But the initial indications give at least some grounds for hope. The 2000 federal budget contained no new unilateral federal spending measures in areas of exclusive provincial legislative competence. It appears that Minister Rock wishes to widen the scope of the Canada Health Act to include home care as part of a comprehensive public health insurance system. But it is equally clear that the federal government is willing to put additional federal funds into public health insurance only if a deal can be worked out with the provinces. In this case, there appears to be no suggestion of Ottawa acting on its own or with the support of a few provinces only. This behaviour by the federal government is consistent with its SUFA obligations. Similarly, there has been an extensive federal-provincial dialogue surrounding a National Children's Agenda. Here too, the federal budget showed no additional initiative pending the resolution of outstanding issues between the two orders of government.⁸ It is true that some provincial governments, perhaps all, consider that Minister Bradshaw's Homelessness announcement last December, which entailed additional federal expenditure commitment through its spending power, to be at least inconsistent with the spirit of SUFA. But in the wider scheme of things this was a relatively small initiative and a relatively small part of the social policy landscape. It is possible that if the federal government handled this file poorly, this reflected 'growing pains'— that it had as much to do with uncertainties about the nature of what the federal government owed to the provinces in terms of advance consultations as it did to bad intentions. On much larger files, ranging from health care to children to disability issues and the labour market, I am aware of no indications that the federal government has breached either the letter or the spirit of SUFA by undertaking new unilateral spending initiatives in areas of exclusive legislative competence.

What lies ahead? The period leading up to the next federal general election, likely in 2001, will be absolutely crucial in determining if SUFA can survive prosperity. This period will be crucial simply because the next federal budget will probably be the last one before that election. And if Ottawa can live within the spending power constraints of SUFA in the context of a large budgetary surplus in an election year, then the prospects of Ottawa playing by the rules in the longer run become much better. This would serve as a strong signal to provincial governments.

If it turns out that Ottawa plays by the rules, this does not by any means imply that the provinces will be satisfied. For as anyone who reads the newspapers knows, what the provinces mainly want from Ottawa is more money – effectively unconditional money- even if it is formally earmarked for health. This in turn leads to a related issue.

Tension 5: The Provinces and the Federal Spending Power

or federal counterparts. They may also be more interested in good policy (whatever that means) than good politics. They may find a challenge in making complex systems work well.

To be sure, the civil servants work for ministers. And senior civil servants will not remain senior civil servants for long if they are insensitive to political imperatives. But civil servants and politicians have different functions in our political system and hence different mindsets. And what is being suggested here is that it is easier for civil servants to accommodate to the constraints of SUFA than it is for political leaders. This too is another tension inherent in SUFA.

Tension 7: Central Agencies and Line Ministries

Donald Savoie has written recently about the tensions between those who govern from the centre and the remaining parts of Canadian governments.¹⁰ His thesis has important resonance for understanding the challenges to effective SUFA implementation. For in general, line

A similar issue may arise between provincial and federal line departments, on the one hand, and their respective intergovernmental ministries, on the other. Here too, line ministries can be ‘hung out’ by intergovernmental ministries that attach more weight to jurisdictional concerns, or old grievances, than building the social union. There is, of course, a legitimate role for intergovernmental ministries in ensuring that first ministers can retain an oversight of how the federation is being managed. But if the interventions of these ministries are the rule, rather than the exception, the machinery of joint planning may become clogged and the SUFA rendered less functional. In this regard, the federal government may have as much reason to worry about the role of provincial intergovernmental ministries as provincial governments have to worry about the federal finance ministry.¹² This is not to deny that intergovernmental ministries have a legitimate role. Indeed, they often work closely with their first ministers and in that sense speak for their governments with considerable authority. It is simply that if they play a lead role too often, this is likely to be a symptom of the high politics of protecting jurisdiction as opposed to the bread and butter politics of advancing social policy.

Managing these tensions effectively will therefore be another essential for successful SUFA implementation.

Tension 8: The Lack of Transparency in an Agreement that makes Transparency a Priority

In some ways this is an extension of the tension between intergovernmental collaboration and citizen engagement referred to above. However, it is discussed separately here because it has less to do with tensions within SUFA itself and more to do with the practical governance activities related to it. Section 3 of SUFA highlights the importance of “ensuring fair and transparent practices” in the management of social programs. SUFA itself was, as is well known, negotiated entirely behind closed doors. And virtually none of the activities taking place under the auspices of SUFA, as such, has a substantial public profile.¹³

It is not surprising that governments prefer to work in private. It is hard to strike intergovernmental deals when critics are sniping at governments from all sides. It is difficult to reach agreements when the public grandstanding of one or two participants can derail negotiations. In short, working in private is easier than working in public.

Yet unless the public is brought much more fully into ‘the know’ with regard to SUFA, the agreement risks sinking under the weight of the many well-intentioned and hardworking intergovernmental social policy committees and sub-committees beaver away in private. It is true that many of them pre-date SUFA and would continue should that agreement disappear. But these committees are expected to conduct themselves according to SUFA’s canons. If, however, the public has little awareness of what governments are doing, or failing to do, in relation to their SUFA commitments such as those on joint planning, public accountability and dispute avoidance and resolution, it will be easier for governments to ignore them when they are inconvenient for governments. Remaining detached from the public, SUFA risks never registering on the public’s radar screen which, over time, will surely be its kiss of death.¹⁴

D. TENSIONS RELATING TO SUFA AS CANADA BUILDING

In the short-term, a crucial issue is the need for both the federal and provincial governments to re-assess the meaning and nature of the agreement. Without some greater flexibility by both orders of government, a basic dispute about purpose will remain. And with that cleavage, central agencies will be too involved and transparency will continue to be noticeable by its absence. While on the one hand it is understandable, in this regard, that Ottawa should want to avoid the legalisms and formalities of an international agreement, it is at least equally understandable that provinces would want a clear understanding about the processes and procedures that would breathe life into the agreement. Failing some better understanding about these matters, the agreement will almost certainly fail.

If this hurdle can be overcome, it should be possible to begin to build trust among signatory governments. With *trust*, SUFA will survive the periodic hurricanes that come from changing governments, prickly personalities and external shocks. Without trust, SUFA will be a footnote in Canadian history. Indeed, the successful management of all the tensions described in this paper is fundamental to building and sustaining the required *trust* relationships among signatory governments. And the starting point for such a change is a better understanding among these governments about the obligations that they have imposed on themselves by signing SUFA.

The second big challenge is Quebec's non-participation. On this point, there may be a few scholars who see this as an example of the kind of asymmetry that is healthy for the federation. That view is not shared here. The scope of SUFA is huge. If it is effective, then it will over time become part of the unwritten constitution. And celebrating having Quebec outside this kind of pact as an example of flexible asymmetry is just too big a stretch. That SUFA should be flexible enough to allow for asymmetric implementation is a separate issue. But on SUFA itself, governments elsewhere in Canada should consider what kind of amendments are needed to make SUFA a tolerable if not an attractive document to a future Government of Quebec.¹⁸ For the federal government, this may be especially difficult but the prospects of an effective overarching intergovernmental agreement on the *how* and the *what* of social policy without the participation of Quebec will surely widen the gap between that province and the rest of Canada.

About 70 per cent of federal spending is on social programs. For the provinces, the figure is even higher. Three-quarters of their expenditures are for social purposes. So it is many ways fitting that Canada should now have an overarching intergovernmental agreement that deals with social policy. It is equally appropriate that the agreement should address the challenges to the democratic process associated with Canada's expansive executive federalism. What is not clear yet, however, is whether this agreement will stick or whether it will quietly fade as governments gradually choose to forget the factors that first caused them to sign it. In short, whether SUFA will turn out to be a lost opportunity or a new beginning for the federation remains to be seen. The three-year review should turn out to be a good indicator of which path the federation will follow.

NOTES:

¹ As will be discussed below, SUFA is a political agreement, not a legal one. If a signatory government fails to respect its provisions, there are no formal sanctions. In this sense, it is not similar to an international agreement.

Nonetheless, it is similar to some international agreements to the extent that signatory governments accept some constraints on their *de facto* freedom of action.

² See, for example, Greg Marchildon, “Reply to Ryan and Burelle: A step in the right direction,” in *Inroads: A journal of opinion*, No. 9, 2000.

³ The several remarks in this paragraph are based on my conversations with provincial and federal ministers and officials. They are, however, just examples of many comments of this kind that have been made in private.

⁴ While my remarks here are based mainly on conversations with federal officials, this theme can also be found in Treasury Board Secretariat, “Analysis of the Social Union Initiative: Staff Working Paper”, available at <http://www.tbs-sct.gc.ca/rma/cumunic/prr98/socune.thml>.

⁵ “SUFA’s Double Vision: Citizen Engagement and Intergovernmental Collaboration”, *Policy Options*, April 2000, pages 43-45.

⁶ *Ibid.*, page 43.

⁷ Even this statement has to be qualified. In a recent meeting the author had with federal and provincial officials and some representatives of the disability community, all the government officials and disability representatives agreed that there was a good working relationship at the stage of problem identification but that more effort was needed to keep the disability representatives “in the loop” once the intergovernmental negotiating process is launched.

⁸ It appears that provincial governments may be holding back on an agreement on the Children’s Agenda until they

