

THE DEATH OF EXECUTIVE FEDERALISM AND THE RISE OF THE “HARPER DOCTRINE”: PROSPECTS FOR THE NEXT HEALTH CARE ACCORD

Geoff Norquay

In his first six years as Prime Minister, Stephen Harper has charted a new course for federal-provincial relations in Canada. Through his classical federalist approach to sections 91 and 92 of the Constitution, and by addressing long-standing provincial concerns such as the fiscal imbalance, Mr. Harper has transformed executive federalism into a new “Harper Doctrine” of relations with the provinces. Contributing Writer Geoff Norquay evaluates this new approach to federal-provincial relations and assesses how it might affect the future of Canada’s most important social program.

The recent argument over the potential provincial costs of implementing the federal government’s omnibus criminal justice bill has prompted some initial evaluations of federal-provincial relations in the Harper era. So, after six years of Conservative government, what have we learned about the Prime Minister’s approach to managing the federation, and what might it mean for the future?

If we start with the simple indicator of “noise” — the normal shouting back and forth between the two levels of government over policies, programs, financing and issues of the day — it’s actually been a pretty quiet six years. There was, of course, the troubled relationship between Newfoundland and Labrador’s premier Danny Williams and Harper over the counting of offshore resource revenues, but that battle started when Paul Martin was prime minister and merely continued after the Conservatives took office, and there was clearly an element of personal animus on the Williams end. The reality is that the last six years have seen little of the pitched-battle federal-provin-

cial relations often witnessed over the past half century, for example:

- Ontario premier John Robarts’s stare-down with Ottawa over the imposition of medicare in the 1960s;
- The Alberta-Ottawa battle over the National Energy Program in the early 1980s;
- The arguments over the adoption of the Charter of Rights and Freedoms and patriation of the Constitution in the same period; and
- The donnybrook over Brian Mulroney’s attempts to update the Constitution through the Meech Lake and Charlottetown Accords and to achieve Quebec’s formal agreement to it.

In fairness, the Harper Conservatives have clearly benefited from a period of quiet in federal-provincial relations by inheriting the Health Accord negotiated by Paul Martin’s government in 2004. Martin’s ten-year deal took a potentially critical and divisive issue off the table by providing predictability and certainty, not to mention

delivering significant and escalating amounts of cash to provincial Finance Ministers for their most pressing fiscal responsibility.

The Martin health care deal is important but it has some historical antecedents. The fact is that over Canada’s history, much of our federal-provincial relations have been defined by the mismatch between provincial responsibilities and their corresponding taxing authorities. In the 1950s and 60s, successive federal governments used their superior revenue muscle to create the architecture of the modern welfare state, largely in areas of provincial jurisdiction.

While few today would argue against those initiatives, these “joint programs” left the provinces even less able to pay their share of the costs than previously. The result was a 40-year evolution of federal transfers to the provinces, from cost-sharing to block funding to Established Programs Financing and ultimately to the Canada Health Transfer and the Canada Social Transfer that exist today. It’s important to note that throughout this evolution, the conditions on federal payments gradually diminished to the point of being virtually nonexistent, but so did the federal contributions over time. With its 6 percent escalator, the Martin health care deal effectively put the latter issue to rest for a decade.

But there is much more to the relative quiet of the federal-provincial scene on Stephen Harper’s watch than the timing of the Martin initiative. First up is the Prime Minister’s fundamental belief in the sanctity of sections 91 and 92 of the Constitution, those sections that define the respective responsibilities of the two levels of government. As Harper told *Policy Options* in a March 2006 interview:

It’s always been my preference to see Ottawa do what the federal government is supposed to do...Ottawa has gotten into everything in recent years, not

just provincial jurisdiction but now municipal jurisdiction. And yet at the same time if you look at Ottawa’s major responsibilities, national defence, for example, the economic union, foreign affairs, beginning obviously with the most important relationship, with the United States, Ottawa hasn’t done a very good job of these things.

Harper is a classic federalist, and beginning with his Quebec City speech of December 19, 2005, the then opposition leader began laying out what might be called the “Harper Doctrine” of federal-provincial relations, the details of which were essentially put in place with the tabling of the March 2007 federal budget:

- The “promise kept” to provide Quebec formal representational status at UNESCO;
- A commitment to back Ottawa out of provincial jurisdictions and to concentrate on doing a better job at managing major federal responsibilities;
- Legislation to place formal limits on the use of the federal spending

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power for new shared-cost programs in areas of exclusive provincial/territorial jurisdiction, accompanied by the right of opting out with reasonable compensation if comparable programs are offered;

- Recognition that provinces and territories are best placed to deliver and design labour market training programs;
- Renewed and strengthened formulas for equalization and territorial financing;
- The transfer of several billions of dollars to the provinces and territories through a variety of pro-

grams to address the fiscal imbalance; and

- Acknowledgement that both health care and infrastructure were exceptions to his sections 91/92 rules.

Importantly, the Prime Minister and his Finance Minister backed up this latter commitment immediately after the market meltdown in the fall of 2008. The subsequent budget earmarked billions of dollars for both provincial and municipal infrastructure as well as for post-secondary education, all of which are in provincial jurisdiction. These commitments provided credibility through direct action and backed up the principles of the Harper Doctrine, but they also indicated an essential flexibility. Yes, Harper held strong views about sections 91 and 92, but he wasn’t going to be obtuse or doctrinaire. He recognized reality — that provinces, municipalities and the post-secondary education sector were tapped out on the infrastructure front — and responded practically and positively.

In terms of managing the day-to-

day of federal-provincial relationships, Harper has evolved his own style here, as well, and it is a key part of the Harper Doctrine. Much has been made of the Prime Minister’s avoidance of First Ministers’ Conferences, those time-honoured, clambakes of rhetoric in which premiers play to their home parish and lacerate the prime minister of the day for real and imagined slights on national television. Harper had a better idea: quiet, calm, private conversations conducted one-on-one by telephone or in person with premiers, in which the issues are worked out or

there is agreement to disagree quietly. It's not by accident that Harper has appointed two former premiers to major diplomatic posts, Gary Doer to Washington and Gordon Campbell to London. Clearly, they both subscribed

ter how the NDP comes to articulate its soft nationalist representation of Quebec, the NDP is a federalist party, and it will not play such zero-sum games. This is a huge advantage to the Prime Minister.

ed nearly enough change in the fundamental organization of how the system is managed and how services are delivered in such areas as primary care, home care and the adoption of information technology.

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There's another part of the popular evaluation of the Prime Minister's conduct of federal-provincial relations so far and it's that he has had incredible luck — no big divisive issues, quiescent Premiers, relatively friendly provincial governments, a declining federal Liberal Party and a newly elected NDP opposition that lost its iconic leader immediately after its huge breakthrough and is still feeling its way.

Fair enough, but the Prime Minister's biggest break is actually the most recent, namely the NDP's May 2 results in Quebec, which obliterated the Bloc Québécois. As an old Marxist, Gilles Duceppe understood the value of "heightening the contradictions" to create revolution — going to the extreme to sow anger and mistrust among the key elements of society, or in this case, the federation. With Duceppe and the Bloc, whatever decision came from Ottawa, it was always another "humiliation" for Quebec, or as the singing group Bowser and Blue so perfectly put it, "*C'est la faute du federal.*"

Duceppe and his followers specialized in inciting rage in the rest of Canada because they wanted ROC to flip Quebec the finger. This was the Bloc's modus operandi — tick them off enough and they will tell us to leave! This all changed on May 2, and the reason is that regardless of who leads the NDP into the future, and no mat-

There's another example on the "luck" side. An NDP provincial government in Saskatchewan would currently be pounding the federal government on its intentions to take down the Canadian Wheat Board's single desk monopoly for the marketing of wheat. But with Brad Wall in charge of the province, this simply won't happen; he is firmly onside with Ottawa on the Wheat Board. But speaking of Wall, he provides an example of Harper not only making his own luck, but putting water in his wine. Just a year ago, the Premier championed foreign-owned Potash Corporation in its defence against an equally foreign-owned hostile suitor, BHP Billiton. Faced with the obvious ironies of the situation, but also a 90 percent approval of the Premier's stand among the people of the province, Harper's government disallowed the acquisition.

What does all of this mean for the future, and how will the Harper Doctrine influence the renegotiation of the Martin Health Accord, which expires in 2013-14? The current accord had some strings attached to the federal money, improvement in wait times for certain procedures being the most visible of several. Eight years later, the reviews on performance are mixed: worthwhile improvements have been achieved in some areas; much less progress has been seen in others. There is growing recognition that Martin's 10-year fix has not prompt-

In the meantime, provinces have also seen their share of health care costs growing at a rate that hastens the day when this one responsibility will seriously crowd out other essential needs, such as education, transportation and key social services. And as they survey the future, both levels of government face serious questions of sustainability in terms of both costs and revenues, as the baby-boom generation hits 65, the active labour force shrinks in proportion to the rest of the population and dependency ratios begin to climb.

Leading up to the May 2 election, the Prime Minister quickly matched the Liberals' 6 percent escalator commitment to health care. There are rumours that the government had been thinking of a more modest commitment as a starting point for the negotiations, but that alternative was lost via the campaign promise. Still, there are at least three other key variables in the federal negotiating position, and they are likely linked: the length of the deal, accountability measures and freedom to innovate.

On the same day last month that he pushed out the target for the federal budget to be balanced by one year, Finance Minister Flaherty indicated that "for planning purposes" future 6 percent increases for health care were only committed for 2014-15 and 2015-16. Chances are that a longer deal will be a function of greater certainty in the global economy and a clearer view of affordability in the future. Possibly a deal of longer duration could be exchanged for stronger commitments to more far-reaching reforms at the provincial level.

That said, it's worth noting that according to the Finance Minister's recently revised fiscal forecast, in



PMO photo

Prime Minister Stephen Harper is greeted off the PM's Challenger by Canadian Ambassador Gary Doer at Andrews Air Force Base in Washington. Harper and Doer developed a close working relationship when Dorner premier of Manitoba prior to his appointment to Washington.

2013-14 the federal deficit will still stand at \$17 billion and there will still be a cumulative \$12 billion in federal spending cuts to come over the succeeding three fiscal years. And that's with everything working according to Flaherty's current estimate of how domestic and global economies will perform between now and then.

There is another question related to the 6 percent commitment. Some provinces have begun to manage down the growth in health care costs. Ontario, for example, is at a 4 percent growth rate in the current year and is headed toward annual growth rates of 3 percent and then 2 percent. How will these lower provincial growth rates fit

with the federal promise of 6 percent? Could the difference between actual provincial expenditures and the 6 percent commitment be used to drive more efficiencies in the system? That would seem to make sense.

Perhaps the answers to some of these questions can be found under the heading of accountability, which the Prime Minister promises will be a top objective of the next health accord. This likely means that federal funding will be more directly linked to “buying reform” in provincial health care delivery than in the current deal. Could this effectively mean the “reconditionalizing” of federal transfers for health care? Given the Harper Doctrine commit-

ment to open federalism as well as his stated desire to work collaboratively with the provinces and not dictate how they deliver health care, that term may be too harsh. Still, the Prime Minister is likely going to be insistent that health care transfer dollars are not only spent on health, but also that they buy real change.

This brings us to the third variable in the likely federal framing of the issues — freedom to innovate. The system would clearly benefit from a series of one-off deals in which provinces would get to test drive more radical alternatives to the current mainstream approaches to health care delivery. Could some of these experiments test the bound-

aries of the *Canada Health Act*? Possibly, but those boundaries are only a few years away from becoming irrelevant if the system cannot reform itself and become more sustainable.

Of course, more radical alternatives to health care reform might well involve some noisy upsets to the system, involving physicians (primary health care reform) or unions (competitive bidding for best price) to name just two. On the other hand, provincial health care systems, like other services, have evolved in different directions in recent years and no one size is going to fit all, nor should it. There will likely be complaints about the loss of a common level of services across the country, but that horse is long out of the barn given the growing sophistication of the

provinces and the clear reluctance of the federal government to dictate to provinces how they do their business, even under the Martin accord.

Hopefully, all sides will recognize that there are reform options available that need not get anywhere close to the introduction of income as a determinant of access to necessary services. For example, the Kirby-LeBreton report on health care a decade ago proposed retaining the single public funder model for hospital and doctor services, while driving reform and efficiencies through service-based funding of hospitals and through service delivery by the least cost provider.

The upcoming health care talks will be long and difficult, but one final point is clear: there will not likely be a return to the First Ministers Conferences of old to resolve what comes after the current

health accord. The Prime Minister has developed a new approach to federal-provincial relations that appears to have found favour with most provincial premiers. The old executive federalism approach provided the aura of accountability because it was played out in public, but it often exacerbated federal-provincial tensions and on occasion led to hasty and ill-considered compromises in the name of a deal. Harper had a better idea, and so far, it's working better than the old model.

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