



Royal Commission on Renewing and Strengthening Our Place in Canada

Federal Representation of the People and Government of Newfoundland and Labrador

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The views expressed herein are solely those of the author and do not necessarily reflect those of the Royal Commission on Renewing and Strengthening Our Place in Canada.

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Introduction

The purpose of this paper, as is mandated in the terms of reference provided by the Royal Commission, is to provide an assessment of the various institutional and informal means by which the people and Government of Newfoundland and Labrador are represented in the institutions of the Government of Canada. This will necessitate a review of the recent literature on representation in federal institutions, studies of the pattern and significance of representation of or by Newfoundlanders and Labradorians since 1949 in federal institutions, a survey of the literature on major options for representation reform, and finally, conclusions and recommendations about the role that representation has and could play in terms of Newfoundland's ability to renew and strengthen its place in Canada.

The terms of reference appear to lend themselves to theoretical discussions of representation and federalism. Representation theory is not simple; there are a host of meanings to the term and as many implications which can be drawn from them. The paper reviews these, and also the legislative, executive - even judicial - forms through which representation takes place. As well, most reform ideas about representation in federal systems are built on theoretical assumptions about what the nature and purposes of federalism should be. If we are talking about the role of a province and its people vis-a-vis the federal government, we are talking about federalism. The task of this paper will be to assess which of the concepts of representation and federalism seem germane in the present endeavour.

There have been no lack of options for representation reform that have been touted both in Canada and in other federal states. This research and analysis paper will investigate some of them. The emphasis will be to identify "decision points" which emerge from the study of domestic and international federal systems. The concept of "decision points" is simply a technique for highlighting different options that the Commissioners may care to consider. This paper offers both the range of options available for various governing institutions, and assesses which may be most appropriate.

In 2002 the population of Newfoundland and Labrador was 531,595. The population of Canada was 31,413,990. This means that the people of the province formed only .0169222 of the population of the country - scarcely 1.7 per cent. What to do about this fact is the topic of this paper.

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Concepts of Representation

The terms of reference note that the Commission is concerned with the representation of both the people and the Government of Newfoundland and Labrador. Representation of the people of the province implies that the federal bureaucracy be generally representative, and that federal institutions be responsive to their needs.¹ Representation of the government of the province implies that provincial interests can be expressed in a variety of intergovernmental and institutional forums and pressed to maximum advantage, keeping in mind the common weal that all Canadians seek. Representation of citizens implies a concern with political representation and representative bureaucracy, and representation of governments implies a concern with the search for theories, or approaches, to federalism. The terms of reference imply that there should be an injection of the “territorial element” into considerations of representation and national policy-making.

Territorialism and Representation Theory

The Royal Commission was right to choose territorial - in this case, provincial - representation to highlight as a research area. There are a number of reasons why. One is national unity. Paul Pross has noted that the federal government has privileged functionalist or occupational policy formation over territorially responsive institutions at the federal level, and therefore unwittingly encouraged the growth of regionalism. “The forces of federalism,” he concludes, “have failed to co-opt the forces of regionalism. The pull of territorialism, represented by the provincial governments, has remained unexpectedly prominent.”² Another is consistency. There have been calls for injecting territorial aspects into institutions of governance in constitutional packages reaching back as far as the Confederation of Tomorrow Conference of 1967. It would be churlish to suggest that there is not a foundation for such a history of discontent. Still another is that territorialism is already implicit in the founding or operation of most of the country’s institutions, and many citizens feel the principle could be extended. Canada, as will be shown, has a regional Senate, a Grandfathered Commons representation, a Central-Canada-weighted Cabinet, a Supreme Court with two-thirds of its members from the two central provinces and other federal courts with Central Canadian-biased selection rules, a language-based criterion for part of its bureaucracy and other arrangements because of a need to be sensitive to the region/province of Quebec. The last and probably most obvious reason why regionalized/provincialized federal institutions need to be considered is that they have considerable employment implications, especially in the public service area. One of the candidates for the federal Liberal leadership, Sheila Copps, committed herself in April 2003 to a policy that federal decentralization be aimed to benefit areas of high unemployment in the country.

Political Representation

Representation has a long history both in political, electoral and bureaucratic arenas. Political representation is the oldest of the concerns of representation theorists. The following categories, based in a general way on the work of surveys by Hanna F. Pitkin³ and A.H. Birch,⁴ review some of the more common purposes of political representation. *Formalistic Representation* is the power to speak on behalf of another and to make commitments binding on the other as if the other had made them. *Descriptive Representation* is the greatest possible correspondence between the assembly and the nation, like a map is to a country's topography. *Symbolic Representation* ("standing for") means a person is a living representation of, or substitute for, in sum "stands for" a nation or a characteristic of it. *Representation as Representatives* "acting for" constituents defines representation by certain general behavioural norms or expected actions on the part of the representative: e.g. *trustee* (deputy as decision maker) and *delegate* (deputy as conduit for the majority's wishes) variants of this theory. *Representation as the furthering of interests* means the pursuance of personal interests, class interests, sectional interests, opinions, or those of political parties by representatives.

Representative Bureaucracy

The literature also makes a case for a separate discussion of representation in the realm of public administration. Most such discussions revolve around the notion of *representative bureaucracy*. Samuel Krislov says representative bureaucracy is worth studying because it provides a measure of the degree of citizen participation which the other branches of government cannot hope to emulate successfully, the bureaucracy emerging as a "good, even superior, index of societal cohesion and diffusion".⁵ Canadian supporters of representative bureaucracy, reflecting on the power held by public servants in the political process, maintain "a public service which is representative of the total population will be more responsive to the interests of the general public and will therefore be more responsible."⁶

Theory in the bureaucratic area has had a shorter history, but its meanings, and implications, are as diverse as those in the political arena. J. Donald Kingsley originated the term *representative bureaucracy* in 1944⁷, influenced by the struggle to change the class basis of the British administrative machine. A left-wing government, he said, both deserved and needed a bureaucracy whose background was similar to it, so that the latter would have "views...identical with those of the dominant class as a whole."⁸ This had only tangential application to North America, and so was followed up with further refinements. Paul P. Van Riper defined a representative bureaucracy as a *broadly representative bureaucracy*, a kind of general mirror to society. "The term representative bureaucracy is meant to suggest a body of officials which is broadly representative of the society in which it functions, and which in social ideals is as close as possible to the grass roots of the nation."⁹

Another approach is to see representative bureaucracy as one featuring bureaucratic interlocutors, as does Frederick Mosher in one half of his famous dichotomy. *Active representativeness* is one wherein "individuals (or administrators) are expected to press for the interests and desires of those they are presumed to represent, whether they be the whole

people or some segment of the people.”¹⁰ This concept of representation is similar to that of “representation as the furthering of interests” in the political category. It implies a kind of “answerability” to the group or people in question.

Passive or descriptive representativeness is the other half of the Mosher dichotomy. This type of representativeness “concerns the origin of individuals and the degree to which, collectively, they mirror the whole society. It may be statistically measured in terms of locality or origin, for example, and its nature (rural, urban, suburban), previous occupation, father’s occupation, education, family income, family social class, sex, race, religion.” Passive representation is a symbolic barometer of the degree of equality of opportunity which the bureaucracy affords to the general society. A school of thought related to this - *precisely representative bureaucracy* - holds that the makeup of bureaucracy should be as closely proportional to the most important sections of society, reflecting within itself aspects like class, gender, language, ethnicity and region.¹¹ It should be noted that region is one of the indices of descriptive or precise representation suggested here.

Reconciliation

The task, then, is to marry territorialism and representative theory. It seems logical to choose theories of *political representation* on the basis of historical practice. Historically, Newfoundlanders and Labradorians seem to have stressed the “delegate” and “furthering of interests” roles of their representatives more than any other. Smallwood chose federal Liberal candidates on the presumption that they would do his bidding, for example; and Wells supported the notion of “Triple-E Senate” reform on the presumption that it would further the economic development interests of this and other peripheral provinces.

If one is to choose among the theories of *representative bureaucracy*, logic dictates that contemporary practice in the federal and provincial bureaucracies be the guide. The current practice in Canadian public administration approaches that of Mosher’s “passive/descriptive” representation. Canadians have grown used to measuring distributive justice for designated social groups according to relatively precise representation measures. One has only to think of the rigorous statistical measures that are employed in the federal employment equity and official bilingualism programs for proof.

Statistical representation, however, seems a rather sterile approach to public affairs. There are traditional values like accountability, neutrality, efficiency and effectiveness, integrity and responsiveness which should be accommodated.¹² Kernaghan maintains that *accountability* is the dominant value in contemporary public administration;¹³ perhaps it is useful to see accountability to regional citizens - hence regional representation - as needing a higher profile. It may also be useful to add another value which is gaining wide acceptance, that of “transparency.” This means that, to the greatest extent possible, all stages of the decision-making process, as well as the evidence used at each stage, be open to public view. In short, then, we can say that territorial (provincial) representation should be designed to enhance accountability to and transparency for the province’s citizens.

Such will be the reasoning behind some of our later recommendations.

Theories of Federalism

As noted in the introduction, if we are talking about the role of a province and its people vis-à-vis the federal government, we are partly talking about federalism. Theories of federalism, then, become relevant to discuss, since one cannot take a stance vis-à-vis the federal government without utilizing some guiding assumptions. Many theories have emerged from the literature, but the Commissioners are most likely to consider the following as valid options:

Centralist federalism. As it was originally understood, this theory posited that the federal government should be the predominant level of government, and provinces should be the subordinate level. In the interests of nation-building, many powers were explicitly (or in some cases implicitly) accorded to the federal level in the 1867 constitution. Centralists originally held that these powers were meant to be taken literally.

In the modern era, some of the 1867 powers have become “dead letters” of the Constitution. Centralism now manifests itself as centrally-led policy innovation, which the provincial governments are expected to follow. Federally-designed cost-sharing agreements in areas of provincial jurisdiction are examples of this.

Cooperative (now Collaborative) federalism. Cooperative federalism accepts the continuance of the two orders of government as outlined in the Constitution, but it values rational policy and the service to the public more than the maintenance of jurisdictional sovereignty. Historically, it resulted from pressure for national standards in social programs and the desire to end disparities between classes of people and regions of the country. Cooperative federalism manifested itself in the post-war period in the growth of federal-provincial conferences, the establishment of intergovernmental institutions, broad-ranging federal-provincial agreements, and a general lack of resistance to the use of the federal spending power.

Some have seen a return of cooperative federalism in the frequent mentions of “*collaborative federalism*” in the 1990s. The Social Union Framework Agreement of 1999, which some consider to be a new charter of intergovernmental behaviour, displayed collaborative themes in its calls for adherence to principles like due notice, partnership, collaboration, performance management, fact-finding and mediation, and others.

Intrastate federalism. Intrastate federalism means federalism *within* federal institutions: making federal institutions reflect and represent provincial diversity. Two variants of intrastate federalism exist. *Provincialist intrastate federalism* aims to strengthen provincial government or provincial electorate representation in national institutions. *Centralist intrastate federalism* wants non-governmental provincial interests represented in federal government institutions to make Ottawa more responsive and legitimate.

In both of the variants, there would be a qualitative change in federal institutions: they would now become truly “national” institutions. The “provincial” variant is most popular lately (Cf per the Charlottetown Accord’s Triple-E Senate). Most (but not all) provincialist reformers would have the provincial governments or provincial electors choosing who would represent them in the national institutions; most centralist reformers (but not all) would have the federal authorities choosing who would represent the provincial interests.

Asymmetrical federalism. Asymmetrical federalism means “a federalism that would not only recognize natural differences (such as size, population, history, etc.) among the units

of a federation, but also formal differences in law among the units either with respect to jurisdictional powers and duties, the shape of central institutions, or the application of national laws and programs. In part, this view of federalism seeks to know whether a federation can tolerate one or more forms of “special status” without the federation falling apart on the shoals of provincial equality.”¹⁴

However, some observers argue that asymmetrical federalism can be achieved by informal as well as formal ways. Peter Russell differentiates between *hard asymmetrical federalism* and *soft asymmetrical federalism*. The former is the achievement of asymmetry through formal constitutional law, whereas the latter accords it in fact but not in constitutional form.¹⁵ Working arrangements set up pursuant to the Labour Market Development Agreement (LMDA) reflect soft asymmetry: each province is free to establish unique relations with the federal government. The Canada-Newfoundland Offshore Petroleum Board (CNOBP) model, which establishes federal-provincial “co-management,” is another asymmetrical model.

The choice of federal theory to chart the province’s future will probably have to be based on a combination of practicality and probability. It is impractical for one province to decree a working doctrine of federalism when there are a dozen other partners involved who may not agree. This alone suggests there should be a preference for an asymmetric approach to intergovernmental relations, and the significant progress made under the LMDA and CNOBP arrangements is another reason to recommend it. In the broader world of intergovernmental relations, however, the probability is that there will be a continuing struggle between advocates of centralist and collaborative federalism. Each camp will have its victories, but each victory carries its dangers because they will inevitably be decided in the interests of larger jurisdictions rather than this one. As a general protection, the province should lobby for decision-rules that offer checks and balances for smaller jurisdictions. The intrastate option has ceased to attract much attention after a period of popularity in the 1970s and 1980s, but if it could artfully be integrated with asymmetric ideas, some interesting possibilities could emerge.

Such reasoning will inform many of our later recommendations for federal and intergovernmental institutions. Asymmetry, where possible, will be the federalism approach we recommend, but other approaches will have to be accommodated.

The Evolving Role of the Function of Representation in Federal Institutions

The Present Role of the Function of Representation in Federal Institutions

Before one investigates the evolving role of the function of representation in federal institutions, it seems logical to establish what is in fact the *present* role of the function of representation in federal institutions, with special reference, where appropriate, to Newfoundland and Labrador. The federal institutions to be investigated involve the House of Commons, the Senate of Canada, the federal Cabinet, the Supreme Court of Canada, the Federal Court of Canada and other senior courts, major regulatory boards or commissions, the federal public services, the Canadian Armed Services and other institutions.

The House of Commons

Representation in the federal Parliament is based on two separate principles of representation: representation by population and equality of regional representation. The House of Commons demonstrates the principle of representation by population, with modifications. The *Constitution Act, 1867* mandates that there be a decennial census and that the population distribution is used as a rough guide to assigning the number of seats per province. There has however never been an exact adherence to provincial representation by population of the provinces, for reasons of geography, history and perceived provincial needs. The current process used by Elections Canada according to the latest iteration of representation legislation (The *Representation Act, 1985*), is listed in *Appendix 1*.

Legislation has provided for adjustments even after an electoral quota is divided into the population of the province, thus deriving a theoretical number of seats per province. Since 1915, the “*senatorial clause*” has provided a floor: no province will have fewer members in the House of Commons than it has in the Senate. There is another protection, this time provided for in the *Representation Act, 1985*. According to its new “*grandfather clause*,” each province is guaranteed it will have no fewer seats than it had in 1976, or during the 33rd Parliament. Thus Newfoundland and Labrador is guaranteed what it had in the 33rd Parliament, which is seven seats. (The Terms of Union of 1949 had originally accorded six seats in the House of Commons to the province, at a time when there were 249 members of the House of Commons).

The Senate of Canada

The Senate was designed on the basis of equality of regional, not provincial, equality, but Newfoundland is an outlier to this principle. Equality of the “three great sections” in the Upper House - Ontario, Quebec and the Maritimes, John A. Macdonald insisted, was “to protect local interests and to prevent sectional jealousies”. Newfoundland was an exception to this

principle. Thinking, in 1865, that the adherence of Newfoundland to the Union was imminent, Macdonald outlined the distinctness of Newfoundland which entitled it to have a separate rationale for representation:

“The only exception to that condition of equality is in the case of Newfoundland, which has an interest of its own, lying, as it does, at the mouth of the great river St. Lawrence, and more connected, perhaps with Canada than with the Lower Provinces... It, therefore, has been dealt with separately, and is to have a separate representation in the Upper House, thus varying from the equality established between the other sections.”¹⁶

The *Constitution Act, 1915* created a fourth division, the Western division, with Manitoba, Saskatchewan, Alberta and British Columbia, each represented by six Senators. It also allowed for Newfoundland to have six seats in the Senate upon its entrance into Confederation, which in fact came about in 1949.

The Federal Cabinet

The function of representation in the federal Cabinet also involves an important regional aspect. The convention of sectional or regional representation in the federal Cabinet is so basic that it has been called the dominant characteristic of government in Canada.¹⁷ To be sure, other bases of representation - race, religion, gender and so forth - have each played a role, but region overwhelms them all in terms of the attention paid by Prime Ministers in Cabinet construction. Mallory says that representation of Quebec has always been a key element in Cabinet construction, (including here the need to balance French and English speakers). This in turn affects the fate of other provinces as to share of representation. As well, “the increase in the number of provinces has had the effect of increasing the size of the Cabinet. This effect has been compounded by the fact that in order to retain Quebec’s due share in the proportionate share of the Cabinet the number of members from Quebec has had to increase, and it is, of course, difficult to increase the number from Quebec without increasing that from Ontario. Needless to say, this principle cannot always be followed because party representation in the House is seldom in the same proportion as party representation from each province.”¹⁸ With the larger cabinets, each other province (with the exception of PEI) can expect at least one cabinet representative, and maybe more in the case of larger provinces.

Appendix 2 shows that Cabinet members from Atlantic Canada have over the decades formed a decreasing percentage of the total number of cabinet members; where once they formed close to a third of Cabinets, now they are lucky if they get 15 per cent of cabinet memberships. The upshot is that Newfoundland and Labrador has to compete with other Atlantic provinces for a shrinking share of federal Cabinet representation. Some may argue that numbers are not important and that they could be made up for by a strong regional minister. Such thinking assumes there would be a strong regional minister per province with every change of government, and ignores history.

There has also been a tendency to allocate certain types of portfolio to ministers from certain regions. There are notable exceptions, but the following are generally the case: Atlantic Canada or British Columbia gets Fisheries and Oceans, Ontario gets Finance and the Industry

Department, Quebec gets Public Works and Justice, and the West gets Agriculture and various natural resources portfolios.¹⁹

The Federal Courts and Judicial Hierarchies in the Provinces

Another pattern of representation is found in federal courts. There are three “pure” federal courts - *Section 101 courts* that are completely staffed, financed and organized by the federal government. *Section 96 courts* on the other hand feature shared federal and provincial roles in matters touching the superior courts of the provinces.

Section 101 of the *Constitution Act, 1867* provides the general authority for the creation of the “pure” federal courts¹: these would be the Supreme Court of Canada, the Federal Court of Canada (heretofore with Appeals and Trial Divisions) and the Tax Court of Canada. There are nine judges on the Supreme Court of Canada. (Recent legislation - the *Courts Administration Service Act*,²⁰ assented to 27th March, 2002, provides that the Federal Court - Appeal Division is to continue under the name “*Federal Court of Appeal*” and the Federal Court - Trial Division is to continue under the name “*Federal Court*.”). There were, as of April of 2000, 1,014 judges appointed under authority of sections 96 and 101 (compared to roughly 1,300 provincially-appointed judges).²¹

Regional “representation” plays a role in the way that the Supreme Court of Canada is configured. By statute, three of the justices of the Supreme Court must be from the civil law tradition, effectively meaning from Quebec. Convention dominates the appointment of the other six justices. By convention, three of the justices come from Ontario, and three from the rest of Canada. The “rest of Canada” translates in practice to two being from Western Canada, and one from Atlantic Canada.

There has been and will continue to be some degree of regional representation in the Federal Court of Canada and the Tax Court of Canada. Until recently, the *Federal Court Act* provided that in addition to the Chief Justice and Associate Chief Justice, there were to be not more than 44 other judges, 12 appointed to the Court of Appeal and the remainder to the Trial Division. Furthermore, in s. 5 (6) of the *Federal Court Act* it stipulated that “at least 15 of the judges shall be persons who have been judges of the Court of Appeal or of the Superior Court of the Province of Quebec, or have been members of the bar of that Province.”²² However, the new *Courts Administration Service Act*²³ of 2002 - which continued the previous division under new names (as noted above) - now provides (in s. 5.1 (1) that “the Federal Court consists of a chief justice called the Chief Justice of the Federal Court, who is the president of the Federal Court, and 19 other judges.” It goes on to provide, in s. 5.4, that “at least four of the judges of the Federal Court of Appeal and at least six of the judges of the Federal Court must be persons who have been judges of the Court of Appeal or of the Superior Court of the Province of Quebec, or have been members of the bar of that Province.” The reasons for this are not sinister; they simply attest to the fact that a system of civil law exists in Quebec, and that there should be judges who are familiar with that system.

For its part, the *Tax Court of Canada Act* provides (in s. 4) that “Either the Chief Judge or the Associate Chief Judge shall be or have been a judge of the Superior Court of Quebec or

¹ “The Parliament of Canada may... provide for the Constitution, Maintenance and Organization of a General Court of Appeal for Canada, and for the establishment of any additional Courts for the better Administration of the Laws of Canada.”

a member of the bar of that province.” The Tax Court of Canada has, in addition to the Chief Judge and Associate Chief Judge, 21 judges and four supernumerary judges.

Regionalism is not just present in the appointment process; it can be said to be implicit, perhaps, in the residency requirements. The *Federal Court Act* and the *Tax Court of Canada Act* require judges of both courts to reside within 40 kilometres of the National Capital Region. This has led to the issue of “regionalization” of these courts, namely whether or not judges should be permitted to reside outside the National Capital Region (NCR) and hear cases in the regions where they live. A special report conducted by the federal Auditor General proposed amalgamation of the two courts but maintained that they should continue to be centred in the NCR. However, voluntary exceptions to the residency requirement could be made in the interests of gender and regional representation if these were deemed public policy priorities.²⁴ Auditor General Desautels’ report reviewed the arguments for and against regionalization of the courts, here appended as *Appendix 3*.

The qualifications of, the advisory process for, and the consultation about, appointments to the federal judiciary in the provinces all bend towards privileging the province’s own citizens. In particular, the qualifications of provincial superior, district and county courts, as set out in ss. 97 and 98 of the *Constitution Act, 1867*, maintain that appointments will be made only from persons who are members of the Bar of that particular province. (The district and county courts are now amalgamated with the provincial superior courts in all provinces.) Newfoundland’s provincial court system is very much like those found in most of the provinces.

The Federal Public Service

The federal public service is also regionalized, but regional representation has tended to be overshadowed by other representative criteria. As of 2001, as calculations done from federal statistics in *Appendix 4* show, approximately two-fifths - 39.25 per cent - of federal employees worked in the National Capital region. The percentage of federal public servants working in Atlantic Canada, as defined by Treasury Board criteria (see note, *Appendix 4*) was 12.36 per cent. Newfoundland, at 2.02 per cent, had slightly more than its percentage share of Treasury Board-defined public servants.

The problem is that equitable regional representation in the public service is not an explicit policy of the federal government. In fact, until recently, federal Public Service Commission advertisements prevented applicants from outside specific geographic locales from applying for many positions. The only explicit policies are those which are aimed at official bilingualism and employment equity.

Official bilingualism is guaranteed by the *Official Languages Act of 1988*. Section 34 of the *Act* says that English and French are the languages of work in all federal institutions and all officers and employees have the right to use either official language.²⁵ In order to give meaning to balanced participation, section 39 specifies that both language groups will have equal opportunities for employment and advancement and that the “composition of the workforce of federal institutions tends to reflect the presence of both the official language communities,” taking into consideration the specific nature of the institution in question.²⁶

Employment equity in the Canadian federal context is best explained by citing the *Employment Equity Act* of 1986. The purpose of the *Act* (and therefore the policy) is:

to achieve equality in the work place so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability and, in the fulfillment of that goal, to correct the conditions of disadvantage in employment experienced by women, aboriginal peoples, persons with disabilities and persons who are, because of their race or colour, in a visible minority in Canada by giving effect to the principle that employment equity means more than treating persons in the same way but also requires special measures and the accommodation of differences.²⁷

It is significant that the language of the 1995 version of the legislation is identical.

In the public service, the government interprets the policy as one coexisting in harmony with the *merit principle*, by which most commentators mean choosing the most qualified individual for a given position. The objective of the federal government's employment equity policy is said to be "to address representational imbalances experienced by Aboriginal peoples, persons with disabilities, persons in a visible minority, and women (the designated groups) within the context of the merit principle."²⁸ Other considerations of the policy in the federal public service are that there be a *representative bureaucracy* and *fairness* in employment opportunities.²⁹

Summary

In summary, this review has revealed a set of institutional arrangements which is anything but consistent from the standpoint of provincial or regional representation. Representation of regions is the key apparent organizing principle of the Senate of Canada; concentrating on regions instead of provinces was seen as a way of preventing narrow provincial jealousies and contention. Newfoundland however - in light of its unique geography - was recognized from the dawn of Confederation as deserving of a province-based representative principle. Representation in the lower house, the Commons, is clearly based on another principle, that of population, but even here there is an element of concern for provincial representation, of a threshold nature. Parliament has determined that the increasingly severe imbalances in the provinces' populations would have rendered their representation nugatory and so it has "stopped the clock" and added protections for provincial representation such as the "Senatorial Clause" and the "Grandfather Clause." Provincial representation is the central principle, if not the only one, guiding the formation and operation of federal Cabinets; Cabinets are viewed as the forum for establishing interregional and interprovincial compromises. However, it is a weighted regional representation, with most provinces represented around the table, but the larger provinces, and especially Quebec, represented proportionately more. The Supreme Court and the superior court systems in the provinces are also established on regional lines, but not the other pure federal courts. In the case of the Supreme Court of Canada, two of the regions from which the Justices are chosen - Quebec and Ontario - are actually provinces, the other regions being the Western provinces and the Atlantic provinces. Superior courts in the provinces are chosen from the provincial bars but Federal Court and the Tax Court representation has seemed biased toward Central Canada, given the statutory requirement for residency of their judges in the Ottawa area. The federal bureaucracy is based on the merit principle, not region of residency or origin. However, the policies of official bilingualism and employment equity provide some other criteria for personnel choice. The governing structures

of agencies, boards and commissions are chosen on the basis of a number of demographic, professional and other criteria, with which region coexists as a choice. The armed forces are chosen on the basis of preparedness for the military life, but there appears to be a weak regional basis for choice as well.

Perhaps more consistency is evident when one examines the institutions and sees that the configuration of Canada as a bilingual and bicultural nation - which has weak notions of regionalism implicit in it - as a more central theme. Canada has a regional Senate, a Grandfathered Commons representation, a Central-Canada-weighted Cabinet, a Supreme Court with two-thirds of its members from the two central provinces and other federal courts with Central Canadian-biased selection rules, a language-based criterion for part of its bureaucracy and a host of other arrangements because of a simple fact: Canada was founded with special attention to the linguistic and cultural needs of Quebec and this needs to be fostered and creatively renewed from era to era. It is in this context of the “national question,” and the questions of representation to which it gives rise, that Newfoundland and Labrador’s representational concerns must be considered. The road is all uphill.

Literature on the Evolving Role of Representation in Federal Institutions

The lack of adequate regional representation in federal institutions has often been a lightning rod for regional alienation. A literature review reveals the perceived reasons for the alienation and some structural solutions. Some of the reasoning may be compelling, some may not. The fact that it exists - in great amounts and with many spokespeople - is itself worthy of note and serious concern by those who attend to the health of the state. The literature itself is enormous, and the assigned space here short, so this will be only a general review.

Lack of Intrastate Federalism

One school of regional alienation popular in the 1980s, dealing with “*intrastate federalism*,” alleged widespread federal structural failure. As we will later note in greater detail, advocates of “intrastate federalism” promoted federalism *within* federal institutions: making federal institutions reflect and represent provincial diversity. This is to be accomplished, at least in theory, by strengthening provincial government or provincial electorate representation in national institutions, or else (and this is not as common an interpretation of intrastate federalism) by having non-governmental provincial interests represented in federal government institutions, in order to make Ottawa more responsive and legitimate.

Intrastate federalism is usually distinguished from “*interstate*” or “*executive*” federalism. Interstate federalism, also covered later, has been used alternately to mean (1) executive-dominated intergovernmental relations (2) federal-provincial and inter-provincial relations between elected and appointed officials (3) federal-provincial summitry and coordinating agencies that mimic international diplomacy and (4) institutions that promote consultation and cooperation between governments. Although it is the dominant pattern of Canada’s last

half century, interstate federalism is seen by many as an imperfect vessel, for reasons stated below.

Smiley and Watts discerned what they perceive to be the operating assumptions common to most intrastate advocates.³⁰ Together they add up to an indictment of institutional and intergovernmental operation in this country. To paraphrase them, these propositions are:

- National governmental institutions act in an overly centralized and majoritarian fashion. Centralism is manifest in the power of the Prime Minister - inordinate compared to other democratic federations - to appoint “the Governor General, the Lieutenant Governors, the Cabinet, the members of the Senate, and the Supreme Court: in fact, the entire structure of the central government with the sole exception of the House of Commons.”³¹ Majoritarianism is the bias towards more populous provinces apparent in central institutions as they reflect in their own way the uneven representation served up by an electoral system.
- The federal government’s power and legitimacy have waned because it has not adequately represented territorially-based interests. As Irvine says, “A large measure of the current alienation from [the] federal government comes from the fact that its formal power exceeds its real social power. Governments act, and must act, on behalf of the whole country but they do not have support from a majority of the voters, nor do they have caucus representation from large segments of society.”³²
- Central institutions must be more representative of, and responsive to, provincial governments, in order to contain the provincial power which has grown proportionately as the ability of the federal government to reflect provincial and territorial interests has declined. In other words, the centre must represent the regions or else the provinces will push for the more radical alternative of massive decentralization which will ultimately hurt the weaker provinces.
- Federal and provincial governments are currently locked in an unacceptably conflictual relationship because the present structures of government and representation encourage confrontation and are not counterbalanced by institutions which encourage accommodation. Gordon Robertson saw an increasing tendency for provincial governments to concern themselves in areas of federal jurisdiction because of the lack of “an effective forum for open regional advocacy and brokerage within our institutions at the federal level of government.”³³
- In order to represent individual Canadians, who are socially diverse and who occupy geographical areas with different groups represented therein, majority government must in the future mean not only 50 per cent plus one, but regional consensus on important issues.

These concerns are not of course universally accepted, but they are compelling to many, even to those who do not accept the intrastate recommendations that accompany the analysis.

National and Regional Effects of the Electoral System and Representation by Population

Regions are represented in the House of Commons; how well they are represented is the issue. The electoral system that is used at present is the Single-Member Plurality (SMP) system (one member per riding elected by simple plurality). SMP in Canada has been subject to a variety of criticisms. One is that it tends to manufacture single-party majorities in legislatures even when the parties do not get majorities in the popular vote (the total number of votes cast). Another is that it tends to exaggerate the degree of victory for the party concerned by giving it a “bonus” of seats: a percentage of seats which is greater than the percentage of votes that it achieved in the election. Another is that it tends to disadvantage third or minor parties with dispersed national support, who end up with a percentage of seats that is less than the percentage of popular vote. Yet another is that occasionally a party can form the government but rank second in the popular vote, as was the case with Conservative national victories in 1957 and 1979. These criticisms are held to outweigh the advantages of the SMP system, which include the production of stable majority governments which are free to demonstrate political leadership, clarity of identification of the voter’s representative, and the promotion of a two-party system in which the parties serve as brokers of regional interests (the results of the last three general elections excepted).

From the regional standpoint, SMP is a double-edged sword. Regionally-concentrated parties tend to have percentages of seats in the Commons which are significantly greater than the percentage of popular vote that they have earned, giving regional concerns a boost, but exaggerating the degree of regional disaffection. Some political parties as well may end up with no elected members in certain provinces but have healthy percentages of the popular vote there. This latter condition exacerbates the perception of regional alienation where it is not completely deserved: historically the West has not been as estranged from the Liberal Party as the “seats won” figures would suggest, nor Quebec from the Conservatives. In the case of governing parties, this presents an additional serious problem: the representatives of some regions may not be present around the Cabinet table, which defeats one of the major premises upon which the brokerage system rests.

Of course the whole electoral system is roughly based on the principle of representation by population. This means that the more populated areas of the country are, with qualifications noted elsewhere in this paper, entitled to a commensurate number of representatives in the House of Commons. Less populated regions, or regions with declining populations not only have comparatively fewer representatives; they also wield less power in the party caucuses and especially in the government party caucus and the Cabinet.

Decline of Regional Ministers

Observers have identified a number of problems experienced by regions in the operation of the federal Cabinet. These include a tendency for Cabinet positions to be allocated on the basis of representation by population, the small number of ministers from peripheral regions, the strictures of responsible government which privilege the interests of larger regions, the increasing dominance of the Prime Minister’s Office (PMO), and the roulette of voting for a party which may not form the next government.³⁴ The decline in the influence of regional

ministers is another perceived deficiency in the Canadian system of regional representation. There was a period in Canadian history (1917-1957) when strong regional ministers were the primary representatives of their provinces or regions.³⁵ The rise of the power of the Prime Minister and various attempts by the PMO to supplant the influence of these ministers led if not to an extinguishment of their power, then certainly to a significant diminution of it.

Bakvis does however give some hints about the relative effectiveness of regional ministers.³⁶ He found that the most effective regional ministers were those who both acted as conduits (what we have called delegates) for provincial Cabinets and independently identified what they themselves thought to be in the best interests of their province. He suggested that the institutional supports given to the offices of the regional ministers be expanded. He concluded that “the clout of regional ministers is found primarily on the margins. It is, however, still a good-sized margin, one that could conceivably expand in the future.” He also states “regional ministers are an important part of the equation in determining success or failure in protecting or promoting the province’s interests within Ottawa circles and especially within Cabinet.” If a province is represented by a weak or ineffectual regional minister, therefore, it can hurt its interests.

Deficiencies Muting the Regional Role of M.P.s

There are a number of deficiencies muting the regional role of M.P.s, to add to the litany of representational woes. One is that M.P.s play little role in overseeing or evaluating the nature of executive (or interstate) federalism in this country. Donald Smiley observed that “the lack of parliamentary involvement in federal-provincial relations is demonstrated not only in situations where it is restricted to the *post hoc* ratification of actions already agreed upon by the two levels of government, but also by governments bypassing their respective legislatures in announcing future policies.”³⁷ Another is that the strict nature of party discipline, which tends to make all but the most adventurous M.P.s a representative of their party to the electorate, rather than representatives of various cleavages, like region, to the party and by that token, to the country. For their pains, recalcitrant Members may be threatened with loss of committee chair status, non-signing of nomination papers by the Prime Minister, expulsion from the party caucus and loss of career opportunities like parliamentary secretary and cabinet minister status. The situation is further exacerbated by the asymmetrical nature of parliamentary careers. Unlike Britain, where there tend to be long-serving M.P.s and short-term Prime Ministers, the situation is exactly reversed in Canada.³⁸ This “amateurism” dooms the normal Member to a subordinate status vis-à-vis the Prime Minister and Cabinet because it leaves him or her less time to establish independent bases of influence.

A Senate Based on Regions but Not Representing Them

In Canada, there is an anomaly at work in the form and function of the Senate. Originally modelled after the British House of Lords, the Constitution implicitly assigns it two functions: to preserve property rights and to represent the regions. (Legislative Review and protection of minorities were two additional functions later attributed to the Senate.) The first function has proved unnecessary to fulfill, and the second has not been a serious concern of the Senate, due

largely to the fact that the federal Crown appoints the Members of the Senate. The Government of Canada itself has admitted what Canadians already knew for decades about its lack of regional representation and capacity for authoritative action:

Appointment by the federal government alone, combined with lengthy tenure (formerly for life, now until age 75), has had two major effects. First, it has weakened the Senate's ability to represent, and to be seen to represent, the regions of Canada....

A good representative must be responsive to the views and interests of those being represented. During a long appointment, such responsiveness cannot be assured. Senators are not obliged to account to their regions, and their actions as "representatives" are not put to any public test....

The second major problem is thus a result of the first. Because of its method of appointment, the Senate lacks the authority to exercise the substantial powers given to it by the Constitution. A political institution can possess formal or legal powers, but if the public does not think it ought to use them, these powers may not be exercised.³⁹

Not only does the Senate do a bad job of regional representation because of the long appointment and method of appointment, the basis for representation is basically flawed. In a world where upper houses of legislatures tend to be chosen on the basis of equal numbers per region (see table elsewhere in this paper), the Canadian Constitution allots approximately 46 per cent of the Senate's membership - a total of 48 senators - to two "regions" of Central Canada - Ontario and Quebec, who have approximately 62 per cent of the national population. As McCormick, Manning and Gibson state:

This manipulation of the concept of region has resulted in an upper chamber whose representation is heavily skewed toward representation by population instead of reflecting the federal nature of the country Far from giving increased representation in the Senate to smaller provinces, the Canadian system perpetuates the political dominance of the larger provinces in both houses of the bicameral legislature [Parliament]. Canada is the only democratic federal system in the world in which the regions with the largest populations dominate both houses of the national legislature.⁴⁰

Federal Judicial Appointments

It has often been commented on by critics of Canadian federalism that there are two arrangements in the Canadian Constitution which are anomalous in a federal system. One is that the Supreme Court of Canada, which is the final arbiter in matters relating to the division of powers, is totally appointed by one order of government - the federal - and that the highest level of judicial hierarchy of each province - the so-called "section 96 courts" - is completely chosen by the federal authorities. While disputes about these matters seldom flare into political or constitutional crises, they have been sufficiently contentious to make the list of constitutional reforms in recent years. The Meech Lake Accord, for example, would have

added a new s. 101C, providing for a provincial role in the “nominating” of candidates for the Supreme Court:

(1) Where a vacancy occurs in the Supreme Court of Canada, the government of each province may, in relation to that vacancy, submit to the Minister of Justice of Canada the names of any of the persons who have been admitted to the bar of the province and are qualified under section 101B for appointment to that Court.

(2) Where an appointment is made to the Supreme Court of Canada, the Governor General in Council shall, except where the Chief Justice is appointed from among members of the Court, appoint a person whose name has been submitted under subsection (1) and who is acceptable to the Queen’s Privy Council for Canada.

The Governor General in Council was to appoint a person whose name had been submitted by the government of Quebec or another province, as the case may be. (It should be added that an analogous arrangement was provided in the Accord for the appointment of Senators.)

Insufficiently Representative Bureaucracy?

Whether or not the federal bureaucracy is sufficiently territorial in representation is a matter of debate. Matters are not helped by a lack of recent research on the subject, or by the government’s lack of interest in tracking the geographic origin of employees in the federal system. There is also a school of thought that it simply does not matter.

One school of thought considers the degree of territorial representation of the federal public service to be satisfactory. Beattie *et al.* found that the middle level of the bureaucracy was regionally representative, reflecting all regions but Quebec, and its degree of regionalism exceeded that of the senior executive level.⁴¹ However, Dennis Olsen’s 1973 data revealed that there was a significant degree of regional representation in the federal bureaucratic elite (183 in total, in department and public corporations). The Atlantic provinces had 12.8 per cent of the Canadian-population in 1971, and 7.1 per cent of the Canadian-born bureaucratic elite in 1973; Quebec had 31 per cent of the population and 27.9 per cent of the elite; Ontario had 30.9 per cent of the population and 31.1 per cent of the elite; the Prairie provinces had 18.9 per cent of the population and 28.4 per cent of the elite; and British Columbia had 5.5 per cent of the population and 6.4 per cent of the elite. However, the Atlantic provinces were less represented in Ottawa’s elite. These findings were roughly similar to those of Kernaghan for 1977, who concentrated only on senior department executives. He found that the Atlantic provinces, with 9.5 per cent of the population in 1976, had 9.5 per cent of senior executives; Quebec, with 27.1 per cent, had 23.7 per cent; Ontario, with 35 per cent, had 43.2 per cent; the Prairie provinces, with 16.5 per cent, had 16.0 per cent; British Columbia, with 10.7 per cent, had 7.6 per cent; and the Yukon and NWT senior executives formed .1 per cent and .2 per cent, respectively of the total. He concluded that “there seems no pressing need, except perhaps in Quebec, to use...remedial strategies...to enhance regional representation in the federal bureaucracy.”⁴²

Another school of thought stresses that the federal bureaucracy in recent years has been insufficiently representative. David Kilgour, now a Member of Parliament for Edmonton

Southeast and Secretary of State for Asia-Pacific relations, and author of *Inside Outer Canada* (1990) wrote in 1991 that:

Data on regional or provincial composition of federal public officials are difficult to find because, unlike linguistic and gender data, they are rarely recorded. My own survey of the 220 most senior individuals in 28 federal departments and agencies in mid-1989 indicated that only about 10 per cent were born and educated in Western Canada, which holds about 30 per cent of our national population.

Four per cent were from Atlantic Canada (which has almost 10 per cent) in both education and birth. Senior executives who were both born in and educated in either Ontario or Quebec held 70 per cent of the highest posts. Eight per cent of the top job holders were born outside Canada, but all of these had received at least part of their education in Ontario or Quebec.⁴³

Kilgour saw this as an extremely unfortunate pattern. Federal officials at the middle or senior levels of departments play key roles in the shaping of policies, he said, and there is cause for concern when there is limited organizational capacity to represent regional circumstances.

Whether all this debate actually amounts to anything meaningful is a valid question. Representative bureaucracy theory, as several commentators have pointed out, is premised on a kind of “active representation” model, where public officials lobby on behalf of the demographic or territorial groups that they represent, and where people’s behaviour is shaped by pre-employment socialization. The literature is inconclusive on these issues. More likely socialization factors, Smiley and Watts venture, are graduate-level education, the gateway to promotion in the federal service, and career paths of senior federal officials, which are trodden for the most part in the national capital region.⁴⁴ Whatever the case, it is worth lobbying for a territorially representative bureaucracy at the very least for fair employment prospects for Newfoundlanders and Labradorians.

Summary

Summarizing, then, what the commentators in this literature review all contend is simple: national representative institutions are insufficiently representative. National institutions represent Central Canadian interests; intrastate federalism is a working solution. Regional ministers, although valued protectors of provincial interests historically, are in decline, but this decline can be arrested: indeed, their role needs to be expanded. M.P.s are discouraged from acting as regional voices because of a variety of factors, a basic one being the lack of a parliamentary role in general policy-making, let alone intergovernmental policy-making. The Senate is based on representation of regions, but its actual capability to represent them has been severely compromised due the long period of appointment (which hinders accountability) and the method of appointment (which hinders legitimacy). Federal judicial appointments both by statute and convention privilege Central Canadian appointees and place Atlantic Canadians at a severe disadvantage in terms of careers on the pure federal courts. Information on the regional makeup of the federal bureaucracy and boards is unfortunately sketchy, but recent data indicate that Atlantic Canada does not get its share of senior officials.

In short, all the institutions are in question from a territorialist standpoint. No one body is acting so as to give effective voice to provincial or regional actors. The centre appears to represent mainly the centre. The regions even have a new name which describes their status: "Outer Canada."⁴⁵ The corpus of reform literature is growing yearly, but actual reform has been modest.

Representation of Newfoundlanders and Labradorians in Federal Institutions Since 1949

In 2002 the population of Newfoundland and Labrador was 531,595. The population of Canada was 31,413,990. This means that the people of the province formed only .0169222 of the population of the country - scarcely 1.7 per cent. If the logic of strict proportionality were taken to its limit, the province would have

- Five Commons members (of 301);
- Two Senators (of 105);
- perhaps one of the ministry (as it now has, out of 39, as of April 11, 2003);
- almost never have a Newfoundlander as a Justice of the Supreme Court or as a judge of the Federal Court, Court of Appeal (formerly the Federal Court-Appeal Division);
- perhaps every so often have someone from this province as a judge in the Tax Court of Canada or, less often, as a judge in the Federal Court formerly the Federal Court - Trial Division.
- have its share not only of the federal public service (1.7 per cent), but also of senior appointments to the leadership positions in the public service;
- have its share of appointments to agencies, boards and commissions;
- have between 900-1,000 Canadian Forces Personnel (of about 55,000)

Proportionate Representation in Federal Institutions

The representation of or by Newfoundlanders and Labradorians since 1949 in federal institutions has not been remarkably unjust, judged in terms of strict proportionality. It has had an assured base of seven Commons members since 1976 (See *Appendix 1*). It gets more than its fair share of Senators (six). It gets its proportionate share of the federal ministry, one regional minister or minister of state. It got the odd judgeship on the Trial Division of the Federal Court of Canada, although it has never had an appointment to the Tax Court of Canada, or the Supreme Court of Canada. It is impossible to say if it gets its share of the federal bureaucracy, since the federal government does not track its employees by provincial origin; as a proxy, one could use the percentage of the federal public service working in the province (2.02 per cent), a figure which is ambiguous, since federal employees in the province include people born in/ transferred from other provinces. *Appendix 5*, with material provided by the Federal Council of Newfoundland and Labrador, shows different numbers than does *Appendix 4*, but the general drift is towards increasing numbers of federal employees in the province, after reductions (due

² The Federal Council says that “it should be noted, however, that the reductions in numbers of employees [from 6,534 to 4,617] in Newfoundland and Labrador were the highest of any province in the Country. It should also be noted that considerable amount of the increase in employees from 1998 to 2002 [to 5,528] is made up of short term and seasonal staff associated with the Tax Centre. Conversely, a significant portion of those that left the public service and did not go to the private sector were higher paid full time employees.”

to Alternative Service Delivery reforms) from 1995 to 1998.² It does not get its fair share of senior appointments: only one Deputy Minister from the province since Confederation in 1949 (and, paradoxically, two between 1867 and 1949). However, it gets far more than its share of the Canadian Forces, which does track recruits by province. There were 5,595 serving Regular Force members of the Canadian Forces (CF) who were from Newfoundland and Labrador as of 31 March 2001. This represented close to a tenth (9.6 per cent) of total Regular Force members serving in the CF on that date.⁴⁶

This is not to say that things are perfect on the representational front.

Senators from the province have not been chosen on the basis of enhancing its status or influence in the federation. The province's Senators (see *Appendix 6*) have all been chosen on the basis of party favouritism; there has never been a choice of the incumbent based on provincial or community service, as is sometimes the case in other provinces. There have been 850 Senators appointed since 1867 in Canada, and 25 appointed from Newfoundland and Labrador.

Gender equity in MP candidacy although it has been a concern for the established parties elsewhere in Canada, has not been a major factor in federal elections in Newfoundland (See *Appendix 7*). In all of the federal elections since 1949, there have been a total of 373 candidates, including party representatives and independent candidates; only 31 have been women. A little over half of this latter number (16) have been candidates for the New Democratic Party, a figure much larger than that of the Liberals (seven) and the Progressive Conservatives (three) and the Reform/Alliance (one).

Things have not been getting better. The numbers of women running has not grown, but declined. The record for the older parties is particularly unimpressive. In the 1993 federal general election there were eight women candidates of 30 in total; three were NDP, two were Liberal, one was PC, one was NLP and one was Reform. In the 1997 federal general election, there were four women candidates of a total of 29 candidates in all of the seven ridings in the province; of the four women, three were candidates for the NDP and the other was Liberal. In the 2000 federal general election, only three of the 32 candidates were women; two of them were NDP and one was independent.

In the Commons (see *Appendix 8*), only two women have ever been elected from the province, Bonnie Hickey and Jean Payne, both in the 1993. For various reasons they could not even win their party's re-nomination, let alone re-election.

The ministers chosen from Newfoundland (see *Appendix 9*) have not all been uniformly strong. There is general consensus that the four strongest regional ministers since 1949 have been Jack Pickersgill, Don Jamieson, John Crosbie and Brian Tobin. However, the fact remains that there were 10 other "regional ministers" who other Canadians and Newfoundlanders would be hard pressed to name, let alone review their achievements on behalf of the province. Other provinces may have weak regional ministers from time to time as well, but in the Newfoundland case, so much rides on them that non-performers are of relatively greater concern.

Pickersgill, Clerk of the Privy Council, was persuaded by Premier Smallwood to run in a Newfoundland riding in 1953 and was a powerful voice in the federal Cabinet during the Liberal years until 1967. He was instrumental in getting a number of benefits Newfoundland wanted: for example, the 90:10 federal-provincial cost-sharing formula for finishing the Trans-Canada Highway, providing Unemployment Insurance for people who fished for a living, making Term 29 a constitutional right, and freeing privately financed power developments

from federal tax, thus aiding the Churchill Falls development.⁴⁷ Bakvis says that in the Pearson Cabinet, “only Pickersgill, representing Newfoundland and one of the few holdovers from the St. Laurent era, carried any real weight as a regional representative.”⁴⁸ Jamieson held a number of powerful portfolios during the Trudeau years, especially Transport, Regional Economic Expansion and Industry in the late 1960s to mid 1970s, which stood him in good stead to direct attention to the province’s economic needs.

Of Crosbie, Donald Savoie says, “When [Mulroney] wanted someone to tackle a difficult sectoral problem, like the crisis in the east coast ground fishery, he would ask someone like John Crosbie, a strong, articulate ministers from Newfoundland and Labrador, to handle it;” and he credits Crosbie as the only minister in the federal cabinet who favoured the crucial extra funding to the Hibernia Project when Gulf exited from it.⁴⁹ Bakvis adds that

John Crosbie...showed a remarkable capacity to influence the activities not just of his own portfolios but also those of other ministers in areas that were deemed crucial to the well-being of Newfoundland. While his star dimmed after Newfoundland dropped from four government members in 1984 to two in 1988, he still retained control over all fisheries matters affecting the east coast....By the spring of 1989 it was openly acknowledged...that quotas for various fish stocks and the allocations between inshore and offshore fishermen were being set directly by Crosbie rather than the minister of DFO, Thomas Siddon....Furthermore, as minister of international trade since March 1988, Crosbie already enjoyed considerable influence on the conduct of negotiations over the tricky Canada-France boundary dispute.⁵⁰

The province found him useful not only as a conduit (what we have termed a “delegate” representative) but as an independent goad to action.

In Newfoundland, the arrival of John Crosbie as the province’s voice in Cabinet was perceived to make a world of difference, at least in the eyes of [provincial] officials, with respect to fisheries and offshore resources. Furthermore, Crosbie did not simply convey provincial views to Ottawa; he also provided Newfoundland officials with insights into the opportunities and roadblocks existing within the Ottawa system.⁵¹

Tobin was instrumental in arresting the extravagant degree of overfishing by foreign fleets in the Atlantic, beginning the dynamic which led to achieving a new deal with NAFO nations. As Industry Minister, he focused new attention on the needs of rural communities for broadband Internet access.

In the federal bureaucratic elite, there has only been *one* Deputy Minister (DM) from Newfoundland and Labrador since Confederation in 1949, Arthur May, who was Deputy Minister of Fisheries (see *Appendix 10*). (Interestingly, there have been three in total since Confederation in 1867, including May, but the previous two were born in the 19th Century.) There have been close to 400 DM appointments since 1867. Therefore, the province has received, in the most generous interpretation of the statistics, roughly .0075 or three-quarters of one per cent of DM appointments.

There has never been a Newfoundlander on the Supreme Court of Canada, nor will there be a chance of one for over two decades if the current Atlantic-origin justice, Mr. Justice

Bastarache, stays on the court until retirement age. There have only been two Federal Court appointments from Newfoundland and Labrador since the Court was established in 1971 (see *Appendix 11*) and none in the Tax Court of Canada since it was established in 1983 (see *Appendix 12*). The Honourable Elizabeth Heneghan currently sits on the Federal Court - Trial Division (recently renamed the Federal Court) and the Honourable Leonard Martin sat on that same Court for six years, from October 1985 to October 1991. This means it took 14 years to appoint a Newfoundlander; there has never been a Newfoundlander as Chief Judge or Associate Chief Judge; that the province's representation on the current total court is 2.5 per cent and it has formed 2.4 per cent of all appointments in the Court's history; and of course, 0 per cent of Tax Court and Supreme of Canada appointments.

Canadian Forces Regular Forces representation aside, Newfoundland and Labrador is not getting its proportionate share of DND expenditures, while the share of other provinces remains elevated. *Appendix 17* shows that the province, although sitting at 1.9 per cent of the population in 1996-1997 and 1.8 per cent of the population in 2000-2001, was getting only 1.0 per cent of DND expenditures in 1996-1997 and 1.2 per cent of DND expenditures in 2000-2001. In those same years, Ontario's share went from 42.4 per cent to 47.7 per cent, although its share of the national population stayed in the 37 per cent range. In the Atlantic provinces, Nova Scotia gets around 10 per cent of national DND expenditures in Canada, but has little more than three per cent of the population. The actual number of DND personnel stationed in the province has declined, as *Appendix 18* demonstrates. While there have been slight declines in the DND civilian personnel in most provinces (Ontario's number has grown), Newfoundland and Labrador's drop has been the most precipitous, from 416 in 1996 to 130 in 2000-2001. Like many other provinces, its regular forces have dropped in numbers (743 to 615). Its reserves have grown (966 to 1175), but so have those of many other provinces.

So, all things considered, Newfoundland and Labrador is getting an approximate - although not perfect - share in the representational structure of the country. It gets more than its share in the Commons and Senate. It always has a Cabinet Minister designated as the main interlocutor with the federal system. It apparently gets more than its share of the federal bureaucracy. It certainly gets far more than its share of the Canadian Forces personnel.

It is however severely lacking in representation in the federal judicial and administrative hierarchies. This is important because the province's representatives are not able to influence judicial and administrative decision-making.

Representation Without Power

Yet one can have representation without power. Newfoundlanders and Labradorians tend to look at the *results* of the combined institutions of the Canadian state, as well as the relative burdens of the federal partnership, for evidence of the lack of effective representation. The manifestations of weakness are evident in many areas of public administration. Proportionality is therefore not enough.

There is, for example, no federal policy of decentralization of departmental headquarters to benefit Newfoundland and Labrador. This contrasts with the case of Prince Edward Island, which benefited from the locating of the national headquarters of the Department of Veteran's

Affairs in that province in 1981. (It also received a processing centre for the Goods and Services Tax servicing the whole country in 1990 as a political recompense for losing the Summerside military base.) The decentralization of the Department of Fisheries and Oceans is a natural candidate for placement in this province, but little lobbying, at least in public, has taken place to promote such a move.

There are no Atlantic regional departmental headquarters in Newfoundland and Labrador. At last count, Nova Scotia had 17 and New Brunswick had 11. The only federal headquarters which are in the province are for those departments which have headquarters in each province.

Marine Atlantic headquarters are still in Moncton, despite a decade of lobbying by the province to bring it here.

One laudable federal practice however has been the placing of a significant ACOA “policy shop” in St. John’s, as well as some ACOA staff outside the capital city. At about 129 people, the St. John’s ACOA headquarters almost matches the Moncton ACOA headquarters in level of staff commitment. This province’s ACOA staff are well-respected for their professionalism and dedication to the province’s economic development.

Newfoundland and Labrador is the only province other than PEI with no federal penitentiary. This provides a host of economic benefits available to other provinces but not to this one.

In the 1990s, this province bore the heaviest brunt of federal bureaucratic downsizing. From April 1995 to March 1998, federal employment declined by 27 per cent in this province (from 6,440 to 4,701 employees) compared to the national average decline of 17 per cent; this was the largest decline experienced by any province and this occurred at arguably one of the worst periods in its economic history. Federal employment during the same period declined by 22.1 per cent in Nova Scotia, 24.4 per cent in New Brunswick and actually rose by 2.1 per cent in PEI. The National Capital Region and the Outside Canada area were the least effected, declining only by 12.4 per cent and 7.1 per cent respectively.⁵²

There were significant cuts in the 1990s to federal departments and agencies which were crucial to the province’s interest: the Canadian Coast Guard, DFO, HRDC, ACOA and the CBC. At the height of the province’s economic crisis in the 1990s, Ottawa was closing federal government offices in the province: CMHC Cornerbrook, the National Film Board in St. John’s, the Canadian Saltfish Corporation, the Public Works Cheque Production site in St. John’s, the Newfoundland Forest Research Centre in St. John’s, the St. John’s Weather Office and the Newfoundland Militia District Headquarters. In March 2003 the phasing out of the Gander Weather Centre was announced.

What constitutes effective representation for the province is a notion that obviously has to be revisited. This paper suggests there is a need for a firm ideational foundation.

The Secret Nation

All of the foregoing ideas do not amount to much if they are not predicated upon addressing the representational needs of Newfoundlanders and Labradorians. The citizens and the province may be represented in rough proportion to population, but this does not present much in the way of checks and balances.

Facts count. So do ideas. One must return to them to explain the profound sense of betrayal many Newfoundlanders and Labradorians feel in the current federal system. There is the sense that, contrary to expectations, the citizens of the province have been relatively powerless to influence the major directions taken in the last half century that directly or indirectly affected it. More than that, there is a perception that the central problem is that the relationship of the province to Canada (and to other provinces) is one of unequals. A common perception is that *this is not the way a former self-governing country and Dominion should be treated*. The relationship should be one of equal partnership. (For an eloquent expression of this point of view, see the column by journalist Bob Benson in the box below.)

The Telegram
St. John's
Sunday, February 9, 2003

National partners

One of the great mysteries of our soon-to-be commemorated 54 years of Confederation is why successive federal governments in Ottawa have been insensitive to our wishes to be an equal partner in the Canadian nation.

For example, royalty revenues from offshore oil could go a long way to help us achieve that goal if we didn't have to rely on federal handouts. Indeed, the Atlantic Accord reached in 1985 between the federal government and the province specifically recognized the right of Newfoundland and Labrador to be the principal beneficiary of offshore revenues.

Yet, it wasn't that long ago when Premier Roger Grimes estimated the province keeps only 30 cents of every dollar earned — other estimates suggest 20 cents to the dollar — from offshore royalties because Ottawa claws back the revenue from equalization payments.

With royalties estimated to come in at \$800 million a year when all the offshore fields are in production, that would mean under the present arrangements Newfoundland and Labrador would get to keep a measly \$130 million, according to my calculations — simple old journalist that I am.

Every cent counts in a province with the nation's highest unemployment rate, the lowest per capita income: where health-care spending amounts to 42.5 per cent of the \$3.5 billion budget and the provincial debt load works out to about \$21,000 for every man, woman and child living in Newfoundland and Labrador.

Nation of equals

Does it not make sense for Ottawa to let us keep all the offshore revenues until we reach the high standards in health care, education, social services, transportation and so forth of the "have" provinces? Not until then can any prime minister like Jean Chretien or wannabe Paul Martin proclaim we are a nation of equals from coast to coast — not just from Halifax to Vancouver, but from St. John's to Victoria and to the Arctic coast.

There has always been a certain tension between Ottawa and Newfoundland, based on Upper Canada's view of us as an odd, small and irrelevant bit of land somewhere out there in the fog. But that quickly ended when Canada discovered our vast mineral wealth and hydro potential in Labrador, not to mention our strategic position in the North Atlantic.

But back in 1919, Newfoundland was part of the British delegation at the Paris peace conference to end the First World War. Newfoundland was too small to have its own delegation, but our Prime Minister Sir William Lloyd sat with the Brits, who were led by Prime Minister Lloyd George.

The Canadian delegation, headed by Sir Robert Borden, sat at a separate and lower table. They were miffed Newfoundland sat at the main table with the Brits.

Newfoundland had status as a dominion in the Commonwealth and could apply for membership in the League of Nations, the forerunner of today's United Nations.

Instead, the government of the day put its foreign relations in the hands of Britain, but still remained a viable country and dominion which was recognized in the Balfour Declaration of 1925 and the Statute of Westminster in 1932.

Interestingly, if Newfoundland and Labrador decided on Responsible Government instead of Confederation, we could have eventually declared a 200-mile economic zone which would have given the country complete management rights and control over offshore oil. It has been suggested we brought that ownership with us into Confederation, but more learned voices than I say no.

If we were treated as an equal with the other dominions of the Commonwealth like Australia, New Zealand, South Africa and Canada, what did we do to become less equal in the eyes of Ottawa since 1949?

Bob Benson is a St. John's journalist.

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Survey of Major Options For Representation Reform

As noted at the beginning, there have been several options for representation reform suggested both in Canada and in other federal states. This section will investigate some of them. The emphasis will be to identify “decision points” which emerge from the study of domestic and international federal systems: that is, different options that the Commissioners may care to consider. Later we will assess whether or not the patterns deserve emulation in Newfoundland-Canada relations.

Approaches to Federalism

Decision Points:

- Does the Commission wish to have an explicit philosophy, or theory, of federalism?
- Which are the most applicable in the case of representation of the people or governments in institutions of the federal government?
- To what new areas of representation and intergovernmentalism should the theory be extended?

One of the enigmas of Newfoundland’s existence is that, for a province whose relationship to the federal government is so important to it, it has not developed a clear and consistent federal theory to guide it. Other provinces have developed working theories of federalism that established ground rules for negotiations with the federal entity. Quebec’s governments, aided by the province’s intellectuals, successively adopted classical federalism, dualist federalism, and EU-style federal approaches before contemplating sovereignty. Ontario (at least until the 1980s) and Manitoba often identified its interests after WWII with those of Ottawa’s centralist federalism. Many provinces in the last decade have advocated the “collaborative” approach as their working theory. Whether or not the federal government accepts the particular theory in question is not the issue - generally it will not; instead, the issue should be that the provincial government knows what it wants and has a consistent philosophic rationale which resonates with the province’s political culture.

This paper maintains that one of the tasks facing the Royal Commission is precisely to establish this working theory of federalism, preferably one which has a notion of partnership inherent in it. If it does not do so explicitly, observers will be quick to see one implicit in its many recommendations. In a broad sense, all that the Commission will do is informed by theory; in a narrow sense, which options it chooses for representational reform will be too.

It should be stated at the outset that we are using the term “theory” in a very loose sense. Most social scientists understand theories to be “a set of plausible statements or general principles offered to explain phenomena or events. Theories offer testable hypotheses or speculations about the causes of political outcomes.”⁵³ In fact, what we cover here and

elsewhere in the paper does not offer testable hypotheses about causation; they could more accurately be described as “philosophies” or “values”⁵⁴ relating to federalism, in the sense that they are but subjective views and perspectives; they offer moral or ethical judgements on the organization of the federal system. We are using the looser version of theory for a very simple reason: most books on federalism refer to “theories” of federalism when they are covering schools of thought on the purposes of federalism.⁵⁵ The most prominent theories in the Canadian literature relate to centralist, classical, cooperative, compact, dualist, interstate, intrastate, symmetrical and asymmetrical federalism, and provincial intergovernmentalism.

Not all theories are relevant in the case of Newfoundland and Labrador. This paper suggests that four are most appropriate to consider: centralist, cooperative or collaborative, intrastate, and asymmetrical. We have previously explained the content of the theories.

The theory of federalism adopted by the Commission, and ultimately by the Government, should take some things into consideration. It should however not be compelled to take one off the shelf. What is adopted should take into consideration:

- the fact that the province includes the country’s unique major island and as such structures to enhance its resource, economic, transportation and social development should be designed differently than if they were on the mainland;
- the contemporary context of Canadian federalism; and,
- the example of world federalisms.

Intergovernmental forums

Decision Points: In the topic of intergovernmental forums, the decision points involve whether the forums should be:

- formal versus informal, or constitutional versus statutory;
- consultative versus decision-making;
- transparent versus confidential;
- multilateral versus bilateral; and,
- third-party or not.

Each theoretical approach to federalism implies certain types of intergovernmental forums. For example, a centralist will prefer a different set of intergovernmental arrangements than will an asymmetrical federalist. This is not to say, however, that one has to choose only one theory and one set of corresponding institutional arrangements. In politics and government, consistency is, as they say, the hobgoblin of little minds. Some of the machinery and the supporting ideation can be mixed. The following national and international arrangements are reviewed to see if they offer us any ideas for representation of a small jurisdiction like Newfoundland and Labrador.

Centralist Arrangements

There is a clear centralist bias in the traditional federal government practice of calling and chairing of intergovernmental meetings and conferences, especially at the summit level. Some have considered it a convention that these were in federal hands.⁵⁶ This could continue, if the province feels its interests are sufficiently protected by federal leadership. Another centralist practice would be to continue to have the appointment process for federal boards and commissions entirely in federal hands, working on the presumption that the collective leadership of such boards is constructed with an aim to representing a variety of geographic and social cleavages.⁵⁷ Sometimes the practice works to the advantage of the province. Two of the seven members on the Canadian Transportation Agency are from this province (Richard Cashin, appointed in 1996, and Beaton Tulk, 2002), and Paul Dicks was recently appointed to the Board of the Bank of Canada.

Cooperative/Collaborative Federalist Arrangements

This centralist principle in intergovernmental forums underwent a change of sorts during the social union framework years, beginning in the 1990s. New processes would come to reveal cooperative or collaborative assumptions. Joint chairs were the norm during the workings of the Federal/Provincial/Territorial Council on Social Policy Reform (the F/P/T Council). The mildest sort of representational reform would be to extend this principle to a wider range of summit meetings, say on federal-provincial financial arrangements.

Cooperative mechanisms had, of course, previously been recommended by the *Macdonald Commission Report* of 1985. It advocated instruments allowing flexibility and cooperation: delegation, establishing First Minister's Conferences (FMCs) in the Constitution, creating "third-party bodies" to facilitate intergovernmental relations and establishing three ongoing federal-provincial "Ministerial Councils" in the fields of Finance, Economic Development and Social Policy.⁵⁸ One notable approach it took was to suggest that the FMC become less a decision-making body than a coordinating and framework-setting one, one in which participants recognize their interdependence.⁵⁹ Ironically, this recommendation would not be accepted in Canada but would be elsewhere, like in Australia. Cooperative or collaborative federalism could also be effected by learning from the less confrontational, problem-solving principles evident in certain Australian and South African bodies.

The general characteristic of Australian intergovernmental relations, as Brown has noted, is that they are more collaborative (or "cooperative") than is the case in Canada.⁶⁰ Moreover, they have been explicitly redesigned since the 1990s to be more complementary. This is especially the case with First Ministers forums, Ministerial Councils engaging in co-decision models, Mutual Recognition regimes, new national agencies, and uniform legislation.⁶¹ (See *Appendix 13* for a list of some of the various bodies and new instruments involved.) The decision rule of First Ministers meetings - such as the *Council of Australian Governments (COAG)*, the *Treaties Council* and the *Leaders Forum* - is consensus, backed up with legislative action by the governments involved.⁶² *Ministerial Councils* are groupings of Commonwealth, state and territory ministers with analogous functional responsibilities who have been formally

mandated by First Ministers bodies like COAG to provide decision making in specific matters. Their decision rules vary by area, but range from simple majorities, qualified majorities, and sometimes weighted votes. *New national agencies* are jointly Commonwealth/State enterprises or regulatory bodies whose decisions are implemented by Ministerial Councils or other mechanisms, and which have a variety of cooperative features such as joint appointments, shareholder rights, and co-determined work plans. Coordination of financial affairs involves a variety of First Ministers and Ministerial Council mechanisms.⁶³

The Australian model has been called potentially interesting for Canada because there is a recognition that “national” solutions do not have to be centrally-imposed or controlled, there is a commitment to power-sharing by the national government, and there is a high degree of transparency practiced.⁶⁴ Brown says it shows that the states can systematically consider the national interest and that the Commonwealth can have the patience to abide joint processes and subdue its reflex tendency to prefer centralized solutions.⁶⁵

With its new constitution of 1996, South Africa entered an era of intergovernmental experimentation. It coordinates intergovernmental relations with a combination of *legislative intergovernmentalism* and *consultative intergovernmental forums*. Legislative intergovernmentalism is provided by the “National Council of Provinces,” which is the upper house of the South African Parliament (the National Assembly being the lower). It consists of provincial delegates who participate in constitutional amendments and who pass (subject to Assembly override) parliamentary bills affecting provinces. There are three levels of consultative intergovernmental forums: national-provincial coordination in the national sphere, department-specific coordination between national and provincial governments, and national-provincial-local.⁶⁶ In the national sphere, for instance, the President’s Coordinating Council is an informal body made up of the President and the nine provincial premiers, providing policy formation and coordination as well as dispute resolution, albeit of a non-binding nature. Most of the national-provincial bodies however have been established by statute; they involve consultation with provinces over the requisite matters before national legislation affecting them can be passed. There are a multiplicity of others.⁶⁷

Some collaborative federalism literature has included ideas about protections for smaller jurisdictions. One is “co-decision.” Andre Burelle has suggested a “Pact on the Canadian Economic and Social Union” with weighted voting. In this, there would be a European-style co-decision process carried on by a “Council of First Ministers” where the decision rules would vary from simple majority to weighted majority to unanimity, depending on subject matter, and be binding on governments in the Federation.⁶⁸

A related idea is having a decision-making threshold to assure some measure of influence for small jurisdictions. This was the idea behind the federal government’s suggestion for a “Council of the Federation” (1991). Such a council, consisting of ministerial representatives from each level of government, would be entrenched in the Constitution, and all of its decisions would require an approval process that mimics the “general amending formula” in the *Constitution Act, 1982*: approval of the federal government and at least seven provinces representing 50 per cent of the population.⁶⁹ The votes would be taken on fiscal harmonization guidelines, on the use of federal spending power and on Canadian economic union legislation. (the government was then proposing the economic union as a new federal head of power).

Intrastate Arrangements

There is also the “intrastate federalism” option for intergovernmental relations. This features intergovernmental decision-making being covered by provincial representation in a variety of federal institutions, and is covered in other parts of this paper. Suffice it to say that there are a variety of models that have been considered for a number of different institutions, with the Supreme Court of Canada and the Senate of Canada being the focus of the most attention. In the case of intrastate federalism, the need for intergovernmental forums is lessened because the political accommodation is taking place more within the national institutions, and less between governments.

Asymmetrical Arrangements

One interesting intergovernmental option for Newfoundland and Labrador is asymmetry. In this, the province establishes a series of special relationships for different functional areas of strategic importance to it, and negotiates into existence certain bodies which reflect the asymmetrical principle. Asymmetrical principles - in this case called “joint management,” or “co-management” - are present in the case of the Canada-Newfoundland Offshore Petroleum Board (CNOPB). In 1985, the Government of Canada and the Province of Newfoundland and Labrador reached agreement on the “Atlantic Accord” - an accord on joint management of the offshore oil and gas resources off Newfoundland and Labrador and the sharing of revenues. In order to give effect to the accord, both governments passed legislation authorizing the establishment of the CNOPB. The CNOPB is comprised of six members, three appointed by the Government of Canada and three by the Government of Newfoundland and Labrador; both governments appoint the Chair. The Board manages the petroleum resources in the Newfoundland offshore area. Since only Nova Scotia has a deal which is anything like this, the CNOPB can be considered an asymmetrical arrangement.

Newfoundland and Labrador for many years has eyed an analogous arrangement in the fishery. In its 1992 strategic plan *Challenge and Change*, the Wells government stated that it would “aggressively pursue the implementation of a joint fisheries management board (modeled on the Canada/Newfoundland Offshore Petroleum Board) whereby a comprehensive development plan can be put into effect.” Its rationale for joint management of the fisheries was that this would allow for coordination, fairness, transparency, conservation and would facilitate provincial economic policy formation and implementation.⁷⁰ Former Premier Brian Peckford has also indicated that CNOPB-style joint management in all parts of the fishery should be in place today to help the fishery recover.

Asymmetry is a principle which can be extended to a number of other areas. The asymmetrical principle is also present in the agreement regarding labour market development programs negotiated between the federal government and Government of Newfoundland and Labrador in 1997.⁷¹ Newfoundland and Labrador was the first province to opt for co-management and co-design of labour market programs and services as part of the federal government’s plan to renew or “balance” Canadian federalism. The federal and provincial governments now share responsibility for the design and management of labour market development programs and

services for the unemployed in the province, whereas this had previously occurred solely at the national level. A federal-provincial Management Committee sets strategic priorities and allocates a budget among eight programs, aided by four regional LMDA committees.

Third-Party or Hybrid Bodies

Third-party or hybrid bodies are another option. One example is intergovernmental bodies operating at arms-length from governments which comment about the intergovernmental aspects of public policy. In the United States, the Advisory Commission on Intergovernmental Relations (ACIR), for example, lasted from 1959 to 1996 and published many insightful analyses of intergovernmental issues. It consisted of three representatives each from the federal Cabinet, House of Representatives, Senate, state legislators, county commissioners, private citizens, as well as four mayors and four governors. There are overtones of this model in the Health Council of Canada which was discussed in the Romanow Report and the 2003 Federal Budget.

One possible mechanism for seeking mutual advantage is the independent third-party assemblage to advise on matters of federalism. Constitutional councils, or national intergovernmental advisory councils, or national finance commissions, could recommend at regular intervals on approaches to division of powers questions, investigate systematic cases of discrimination against regions and provinces, or propose changes to intergovernmental finance; they could also investigate the cost efficiency of the existing division of powers. Their job would, in short, be to promote compromise and mutual advantage.

Regional Representation by Upper Houses

Decision Points: Another area of possible reform involves representation of regions by upper houses. Here the decision points involve:

- method of selection (appointed, direct or indirect election, mixed systems of election);
- equality or non-equality of representation of regions; and,
- specific types of functions and powers (regional representation, legislative intergovernmentalism vs. executive intergovernmentalism, absolute or suspensive vetoes, equal or unequal powers.

The last few decades have seen many Canadians agreeing on the need for reform of the Senate, but disagreeing on the particulars. Developing our own indigenous models for the upper house turned into a kind of growth industry for politicians and academics. However, much of the Canadian debate on upper house reforms was informed by models and developments abroad. We especially looked to other countries for inspiration in matters related to method of selection, the relative equality in representation, and the functions and powers of upper houses.

Method of Selection

Many have seen the appointment of the Senate by federal authorities alone as an anachronism. In the 1970s and early 1980s, the preferred reform option for choosing Senators was appointment by provincial authorities. This was quickly superseded by the notion of direct election. Direct election was the selection method proposed in the Charlottetown Accord of 1992.

The methods of selection of upper houses in other countries are varied.⁷² Some countries, such as the United States, Australia and Switzerland, feature *direct election*. In the case of India, Austria, and South Africa the members of the upper house are *indirectly elected*. In India 238 of the 250 members of the *Rajya Sabha* (House of States) are elected by Proportional Representation (PR) by members of the state and territorial legislatures; in Austria the 64 members of the *Bundesrat* are elected by PR from party lists by the provincial parliaments of the nine provinces; in South Africa the 90 members (10 for each of the nine provinces) of the upper house (the *National Council of Provinces*) are elected by the Provincial Parliaments. In Germany, the members of the *Bundesrat* are ex officio “delegates” of the Land (provincial or state) cabinets and vote *en bloc* as their representatives in a weighted system. In some countries there are *mixed systems of selection*. In Spain, 208 members of the 259-member *Senado* are directly elected and the other 51 are elected by regional legislatures. In Malaysia, 43 seats of a total of 69 in the Dewan Negara are appointed and 26 are indirectly elected by the 13 state Legislative Assemblies (two each). In Belgium, 40 of the 71 Senate members are directly elected and 31 are indirectly elected.

Equality Versus Non-equality of Representation

While equality of provincial representation in the Senate has not been suggested in every past constitutional proposal, it has certainly been the option of choice for latter-day reformers. (See *Appendix 14*, Senate Composition Schemes). Opinion-leaders like the Canada West Foundation (1981), the Alberta Legislature (1985) and Premier Clyde Wells (1989) all proposed equal provincial representation in a reformed Senate of Canada. The fact that the most consensus-oriented constitutional agreement of the last century, the Charlottetown Accord, featured equality of provincial representation in the reformed Senate as a basic principle, was telling.

The reasons for this are not hard to imagine. Populist reformers in Canada were heavily influenced by American representation theory. The founding of the American federation was greatly aided by the “Connecticut Compromise,” which joined representation by population (in the House) to equality of regional representation (in the Senate). This institutionalized system of countervailing power has seemed fair to Canadian reformers, especially those who reside in less populated provinces. Another reason is that the imbalance of (population-based) representation in the Commons is so glaring that there is little apparent incentive for governing parties based largely on representatives from Ontario and Quebec to pay much attention to the needs of the western and eastern provinces. Yet another is that the idea is simplicity itself, and

simple solutions are appealing in a political system that seems to thrive on preserving arcane and complicated political forms.

As for other countries, there are differences of opinion. Ron Watts noted that equality of representation of the component units is the exception rather than the rule in federations, at least in the 10 federations he studied (See Appendix 15).⁷³ However, our review shows that, if more recent data are considered and a larger number of federations (21) is considered, equality of regional representation is more the norm than is inequality (See Appendix 16). This is in spite of the fact that there are significant variations in the populations of most of the states or provinces in countries with federal systems. In Argentina, Brazil, Malaysia, Mexico, Nigeria, Russia, South Africa, USA, and Yugoslavia, for example, there is equality in the representation for the elected part of the Upper House but there are vast inequalities in state populations.

Functions and Types of Powers of Upper Houses

Over the course of Canadian federalism, four functions have been described for the Senate. These are regional representation, protection of property, legislative or technical review and protection of minorities. There is general consensus that the only function that the Senate has excelled at has been legislative review, but even this function has been tarnished by the charge that the Senate in legislative review is really representing corporate and banking interests, rather than the interests of ordinary Canadians.

Canadian reformers sometimes look to the upper houses of other nations for inspiration regarding which functions that a reformed federal upper house could perform. One such function is intergovernmental relations, or a form of “legislative intergovernmentalism.” This is a function performed by the German Bundesrat, and the one that was foreseen (but not yet achieved) for the South African “National Council of Provinces.” In a country such as Canada, which has traditionally practiced “executive intergovernmentalism” or “executive federalism,” where legislatures are only informed about intergovernmental relations after the fact, and seldom asked to comment on them in a systematic way, the German model would be quite a departure.

Given the mandate for this paper, an intensive discussion comparing the types of powers to be exercised in a reformed upper house is not necessary. However, it is worth considering the types of powers possessed by upper houses in several federations. Depending on circumstances, they may exercise an absolute veto, suspensive veto, coequal powers with mediation, or unequal powers. At one end of the spectrum of upper house powers is the German Bundesrat, which exercises an absolute veto over concurrent federal/Land powers and a suspensive veto (overridable) over exclusive federal powers; at the other is the Canadian Senate, with an absolute veto in all matters except financial bills, but which is practically unused because of a perceived lack of legitimacy. The Charlottetown Accord would have featured an interesting combination of suspensive and absolute vetos, which would apply according to the class of legislation being considered by the Senate. Appendix 15 offers a comparative outline of the functions and roles of upper houses in federations.

Regional “Representation” in the Judiciary

Decision Points: In terms of reforming the “representativeness” of Section 101 and 96 courts, the options range from recommending whether there be:

- appointment by federal cabinet alone, or in concert with provincial governments;
- continuation of the present consultation model, or a formal nominating model;
- informal, statutory or constitutional procedures to ensure provincial roles;
- transparency or traditional obscurity in choosing judges; and,
- enlarging or maintaining the size of the Supreme Court of Canada

To discuss representation and the judiciary in the same breath smacks of heresy, since the judges once appointed are not expected to represent anything but the law. They are certainly not expected to be spokespeople for the regions from which they are appointed. There are however representative aspects in statute and convention in Canadian judicial circles. Judgeships, after all, are jobs, and jobs have to be spread around in some sort of equitable way, while respecting the functional needs of various legal systems in the country. We made reference earlier to the appointment criteria for members of the Supreme Court of Canada, Federal Court and Tax Court of Canada having a regional aspect, either by statute or convention.

Appointment Procedures

The first issue to be dealt with is the matter of appointment procedures. We have made mention of the fact that the federal Crown has the sole authority to appoint the “pure” federal courts (Section 101 judges) and the highest level of courts in each province (section 96 judges). Many alternatives to this state of affairs have been suggested over the past several decades. Ronald L. Watts sums up what some of them have been, along with Supreme Court, and examples of possible models elsewhere. To paraphrase:

Canadian-made Suggestions:

- constitutional requirement of mandatory consultation with the provinces;
- ratification [of appointments] by a reformed Senate;
- nomination by federal-provincial nominating commissions; and,
- selection by an Appointing Council composed of federal and provincial appointees.

International Models:

- the requirement of Senate ratification of senior judicial appointments, as in the United States;
- appointment of half the members by the state governments, as in effect occurs in Germany through the Bundesrat; or,

- the requirement of prior consultation either with state governments or chief justices of the state high courts as occurs in Australia, Malaysia, and India.⁷⁴

Provincial Involvement

A second and related area of decision making involves the degree to which provinces should be involved in the process. The present model can be called a consultation-oriented one, led by the Commissioner for Federal Judicial Affairs. In this model, the province adopts a passive stance, waiting to react to the federal initiative. In the nominating model, the province would be more activist, in fact initiating the process of naming appropriate candidates for positions. The Meech Lake model alluded to in an earlier section is an example of an activist, constitutionalized stance. It is not beyond the realm of possibility, however, to imagine an activist, provincial nominating stance which could be statutory or informal.

Transparency vs. Obscurity

The relative merits of transparency and public pressure versus the present consultative and somewhat obscure process of choosing federal judges should be considered. In the process which transpired between the resignation of Mr. Justice LaForest and his replacement by Mr. Justice Bastarache on the Supreme Court of Canada on September 30, 1997, there was mention of a Newfoundland candidate for the vacant Supreme Court post. The fact that the province had never had a “representative” on the Supreme Court in 50 years, that New Brunswick had already had its “turn” (both LaForest and Bastarache are New Brunswickers) were never publicly touted as decision factors by politicians in Newfoundland and Labrador. The successful candidate, Honourable Mr. Justice Michel Bastarache, was 53 years old in 2002. This means it could take until 2024, when his mandatory retirement age arrives, before Newfoundland and Labrador has another chance at having one of its native sons or daughters appointed to Canada’s highest court.

Enlarging the Supreme Court

Enlarging the Supreme Court to make it more regionally representative is another idea that has been touted on occasion by some observers. Peter Russell nearly 20 years ago detected a:

convergence of interest in achieving a common goal in Supreme Court reform; strengthening the Court’s capacity to act as a vehicle of ‘intrastate federalism’....

Throughout the Court’s history the composition of its bench has reflected both dualist and regional concepts [the Quebec provisions and the regional representation convention]....

But in the last few years this position has been challenged by proposals to expand the Court's bench to 11 judges and to entrench some pattern or principle of regional representation. In 1978 the federal government's Bill C-60 called for an 11-judge Supreme Court with four judges from Quebec and a requirement that "as nearly as can reasonably be" the remaining seven be drawn from the Atlantic provinces, Ontario, the prairie provinces and British Columbia....The Pepin-Robarts Task Force, endeavouring to achieve a reconciliation of dualism and regionalism, proposed an 11-judge court with five from Quebec and a "regional distribution" of the rest.

Whatever the choices the province makes, it bears remembering what Peter Russell had to say about the importance of a provincial role in the judicial appointment process: "Not only do the provincial governments have a legitimate interest in most federal judicial appointments, but their proximity to the provincial bar and the fact they are often controlled by political parties different from the party in power in Ottawa, should enable them to augment the information available to the appointing authority about good candidates for judicial office."⁷⁵

Since, as some like Peter Hogg maintain, the size of the court is set by statute and not by constitutional provision, an 11-court alternative may be easier (technically!) than it seems at first. Whether public opinion would countenance such a change is another matter. Certainly the change would have to come from an alliance of politicians, academics and members of the legal profession.

Regional Representation in the Federal Public Service

Decision Points: Regarding the federal bureaucracy, the Royal Commission should consider:

- whether or not to recommend that the federal bureaucracy be representative of the Canadian provinces and regions? If so, it should clarify what sort of representation it means. Representative bureaucracy can mean a variety of things: political responsiveness, broadly representative bureaucracy precisely representative bureaucracy, active (or functional) representativeness, passive (or descriptive) representativeness.
- Whether or not it is consistent with a representative bureaucracy that a province have a deficit in numbers of deputy ministers and regional head offices compared to other provinces, and suffer more than its share of downsizing.

Problems in Establishing the Provincial "Representativeness" of the Federal Bureaucracy

As noted earlier in this study, we were unable to determine to what extent Newfoundlanders and Labradorians are equitably represented in the public service, or boards of the federal government. There is no methodology in place in the federal system to permit the retrieval of data

on territorial representation. Several federal spokespeople contacted for this study commented on the ethical and practical problems of trying to establish who a “true Newfoundlander” is. Would this be by birth? Last residence? Longest residence? Parents?

An Explicit Policy on Territorial Representation

These objections are not insurmountable. The ethical objection to identification of public servants by province seems a fairly flimsy one, considering that in Canadian history have not raised significant ethical objections to identification by veteran, language, gender, aboriginality, disabled, or visible minority status. In fact these have been the foundation for the Veterans Preference, Official Bilingualism and Employment Equity programs in the Government of Canada. As well, in the Official Bilingualism program, there is an implicit provincial and regional identification aspect to the program.

As for the problems of practicality involved, these don't seem insuperable. It is a matter of either or all of : 1) checking a box for place of birth on future hirings in the public service; 2) self-identification; and doing selective studies of strategic areas of the public service, such as the executive categories. Analogous measures, it will be remembered, take place in affirmative action programs. The question of whether or not the entire bureaucracy should be considered as needed to be included - or just its elite - is a matter that should be considered after the question about what meaning should be attributed to the term “representative bureaucracy.”

The fact that there has been only one deputy minister (DM) from this province in its post-1949 history indicates that the DM cadre is insufficiently representative, regardless of the data about Atlantic representation presented earlier. It also raises the question of lack of territorial equity in representation to have had no regional directors for Atlantic Canada situated in the province.

Political Representation and the Electoral System

Decision Points: Regarding the electoral system, the Royal Commission should consider:

- whether to recommend a purpose (or purposes) of political representation;
- whether regions or other cleavages, or both, should be addressed in a new system;
- whether or not to recommend a change from the SMP system to an electoral system based on some form of proportional representation (PR); and,
- whether or not the change should reflect pure PR principles or should be a hybrid including traditional accountability practices.

Certain difficulties in political representation have been discussed in this paper. There is a lack of electoral clout - in absolute terms - of small provinces and regions, and a chronic lack of women candidates, at least in this province. We have already identified the relevant theory of political representation - in light of these realities and provincial history - as “furthering of interests.” The problem is how to structure the electoral system to promote this.

It is in the interests of the province (or at least the Commission) to agitate for a new federal electoral system. There are a number of alternative forms of representation from which to choose. These include a single-member majoritarian system (alternate vote or second ballot); multi-member proportional list, single transferable vote, and a mixed system mixing SMP and PR. In particular, the Task Force on Canadian Unity, Ed Broadbent when he was NDP leader, and several academics have all suggested that a mixed system would be the most useful for reducing the misrepresentation of parties' regional representation,⁷⁶ and some literature suggests that women's representation could be improved by either a mixed system or a PR system (if women were placed high enough on party lists).⁷⁷ However European-style pure PR systems do not seem in keeping with a North American fondness for at least partial retention of a single-member system.⁷⁸

The furthering of the interests of women and the province's residents would be advanced by having most of its Commons members elected in regular constituencies as at present in the SMP system, and to have "provincial" or "supplemental" M.P.s added - or replacing a percentage of existing M.P.s - and to be distributed by party and by province on the basis of popular vote. The charge that these added members would be "second string" or lesser in prestige would be overridden by the increase in representation of provinces like this one in the governing and opposition party caucuses and the inclusion of regionally-sensitive policies and gender-based analysis by opposition parties who may one day form the government.

Conclusion and Recommendations

The world is a different place than it was a decade or two ago when governments and observers were considering representation reform in Canada. The needs of small jurisdictions like Newfoundland and Labrador in some respects heightened. However, attention has shifted away from conceptualizing ways to redress institutional imbalances and towards new aspects of public policy. It is one of the jobs of the Royal Commission to shift it back.

The Changed Environment

Here are some of the things that have changed:

- There has been a switch from constitutional to non-constitutional solutions for systemic institutional and regional problems. There was a period from the late 1960s to the early 1990s in Canada in which the proponents of broad-ranging constitutional reform were in the ascendancy, and “linkages” (trade-offs) between various aspects of reform were drawn by the actors.⁷⁹ What might be called the “constitutional reform industry” - the assemblage of politicians, officials, academics and pundits who favoured such reform - nevertheless failed to convince enough Canadians about the wisdom of this approach. It foundered after the demise of the Charlottetown Accord. One of the ironies of Canadian politics is that what this industry sought unsuccessfully by constitutional means, it was willing to seek next, in some areas, by non-constitutional means.⁸⁰
- A related development has been the switch from proposing all-encompassing umbrella structures (A Council of the Federation, for example) to proposing or putting into effect more functional groupings. There are, for example, the F/P/T Council on Social Policy Renewal, its associated sectoral ministerial councils, and the Romanow Commission’s proposed Health Council of Canada.
- Experimentation in intergovernmental forums has come to be the norm. The Social Union Framework Agreement (SUFA) is an intergovernmental agreement which commits governments to seek civic engagement in policy development, but it is not the only one (e.g. The Canada Wide Accord on Environmental Harmonization, the Canada Forest Accord), and is not the only agreement which commits governments to wide-ranging consultation and harmonization exercises (e.g. the Agreement on Internal Trade (AIT)).
- There is renewed emphasis on provincial intergovernmentalism and a *de facto* acceptance of the asymmetries in provincial powers. Large provinces tend to set the agenda for the small provinces in provincial intergovernmentalism, because of larger bureaucracies and greater analytical prowess. This is especially notable in stances taken by the P/T Council in attitudes toward limiting the federal spending power.
- The combination of experimentation in intergovernmental forums and the emphasis on provincial intergovernmentalism has resulted in less attention being placed on the needs of small jurisdictions like Newfoundland and Labrador.

- This relative inattention to the needs of small jurisdictions is exacerbated by the fact that identities other than those based on region or territory have come to the fore, especially those based on gender, sexual identity, relationship to the environment and reaction to globalism. Therefore, there has been renewed and vigorous emphasis on citizen representation as well as government representation.
- The nominal emphasis on e-commerce, e-government and e-democracy also tends to make federal governments see the objects of their efforts not as provincial governments but as individual citizens. Significantly, the Atlantic Investment Partnership (AIP) a five-year \$700 million federal initiative announced in 2000 and aimed at strengthening the Atlantic Region's capacity to innovate and compete, was devised to operate without the necessity of provincial partners.
- Over the last decade there has been a notable shift of attention from reform of the federal upper house (Senate) to the lower house (House of Commons) as the engine of representivity, a tendency which has not escaped notice politically. This was evident in 2002 on a number of fronts: Liberal Paul Martin's October speech on how to correct Canada's "democratic deficit,"⁸¹ the electing of Commons committee chairs, and the growing emphasis on PR as a way to break the stranglehold of party in the Commons. Reform of the Commons however does not necessarily equate to regional influence. An Ontarian now chairs the Fisheries Committee, for example.
- A related development is the return in Canada in recent years to an emphasis on executive intergovernmentalism rather than legislative intergovernmentalism as an institutionalized way to address regional concerns.
- Various federal initiatives in the last decade have made enunciation of provincial aims more difficult to achieve: the federal programs in Atlantic Canada have begun featuring a federal-only approach; the federal authorities have initiated an equalization claw-back on natural resource revenues and changed CHST transfer to a per-capita basis.
- The federal government tends to find it politically dangerous to contemplate the representation of regions in new intergovernmental forums, because they are likely to enunciate only regional demands. If Ottawa feels compelled to bend to regional values (e.g. in the SUFA exercise), it will juxtapose them with other values, like transparency, accountability, mobility (Charter and managerialism values) so that the regional element becomes muted.
- There is a battle for focus of citizen attention/representation between the bureaucracy and the politicians.

This is a difficult kettle of contemporary realities to contemplate. Such an array of developments do not seem to lead one to imagine an easy or advantageous voyage ahead for a small province in a peripheral region.

Yet being a nautical nation for five centuries - almost four-and-a-half centuries before it joined the upstart federation to the west - has left Newfoundland and Labrador with some basic survival instincts. One of them is going against the tide. How else to explain a country which was born of forbidden settlement and developed independently in North America? Innovation and moving against the tide may be still relevant strategies.

Some of the contemporary realities mentioned above are not in the interests of the province. These include the current disinterest in institutional reform, a federal tendency to “go it alone” without provincial partnerships, a growing preference for executive intergovernmentalism over legislative intergovernmentalism, a strengthening of provincial intergovernmentalist forces. Under these tendencies, Newfoundland and Labrador’s concerns have been relegated to secondary status. The province does however stand to benefit by other contemporary developments. These include the spirit of innovation in intergovernmental affairs, the concern with public consultation and non-territorial identities.

Newfoundland and Labrador may yet benefit by a new emphasis on regional issues that is making itself felt. Premier Klein of Alberta, reacting to a new western separatist movement, has relaunched institutional demands reminiscent of another era. In March of 2003 he called for three concessions by Ottawa to the provinces: a Senate appointed from lists of nominees provided by the provinces; regularly-scheduled First Ministers meetings wherein premiers raise their own issues with the Prime Minister; and a guarantee of consultation to precede Ottawa signing any major international agreements or treaties such as the Kyoto Accord.⁸² Later in the month, federal Intergovernmental Affairs Minister Stephane Dion noted the federal government would consider a constitutional amendment to reform the Senate if there was provincial agreement. He noted he felt “a great deal of sympathy” for the idea of Ottawa “simply appointing candidates elected in the provinces” but that the problem was the unequal distribution of senators per province, which would take a constitutional amendment to change.⁸³ In April of 2003, Jean Charest’s Liberal government took office in Quebec vowing that, although they were pro-federalist, they were also pro-Quebec, and would be pressing Ottawa for concessions on the federal spending power, tax room for Quebec, and realigning powers. The front runner in the federal Liberal leadership is known to be more sympathetic to provincial requests for institutional change.

There is a spirit of change in the air that has not been seen for some time. The time may be propitious for Newfoundland and Labrador to get its representational agenda in order.

The Basis of the Recommendations

Let us review the theoretical and practical considerations that have brought us to our recommendations. Some themes have emerged from the study.

1. There is a need for transparency. All stages of the decision-making process, as well as the evidence used at each stage, should be open to public view. This is a primordial point. An informed provincial public is the greatest protector of the province’s interests.
2. Accountability must be furthered. Legislatures are the basis of responsible government. They must also form a part of the system of intergovernmental relations. This may involve a number of innovative mechanisms.
3. Political representation of Newfoundland and Labrador means both protecting its interests in a variety of federal institutional forums, and acting as a delegate of the provincial government, depending on the circumstances.

4. A representative federal bureaucracy means one that reflects both territorial and non-territorial identities. This implies the need for an explicit territorial or provincial representation policy.
5. The asymmetrical principle in federal-provincial relations should be pursued as a default approach. This means, in effect, seeking special intergovernmental arrangements made between the federal and provincial government which reflect the special needs of Newfoundland and Labrador. This of course will not be possible in all circumstances, and other philosophies or theories of federalism will have to be engaged.
6. Third-party or hybrid intergovernmental bodies may be useful additions to the Canadian system. International experience has shown that they take some of the acrimony out of intergovernmental relations, and increase the transparency of decision-making.
7. Lastly, there is only so much a province with 1.7 per cent of the Canadian population can do. The following recommendations are designed as a relatively modest group of suggestions in order to be realistic. It may be that a new era of constitutional change may come and these may be surpassed.

One can imagine both a long term and a short term strategy.

Long-term Strategies

In the long term, it seems evident that some past strategies may once again be germane.

1. Limited constitutional reform initiatives - that is, involving limited linkages or tradeoffs - should be a strategy for the Province. Since the demise of the last wave of constitutional reform, there have emerged no political arrangements the Province can use to countervail the power of Ottawa or of bigger provinces. Reform, fortunately, seems most likely in the area of Senate reform.
 - a) Some sort of reformed upper house chosen on the basis of equal provincial representation would be useful. There should be both representation by population in the lower house and equality of provinces in the upper house, similar to the pattern in many federations. The upper house should have powers to check and/or delay (suspend) federal legislation affecting provinces.
 - b) Some constitutionalized role for the province(s) in international relations should be contemplated, especially in trade or resource issues. Many other federal states allow this, notwithstanding Ottawa's theory of "one voice" in international affairs.
2. Some degree of asymmetrical arrangements should be pursued by exploring what aspects of the Ottawa-Newfoundland relationship could be changed by using section 43 of the amending formula in the *Constitution Act*, 1982.

Short-term Alternatives

General Federalism Issues

3. The province should adopt a more aggressive stance on federal representation issues. One could contemplate the issuance of “representational report cards,” for example. These report cards would stress wins and losses for the province in terms of the federal relationship, and the relative fairness of the this province’s share vis-a-vis those of other provinces, especially in Atlantic Canada. This would further both transparency, and accountability to the province’s citizens.
4. Principles included in the SUFA should be included as elements of most Canada-Newfoundland intergovernmental agreements. SUFA-type principles like due notice, partnership, collaboration, performance management, fact-finding and mediation, and others provide the basis for a satisfactory code of ethics for intergovernmental relations. SUFA also provides procedures to ensure accountability.

Intergovernmental Forums

5. There should be an independent National Finance Commission to recommend on issues of fiscal federalism in Canada. There are various alternatives one could contemplate regarding the composition of this body, but some principles would prevail in its operation: a) the provinces would be able to make their case to it regarding the relative equity of federal and provincial fiscal resources b) there would be transparency in reporting of its recommendations and c) the public, and for that matter regional publics, would be enabled to provide analyses and recommendations regarding future arrangements. The Australian model would be studied for its lessons.
6. There should be an expansion of the CNOPB model (joint management) to other areas of federal competence; Newfoundland tends to benefit when the asymmetrical or co-management style of arrangement is followed. Likely candidates for future joint or co-management structures would seem to be the fisheries, regional economic development and culture.
7. The Province should lobby for the joint chair status for federal-provincial meetings in general, as a way of getting its concerns on the public policy agenda.
8. The Province should consider the advisability of introducing decision rules other than consensus - for example, qualified majorities - to various intergovernmental forums in order to safeguard the interests of smaller jurisdictions.
9. There should be a high-profile “Ottawa Office” opened by the Government of Newfoundland and Labrador to track federal policy developments potentially impacting upon the province and to lobby federal officials regarding the province’s interests.

Senate Reform

The Standing Committee on Intergovernmental Affairs of the House of Assembly (recommended below) could examine and recommend upon the following three alternatives for short-term Senate reform:

10. With the cooperation of the Prime Minister, one member of each subsequent Newfoundland Cabinet could be chosen as the province's representative to the federal Senate, to assure a modest kind of legislative intergovernmentalism. Statute prevents members of a provincial house from sitting in the federal House of Commons, but there is no apparent interdiction against a provincial Assembly member from sitting in the Senate of Canada. A convention would develop that the senators so chosen would resign from the Senate in case of a change in the provincial party in power. This would be a modest version of the German arrangement, which sees Land executive members sitting in the Bundesrat. The individual chosen would be a kind of "delegate": the practice would allow a member of the provincial cabinet to keep track of the federal legislation affecting the province, and to report the province's positions to a federal institution. This would be an interim change until full-fledged Senate reform takes place.
11. The idea of Senate "elections" in Newfoundland and Labrador should be studied, along the lines of Alberta's (advisory) senate elections (which may have set some sort of precedent, since one of the "elected" senators ultimately was appointed to the Senate). This is one way, even if the province is not successful in having its "winning candidates" chosen for the Senate, to exert pressure on Ottawa for meaningful Senate reform, much as Alberta did in the 1980s and is starting to do again. The process of Senate elections will help crystallize the province's "interests," which other actors like the Premier, Ministers and M.P.s can go on to enunciate in other contexts.
12. If no innovative reform takes place in the appointment of senators, more modest alternative approaches could be attempted. The province could hold hearings when federal senators are chosen; citizens and members of the House of Assembly, especially those in the proposed Intergovernmental Affairs Committee (below) would brief Senators on provincial interests that senators should defend and policies that should be furthered. Another alternative is that the provincial Cabinet could establish a committee of "notables" to recommend on a list of appropriate Senatorial "candidates" from which the federal Crown could choose.

Legislative Reform

13. A Standing Committee on Intergovernmental Affairs of the House of Assembly should be established. It would study general intergovernmental affairs from a provincial perspective, monitor intergovernmental agreements and programs, invite testimony from the public and from officials, offer insights on current intergovernmental issues, and advise the provincial government. This would attend to some structural weaknesses in Canadian federalism, namely the lack of accountability (legislative involvement in federal-provincial relations), and the lack of a mechanism for inviting citizen involvement in federal-provincial matters. It would modernize “legislative intergovernmentalism” and place it more in line with citizen consultation and identity politics, and thus make it more legitimate.
14. The Standing Committee would be aided, in part, by the provincial Auditor General, who would do special studies to aid the work of the Standing Committee, much as he or she does for the Public Accounts Committee. Other staff would be made available to the Committee as needs would arise. (If the Standing Committee is not formed, the Auditor general could submit general reports directly to the legislature, as he or she now does in the case of the annual financial reporting, or directly to cabinet, as described below.) The legislative permission that would allow for this work is already found in s. 16 of the *Auditor General Act* of 1991:

Special assignments

16. (1) The Auditor General may, where in his or her opinion such an assignment does not interfere with the Auditor General’s primary responsibilities under this Act, whenever the Lieutenant-Governor in Council so requests or the House of Assembly or the Public Accounts Committee by resolution so requires, inquire into and report on a matter relating to the financial affairs of the province or to public property or inquire into and report on a person or organization that has received financial aid from the government of the province or in respect of which financial aid from the government of the province is sought.

(2) Where the Auditor General makes a report in accordance with subsection (1), the Auditor General shall report back to either the Lieutenant-Governor in Council, the House of Assembly or the Public Accounts Committee (*Auditor General Act*, SNL 1991, chapter 22).

Federal-provincial “financial affairs” could fall under the rubric of s. 16. Legislative Auditors are greatly respected, and if the provincial Auditor General reported that the province was being treated inequitably, this would resonate widely. Such informed reporting would aid transparency and accountability immeasurably.

Cabinet Reform

15. Joint federal-provincial cabinet committees could be established on matters of outstanding importance. The precedent for this idea has already been established - in the 1990s - when an *ad hoc* joint cabinet committee composed of federal and provincial cabinet ministers was struck to deal with managing the cod fishery crisis. Such a reform would aid in the development of asymmetrical arrangements between Ottawa and the Province.
16. Political parties should take it upon themselves to recruit candidates who are expert in federal-provincial issues, and Prime Ministers should occasionally use their power to “appoint” outstanding local candidates in the province to the federal cabinet, who would subsequently submit themselves to the electorate.

Electoral Reform

17. The province should lobby for electoral reform which sees most Commons members elected in regular constituencies as at present in the SMP system, but with “provincial” or “supplemental” M.P.s added - or replacing a percentage of existing M.P.s - and to be distributed by party and by province on the basis of popular vote.
18. The form of electoral reform chosen should be done with the twin aims of increasing balanced regional and gender representation in political party caucuses.

Bureaucracy Reform

19. The province should lobby for a study of the provincial origins of workers in various parts of the federal public service, and especially its senior ranks, to assess the degree of territorial equity which is at play in hirings in the federal system. This is important in an era of expanding federal hirings and because of its implications for federal policy development. The study might also consider the advisability of having the federal government add some notion of a “territorially representative bureaucracy” to its general policy for under-represented regions, if such are discovered to exist.
20. Central agencies in Ottawa should be more “federalized” so that their makeup reflects geographic backgrounds as one criterion of the merit principle.
21. Candidates for decentralization of federal national department headquarters (e.g. Department of Fisheries and Oceans) should be publicly identified, and federal political parties should commit themselves to such targets, regardless of whether they are in or out of power.
22. Candidates for decentralization of regional Atlantic departmental/agency headquarters should be similarly identified and promoted.
23. The Prime Minister should consider appointing more deputy ministers from Newfoundland and Labrador.

24. Executive interchange programs between the federal and Newfoundland and Labrador public services should be aggressively expanded, in order to increase the probability of more senior appointments from this province in the federal service.

Memorial University

25. Memorial University should commit itself to establishing a Public Affairs Centre of Excellence, both by establishing new resources and by reorganizing existing programs. This Centre would offer graduate education and public service training in two streams: public administration and public policy. The centre would both enhance the level of training of provincial public servants and increase the possibilities that provincial residents would be attractive candidates for senior federal public service positions.
26. French Language training should be heightened at Memorial University as part of the Public Affairs programs to decrease the possibility that inadequate language skills will provide an impediment to senior and middle-management appointments.

Judicial Reform

27. A committee of interested parties and stakeholders (for example representatives of the legal profession, the Law Society, interested academics, the Canadian Bar Association - Newfoundland and Labrador branch - and so forth) should study the matter of the sufficiency of provincial representation in purely federal courts, and contemplate some innovative and effective ways of increasing it.

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Endnotes

1. This is the way that Kenneth Kernaghan interpreted his mandate in an analogous assignment from the Macdonald Royal Commission in 1985. See Kenneth Kernaghan, "Representative and Responsive Bureaucracy: Implications for Canadian Regionalism," in Peter Aucoin, Research Coordinator, *Regional Responsiveness and the National Administrative State, Study #37* of the collected research studies, Royal Commission on the Economic Union and Development Prospects for Canada (Toronto: University of Toronto Press, 1985).
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3. Hanna F. Pitkin, *The Concept of Representation* (Berkeley and Los Angeles: The University of California Press, 1967).
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9. Paul P. Van Riper, *History of the United States Civil Service* (Evanston: Row, Peterson, 1958), p. 552.
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11. Arthur D. Larson, "Representative Bureaucracy and Administrative Responsibility: A Reassessment," *Midwest Review of Public Administration*, 7 (April, 1973): 79-89 at 87.
12. Kenneth Kernaghan, "Representative and Responsive Bureaucracy: Implications for Canadian Regionalism," p. 11.
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14. David Milne, "Equality or Asymmetry: Why Choose?" in Ronald L. Watts and Douglas M. Brown, eds., *Options for a New Canada* (Toronto: University of Toronto Press, 1991), p. 285.
15. Peter H. Russell, *Constitutional Odyssey: Can Canadians Become a Sovereign People?* (Toronto: University of Toronto Press, 1993), second edition, p. 178.

- ^{16.} *Parliamentary Debates on the Subject of the Confederation of the British North American Provinces*, (Quebec: Hunter,Rose, 1865), pp. 35-36).
- ^{17.} J.R. Mallory, *The Structure of Canadian Government*, rev. ed. (Toronto, Gage Publishing, 1984), p. 89.
- ^{18.} Mallory, *Structure of Canadian Government*, p. 91.
- ^{19.} Keith Archer et al., *Parameters of Power: Canada's Political Institutions* 3rd ed., (Scarborough, Ontario: Thomson Nelson, 2002), p. 246.
- ^{20.} *Courts Administration Service Act* S.C. Chapter 8 49-50-51 ELIZABETH II Assented to 27th March, 2002] http://www.parl.gc.ca/37/1/parlbus/chambus/house/bills/government/C-30/C-30_4/90155bE.html
- ^{21.} "Canada," in Herbert M. Kritzer, ed., *Legal Systems of the World: A Political, Cultural and Cultural Encyclopedia* (Santa Barbara, Denver and Oxford: ABC CLIO, 2002) p. 257.
- ^{22.} Canada, *Federal Court Act* Chapter F-7 R.S., c. 10(2nd Supp.), s. 5.
- ^{23.} *Courts Administration Service Act* S.C. Chapter 8 49-50-51 ELIZABETH II Assented to 27th March, 2002] http://www.parl.gc.ca/37/1/parlbus/chambus/house/bills/government/C-30/C-30_4/90155bE.html
- ^{24.} Auditor General of Canada, *Report on the Federal Court of Canada and the Tax Court of Canada*, August 1997. Conducted under the authority of order-in-council P.C. 1995-852 of May 30, 1995.
- ^{25.} In order to provide work environments that are conducive to the use of either language, workers are to be provided with appropriate work instruments and services, as well as access to automated data processing and data communication systems in either languages; and supervisors and management groups are to be able to communicate in both official languages with officers and employees of the institution (section 36).
- ^{26.} *Official Languages Act*, R.S.C. c. 31, s. 39(1).
- ^{27.} *An Act respecting employment equity*, ch. 31 S.C. 33-34-35 Elizabeth II, section 2 .
- ^{28.} Canada, President of the Treasury Board, *Employment Equity in the Public Service, Annual Report 1994-95* (Ottawa: Minister of Supply and Services, 1996), p. ix. Hereafter cited as *Employment Equity in the Public Service*.
- ^{29.} "This [equity policy mentioned above] ensures that the Public Service better reflects the population it serves. The guiding principle of the Employment Equity Program also remains constant: employment opportunities must be open to all Canadians in a fair and equitable way." *Employment Equity in the Public Service*, p. ix.
- ^{30.} Donald V. Smiley and Ronald L. Watts, *Intrastate Federalism in Canada* (Toronto: University of Toronto Press, 1985).
- ^{31.} Canada West Foundation, 1978, as quoted in Smiley and Watts, *Intrastate Federalism in Canada*, p. 18.

- ³² William P. Irvine, *Does Canada Need a New Electoral System?*, as quoted in Smiley and Watts, *Intrastate Federalism in Canada*, p. 19.
- ³³ Gordon Robertson, as quoted in Smiley and Watts, *Intrastate Federalism in Canada*, p. 20.
- ³⁴ See, for example Peter McCormick, Ernest C. Manning and Gordon Gibson, “Regional Representation in Canada,” in J. Paul Johnson and Harvey E. Pasis, *Representation and Electoral Systems: Canadian Perspectives* (Scarborough, Ontario: Prentice-Hall Canada Ltd., 1990), pp. 101-102.
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- ⁴³ David Kilgour, “Underrepresented in Ottawa,” in *Policy Options*, November 1991; reprinted in *Policy Options*, December 2000, p. 31.
- ⁴⁴ Smiley and Watts, *Intrastate Federalism in Canada*, p. 88.
- ⁴⁵ David Kilgour, *Inside Outer Canada* (Edmonton: Lone Pine Publishing, 1990); Stephen G. Tomblin, *Ottawa and the outer provinces : the challenge of regional integration in Canada* / Stephen G. Tomblin. (Toronto : James Lorimer, 1995) .
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- ⁴⁷ Frederick W. Rowe, *The Smallwood Era* (Toronto: McGraw-Hill Ryerson, 1985), pp. 181-183.
- ⁴⁸ Herman Bakvis, *Regional Ministers: Power and Influence in the Canadian Cabinet*, p. 72.
- ⁴⁹ Donald Savoie, *Governing from the Centre: The Concentration of Power in Canadian Politics* (Toronto: University of Toronto Press, 1999), pp. 243, 76.
- ⁵⁰ Herman Bakvis, *Regional Ministers: Power and Influence in the Canadian Cabinet*, p. 276.
- ⁵¹ Herman Bakvis, *Regional Ministers: Power and Influence in the Canadian Cabinet*, p. 298.
- ⁵² These figures are derived from *Employment Statistics for the Federal Public Service*, Treasury Board of Canada Secretariat, 1995 - 1998.
- ⁵³ Diane E. Schmidt, *Expository Writing in Political Science: A Practical Guide* (New York: HarperCollins College Publishers, 1993), p. 37.
- ⁵⁴ *Ibid.*, p. 36.
- ⁵⁵ See, for example, Samuel V. LaSelva, *The Moral Foundations of Canadian Federalism: Paradoxes, Achievements, and Tragedies of Nationhood* (Montreal and Kingston: McGill-Queen's University Press, 1996).
- ⁵⁶ Andrew Heard, *Canadian Constitutional Conventions: The Marriage of Law and Politics* (Toronto: Oxford University Press, 1991), ch. 5.
- ⁵⁷ Sharon Sutherland and G. Bruce Doern, *Bureaucracy in Canada: Control and Reform* (Toronto: University of Toronto Press, 1985).
- ⁵⁸ Canada, *Report of the Royal Commission on the Economic Union and Development Prospects for Canada*, Volume I (Ottawa, Minister of Supply and Services, 1985), pp. 399-400. (Hereafter cited as "Macdonald Report".)
- ⁵⁹ Canada, *Report of the Royal Commission on the Economic Union and Development Prospects for Canada*, Volume III (Ottawa, Minister of Supply and Services, 1985), pp. 265.
- ⁶⁰ Douglas M. Brown, *Market Rules: Economic Union Reform and Intergovernmental Policy-Making in Australia and Canada* (Montreal and Kingston: McGill-Queen's University Press, 2002), p. 234.
- ⁶¹ Douglas M. Brown, *Market Rules*, ch. 8.
- ⁶² COAG is comprised of the Prime Minister, state Premiers and Chief Ministers and the President of the Australian Local Government Association (ALGA). COAG is structured to allow the governments to discuss matters of national importance and to set out a strategy and action plan, part of which may involve implementation by a Ministerial Council. The *Treaties Council*, whose membership is the same as the COAG, and which has met only

once, is meant to focus on treaty negotiations affecting states and territories. The *Leaders Forum* is composed of states and territories leaders only, and serves as a goad to action by the Commonwealth. See Roger Wilkins and Cheryl Sauders, "Intergovernmental Relations in Australia," in J. Peter Meekison, *Intergovernmental Relations in Federal Countries: A Series of Essays on the Practice of Federal Governance* (Ottawa: The Forum of Federations, nd. (2002?)).

- ⁶³ Intergovernmental coordination of financial arrangements is extensive in Australia. There are three intergovernmental institutions which bring together federal and state officials to negotiate or assess the various facets of federal finances. The *Premiers' Council* is a forum for the Commonwealth (federal) Prime Minister and state Premiers to deliberate transfer payments; the *Loans Council*, a body composed of Commonwealth and state representatives, coordinates Commonwealth and state borrowing according to a voting rule; and the *Commonwealth* is a commission of experts who advise the federal government on transfers.
- ⁶⁴ Margaret Biggs, *Building Blocks for Canada's New Social Union*, Working Paper no. F/02 (Ottawa: Canadian Policy Research Networks, 1996). See also Kathy O'Hara, *Securing the Social Union*, (Ottawa: Canadian Policy Research Networks, 1998), ch. 5.
- ⁶⁵ Douglas M. Brown, *Market Rules*, p. 216.
- ⁶⁶ *National coordination* features a plethora of bodies: the President's Coordinating Council, the Budget Council, the Council of Education Ministers (CEM), the Heads of Education Department Committee (HEDC), the Financial and Fiscal Commission, the Loan Coordinating Committee and the Local Budget Forum. See Nic Olivier, "Intergovernmental Relations in South Africa: Conflict Resolution within the Executive and Legislative Branches of Government," in J. Peter Meekison, *Intergovernmental Relations in Federal Countries*, pp. 71-90.
- ⁶⁷ At the national-provincial *departmental coordination* level, some interesting patterns have been tried. One concerns bodies - called MINMECs - which involve the relevant national minister and the appropriate Member of the Provincial Executive Council (MEC) and are often supported by technical bodies made up of officials from both levels of government. They coordinate policy development and implementation within specific functional areas. Another concerns *provincial coordinating structures* which in some cases are institutionalized in the provincial premier's office and coordinate intergovernmental relations.
- ⁶⁸ André Burelle, "A Renewed Canada to Which Québec Could Say 'Yes,'" *Canada Opinion* 4(1) (Montreal: Council for Canadian Unity, February 1996). This is cited in O'Hara, 1998, p. 59.
- ⁶⁹ Canada, *Shaping Canada's Future Together* (Ottawa: Minister of Supply and Services, 1991), p. 42.
- ⁷⁰ Government of Newfoundland and Labrador, *Change and Challenge: A Strategic Economic Plan for Newfoundland and Labrador*. (Queen's Printer. St. John's Newfoundland, 1992), Recommendation no. 96.

- ⁷¹ *Canada-Newfoundland and Labrador Agreement on Labour Market Development*, signed March 24, 1997. See http://www.hrhc-drhc.gc.ca/ei/lma/nfld/tab_e.html
- ⁷² The following material is collected from the relevant country chapters in Ann L. Griffiths, ed., *Handbook of Federal Countries, 2002* and Ronald L. Watts, *Comparing Federal Systems*, 2nd ed. (Kingston, Ontario: Institute of Intergovernmental Relations, Queen's University, 1999), ch. 9.
- ⁷³ Ronald L. Watts, *Comparing Federal Systems*, p. 95.
- ⁷⁴ Ronald L. Watts, "The Federative Superstructure," in Ronald L. Watts and Douglas M. Brown, *Options for a New Canada* (Toronto: University of Toronto Press, 1991), p. 334.
- ⁷⁵ Peter Russell, "Constitutional Reform of the Judicial Branch," in F.L. Morton, ed., *Law, Politics and the Judicial Process in Canada*, (Calgary: University of Calgary Press, 1984) pp. 91-92. See also, Peter Russell, *The Judiciary in Canada: The Third Branch of Government* (Toronto: McGraw-Hill Ryerson Limited, 1987), p. 121.
- ⁷⁶ Canada, Task Force on Canadian Unity, *A Future Together: Observations and Recommendations* (Ottawa: Minister of Supply and Services Canada, 1979; William Irvine, *Does Canada Need a New Electoral System?* Kingston: Queen's University Institute of Intergovernmental Relations, 1979; Kent Weaver, "Improving Representation in the Canadian House of Commons, *Canadian Journal of Political Science* Vol. 30, no. 3.
- ⁷⁷ Lisa Young, *Feminists and Party Politics*, (Vancouver: UBC Press, 2000).
- ⁷⁸ Leslie Seidle reminds us that a proposal by a Quebec government commission in 1984 to elect members to the National Assembly from party lists in 29 regional constituencies was abandoned after Parti Quebecois caucus opposition, "notably because it retained no single-member constituencies and broke entirely with the tradition of territorially-based representation." Leslie Seidle, *Electoral System Reform in Canada: Objectives, Advocacy and Implications for Governance*, Discussion Paper F/28, Family Network, Canadian Policy Research Networks, Prepared for the Law Commission of Canada, October 2002, p. 10.
- ⁷⁹ Peter H. Russell, *Constitutional Odyssey: Can Canadians Become a Sovereign People?* 2nd ed. (Toronto: University of Toronto Press, 1993).
- ⁸⁰ Christopher Dunn, "The Federal Spending Power," in Christopher Dunn, ed., *The Handbook of Canadian Public Administration* (Don Mills, Ontario: Oxford University Press, 2002), pp. 225-248.
- ⁸¹ http://www.paulmartin.ca/index_eng.cfm
- ⁸² "Dion critical of Klein's call for reform of Senate" *Edmonton Journal*, April 1, 2003.
- ⁸³ "Ottawa ready to discuss Senate reform: Dion revelation after Klein's firewall proposal," *National Post*, April 17, 2003.

Appendix 1

House of Commons Representation Formula: Detailed Calculation for 2001 Census

SENATE SEAT ALLOCATION	SEATS 33rd PARL.	POPULATION (2001 CENSUS)	DIVIDE BY NATIONAL QUOTIENT: 107,220 (ROUNDED)	ROUNDED RESULT	ADDITIONAL SEATS (SENATE CLAUSE)	ADDITIONAL SEATS (GRANDFATHER CLAUSE)	TOTAL SEATS	PROVINCIAL QUOTIENT (ROUNDED)
Newfoundland and Labrador								
6	7	512930	4784	5	1	1	7	73276
Prince Edward Island								
4	4	135294	1262	1	3	0	4	33824
Nova Scotia								
10	11	908007	8469	8	2	1	11	82546
New Brunswick								
10	10	729498	6804	7	3	0	10	72950
Quebec								
24	75	7237479	67501	68	0	7	75	96500
Ontario								
24	95	11410046	106417	106	0	0	106	107642
Manitoba								
6	14	1119583	10442	10	0	4	14	79970
Saskatchewan								
6	14	978933	9130	9	0	5	14	69924
Alberta								
6	21	2974807	27745	28	0	0	28	106243
British Columbia								
6	28	3907738	36446	36	0	0	36	108548
Provincial total								
102	279	29914315					305	
Nunavut								
1		26745					1	
North West Territories								
1	2	37360					1	
Yukon								
1	1	28674					1	
National Total								
105	282	3e+07					308	

REPRESENTATION FORMULA

The calculation is carried out in the following four steps:

1 — Allocation to the territories

Starting with 282 seats that the House of Commons of Canada had in 1985, one seat each is allocated to Nunavut, the Northwest Territories and the Yukon Territory, leaving 279 seats. This number is used to calculate the electoral quotient.

2 — Calculating the electoral district average (national quotient)

The total population of the 10 provinces is divided by 279 (the number obtained after allocating seats to the territories) to obtain the electoral quota or quotient, which is used to determine the number of seats for each province.

3 — Distributing the seats to each province

The theoretical number of seats to be allocated to each province in the House of Commons is calculated by dividing the total population of each province by the national quotient obtained in step 2. If the result leaves a remainder higher than 0.50, the number of seats is rounded up to the next whole number.

4 — Adjustments (special clauses)

After the theoretical number of seats per province is obtained, adjustments are made in a process referred to as applying the “senatorial clause” and “grandfather clause”. Since 1915, the “senatorial clause” has guaranteed that no province has fewer members in the House of Commons than it has in the Senate. *The Representation Act, 1985*, brought into effect a new grandfather clause that guaranteed each province no fewer seats than it had in 1976 or during the 33rd Parliament.

SOURCE: Elections Canada, 2002

Appendix 2

Regional Distribution of Federal Cabinet Ministers at the Beginning of Each Ministry

	Atlantic	Quebec	Ontario	West	Total #, and % of these who were Atlantic Ministers
Macdonald 1867	4	4	5	-	13 31%
Mackenzie 1873	5	3	6	-	14 36%
Macdonald 1878	5	4	4	1	14 36%
Laurier 1896	4	5	4	1	14 29%
Borden 1911	4	5	7	2	18 22%
Borden 1917	6	4	9	3	22 27%
Meighen 1920	5	3	6	3	17 29%
King 1921	4	6	6	3	19 21%
Bennett 1930	4	5	7	3	19 21%
King 1935	5	5	4	2	16 31%
St. Laurent 1948	4	6	7	3	20 20%
Diefenbaker 1957	8	3	6	4	21 38%
Pearson 1963	4	7	11	4	26 15%
Trudeau 1968	6	10	10	3	29 21%
Clark 1979	5	5	11	9	30 17%
Trudeau 1980	5	12	12	4	33 12%
Turner 1984	5	10	12	2	29 15%
Mulroney 1984	5	11	11	13	40 13%
Chrétien 1993	3	5	10	5	23 13%

Source: modified from Rand Dyck, *Canadian Politics: Critical Approaches*, 3rd ed. (Toronto: Thomson Nelson Learning, 2000), p. 491.

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Appendix 3

Arguments For and Against Regionalization of the Federal Court and the Tax Court of Canada

Auditor General of Canada, 1997

259. Opinion on the merits of regionalization is divided. Most judges of both courts are opposed to regionalization. However, judges and counsel appearing before the courts provided arguments for and against regionalization. Those opposed to regionalization cited a number of arguments, to which proponents cited counterarguments. The views are presented below.

260. **Access to courts.** Proponents saw regionalization as a way to increase access to the courts, which is now affected by scheduling problems caused by travel from and to Ottawa. Proponents said that cases are sometimes hurried so that the judge can leave by the end of the day or week. With judges residing locally, travel requirements would no longer drive the court's schedule. In the Federal Court it would be easier to get a face-to-face meeting for urgent matters, and motions could be dealt with quickly rather than delayed until the next scheduled motion day. This argument was countered by opponents of regionalization, who argued that the same result could be achieved by simpler measures such as establishing a rota in Toronto and Montréal, as now exists in Vancouver. This would help ensure that a Federal Court judge would be readily available to deal with urgent matters such as injunctions. Another alternative could be to increase the numbers and mandates of prothonotaries and deputy judges. Opponents also argued that regionalization would do little to increase access in smaller centres, which would not have resident judges.

261. **Consistency of court decisions.** Opponents argued that regionalization could reduce the consistency of court decisions and practices. Consistency, they argued, is important because the courts are dealing with federal matters, which should be approached in a comparable manner across the country. In particular, judicial review of the decisions of federal tribunals and boards requires a high level of consistency. Any differences in decision-making could be magnified by the possibility of "judge shopping" - litigants could file suit in the location where they thought the judges would be most favourable to their arguments. Others, however, challenged this view by arguing that inconsistency already exists in decisions of the Tax Court and the Federal Court Trial Division, as one would expect in any court; any increase resulting from regionalization could be sorted out as it is now, at the Appeal Division. The courts could adopt rules to limit, although probably not eliminate, "judge shopping."

262. **Collegiality of judges.** Opponents to regionalization expressed concern that it would diminish collegiality among judges and that this, too, would have a negative impact on consistency. Many judges stressed the importance of having informal, ready access to colleagues for advice on difficult issues. There was concern, too, that the Quebec resident judges could become isolated because of language and Civil Code orientations, lessening the bilingual and bijural nature of the courts. Others disputed the need to have all judges in Ottawa as a means of maintaining collegiality. It was pointed out that since many judges are travelling at any one time, collegiality and consistency are not highly dependent on their presence in the National Capital Region. With modern telecommunications and periodic meetings of all judges, collegiality could be maintained.

263. **Role as national institutions.** There were concerns that regionalization would undermine the status of the courts as national institutions and they would eventually be supplanted by provincial superior courts. It was argued that a court dispersed throughout the provinces would lose its identity as a federal court at a time when the country needs to maintain national institutions. A court located in Ottawa that goes on circuit across the country was seen as the best way to maintain a strong federal judicial presence. Interestingly, others argued the opposite - that regionalization would enhance the courts' identity as national institutions by making them more responsive to the regional character of Canada.

264. **Relationship to local issues.** Proponents argued that regionalization would improve judges' familiarity with local issues and the local bar. But others argued that it would limit the number of judges before whom counsel would appear. Any interpersonal problems between local members of the bar and federal judges would become more serious, because each judge would hear a significant proportion of local cases. Others worried that too close a relationship between the local bar and federal judges might have a perceived or even real impact on the impartiality of decision making. Further, opponents were worried that regionalization could result in local "empires."

265. **Recruitment of judges.** Proponents argued that regionalization would increase the possibility that members of the bar from outside Ottawa would accept appointment to the courts, because relocation would no longer be required. Relocation was seen as more often difficult for persons with working spouses. Regionalization, then, would help ensure a regional and gender balance in the courts, and would counter a perception that the courts are "Ottawa" courts with many judges appointed who have been associated with the federal government. Others questioned whether relocation was so significant a factor that it would cause candidates truly interested in an appointment to a federal court to decline. Any difficulties in attracting good candidates were viewed as more likely the result of the lower profile of the federal courts relative to provincial superior courts; more attention to recruitment might have equal benefit.

266. **Travel by judges.** It was argued that regionalization would reduce the amount of travel by judges. Such a reduction would be important because, under proposed Federal Court case management rules requiring more regular contact between parties and judges, the need for travel may increase. The reduction in travel would reduce the stress and fatigue associated with the significant amount of travel that judges now face, as well as reduce concerns about the extensive travel by potential candidates for judgeships. Others countered that establishing a rota in Toronto and Montréal would also reduce judge travel - albeit not by as much as regionalization would - because judges would stay in those cities for longer periods. Travel could also be substantially reduced by using videoconferencing technology to hear routine matters. Indeed, other courts - notably the Australian Federal Court - use videoconferencing for the more demanding interaction involved in trials and other proceedings where witness credibility is at issue.

267. **Personal concerns of judges.** The judges of both courts were concerned that regionalization could impact adversely on the lives of some incumbent judges if they were required to relocate to Montréal, Toronto, Vancouver and other centres. It was suggested that such moves be voluntary for current judges but that new appointees not have an option.

268. **Waiving residency requirement.** Last, a change in legislation was suggested to allow judges to live outside the National Capital Region by waiving the residency requirement;

however, the judges would continue to hear cases across the country. We believe that this option could be tried on a case-by-case basis, if developing and maintaining a regional and gender balance on the court is a public policy priority. We note that the National Capital Region residency requirement was waived by amending the Tax Court of Canada Act to allow a specific judge, who was a member of the Tax Review Board when the Tax Court was established and who did not reside in the required location, to reside outside the National Capital Region. If regionalization of the courts is deemed desirable, then some judges suggested that the courts should experiment with judges residing in certain locations on a voluntary basis.

Source: Auditor General of Canada, *Report on the Federal Court of Canada and the Tax Court of Canada*, August 1997. Conducted under the authority of Order-in-Council P.C. 1995-852 of May 30, 1995.

www.oag-bvg.gc.ca/domino/other.nsf/html/fed_e.html#0.2.2Z141Z1.SCTV3V.4RRY7 E.M

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Appendix 4

Region of Work for Departments and Agencies Coming Under Treasury Board Jurisdiction, March 2001

Region	Federal Public Employees	Percentage of Total
Newfoundland	3137	2.02
Prince Edward Island	1650	1.06
Nova Scotia	8516	5.48
New Brunswick	5906	3.8
Quebec (less NCR)	19199	12.36
NCR: Quebec	17062	10.98
NCR: Ontario	43916	28.27
Ontario (less NCR)	20069	12.92
Manitoba	6340	4.08
Saskatchewan	4319	2.78
Alberta	8487	5.46
British Columbia	14228	9.16
Yukon	486	0.31
NWT	546	0.35
Nunavut	119	0.07
Outside Canada	1380	0.89
Grand Total	155360	100 (rounded)

Source: Treasury Board of Canada Secretariat, *Employment Statistics for the Federal Public Service*, April 1, 2000 - March 31, 2001

http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/pse-fpe/2000-2001/es-se00-01-06_e.html#_Toc1878939

Note: NCR stands for National Capital Region.

Departments and agencies that fall under Treasury Board jurisdiction

On March 31, 2001, the Treasury Board Pay System identified employees working in 65 different federal government departments and agencies listed under Schedule I, Part I of the *Public Service Staff Relations Act* (PSSRA), which grants the Treasury Board authority as a federal public service employer. These federal departments and agencies are shown in Table 7 in this section of the report.

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Appendix 5

Change in Level of Federal Employees¹ By Department in Newfoundland and Labrador Since 1995

DEPARTMENT	1995	1998	2002
Atlantic Canada Opportunities Agency ²	61	57	95
Fisheries and Oceans	1807	1570	1700
National Defence ³	865	146	140
Environment	83	60	69
Public Works and Government Services ⁴	212	122	127
Passport Office	2	2	2
Citizenship and Immigration	21	15	17
Transport ⁵	741	231	182
Canada Customs and Revenue Agency ⁶	1109	976	1525
Canadian Heritage	20	20	20
Parks Canada	201	141	217
Corrections	32	26	29
Public Service Commission	3	4	5
Human Resources Development	947	787	832
Natural Resource-Canadian Forest Service ⁷	81	29	22
Industry	43	27	35
Veterans' Affairs	40	34.5	29.5
Agriculture and Agrifood ⁸	110	87	33
RCMP	134	127	130
Statistics Canada	8	7	0
Canada Food Inspection Agency ⁹	0	130	130
Communication Canada	0	0	3
Health	12	17	18
Status of Women	1.5	1.5	1.5
Indian and Northern Affairs	0	0	4
Justice	0	0	18
Total¹⁰	6533.5	4617	5528

Notes

1. Employees include regular staff hired under the *Public Service Staff Relations Act*. It does not include contract employees.
2. About 30 per cent or 30 ACOA employees were contract in 1995 and 1998. Because they were contract they were not considered regular employees and they're not included in the table. After 2000, ACOA converted most of the contract staff to employee status. This accounts for most of the large increase.

3. Most of the decrease can be attributed to DND's ASD initiative, particularly at Goose Bay where services provided by federal staff are now done by a private company. Most of the effected staff found employment with the company.
 4. Public Works through ASD acquired the services of a private company to maintain federal buildings. Most effected staff found employment with the company.
 5. Major ASD initiatives on the privatization of air traffic control services and airport operations account for the major decrease here. Most effected federal employees found jobs with the private providers.
 6. Much of the increase here can be attributed to transfer of provincial employees to the Tax Services Office as a result of the Harmonized Sales Tax initiative. Also, a country-wide redistribution of income tax services has resulted in a significant increase of work and employment at the St. John's Tax Centre.
 7. The decrease here is actual. NRCan closed the regional Canadian Forest Service Office putting 59 employees out of work. A small district office reporting to the regional office in Fredericton, NB was opened in Corner Brook.
 8. A considerable number of Agriculture food inspectors moved to the new Canadian Food Inspection Agency. This accounts for most of the reduction.
 9. The Canadian Food Inspection Agency was formed from the amalgamation of the food inspection branches of a number of federal Departments including Health, Fisheries, and Agriculture and Agrifoods.
 10. The overall reduction of employees between 1995 and 1998 is somewhat misleading. About 70 per cent or 1,340 employees moved to the private sector as part of the Federal Government's Alternative Service Delivery Initiative (ASD). The remainder moved out of the system through a number of means such as early retirement and relocation. Consequently, the actual job reduction resulting from the Program Review initiative was about 30 per cent or 576.5 employees. It should be noted, however, that the reductions in Newfoundland and Labrador were the highest of any province in the country.
- It should also be noted that a considerable amount of the increase in employees from 1998 to 2002 is made up of short-term and seasonal staff associated with the Tax Centre. Conversely, a significant portion of those that left the public service and did not go to the private sector were higher paid, full-time employees.

Source: Federal Council for the Province of Newfoundland and Labrador, 2002

Appendix 6

Appointments to the Senate of Canada, Newfoundland and Labrador, 1949-2002

Name	Political Affiliation	Date of Appointment	Appointed on the advice of
BAKER , George S.	Liberal	2002.03.26	Chrétian, Jean
FUREY , George	Liberal	1999.08.11	Chrétian, Jean
COOK , Joan	Liberal	1998.03.06	Chrétian, Jean
ROMPKEY , William H.	Liberal	1995.09.22	Chrétian, Jean
OTTENHEIMER , Gerald Ryan (b. 1934.06.04, d. 1998.01.18)	Progressive Conservative	1987.12.30	Mulroney, Brian
COCHRANE , Ethel M	Progressive Conservative	1986.11.17	Mulroney, Brian
DOODY , C. William	Progressive Conservative	1979.10.03	Clark, Charles Joseph (Joe)
SQUIRES , Raymond G. (b. 1926.02.06)	Liberal	2000.06.09	Chrétian, Jean
LEWIS , Philip Derek (b. 1924.11.28)	Liberal	1978.03.23	Trudeau, Pierre Elliott
MARSHALL , Jack (b. 1919.11.26)	Liberal	1978.03.23	Trudeau, Pierre Elliott
ROWE , Frederick William (b. 1912.09.28, d. 1994.06.20)	Liberal	1971.12.09	Trudeau, Pierre Elliott
PETTEN , William John (b. 1923.01.28, d. 1999.03.06)	Liberal	1968.08.04	Pearson, Lester Bowles
DUGGAN , James (b. 1903.09.18, d. 1980.08.13)	Liberal	1966.07.08	Pearson, Lester Bowles
CARTER , Chesley William (b. 1902.07.29)	Liberal	1966.07.08	Pearson, Lester Bowles
COOK , Eric (b. 1909.07.26, d. 1986.08.23)	Liberal	1964.02.14	Pearson, Lester Bowles
HOLLETT , Malcolm Mercer (b. 1891.12.09, d. 1985.09.23)		1961.10.06	Diefenbaker, John George
HIGGINS , John Gilbert (b. 1891.05.07, d. 1963.07.01)		1959.01.15	Diefenbaker, John George
BRADLEY , Frederick Gordon (b. 1888.03.21, d. 1966.03.30)	Liberal	1953.06.12	Saint-Laurent, Louis
QUINTON , Herman William (b. 1896.10.26, d. 1952.04.02)	Liberal	1951.01.24	Saint-Laurent, Louis
PRATT , Calvert Coates (b. 1888.10.06, d. 1963.11.13)	Liberal	1951.01.24	Saint-Laurent, Louis
BASHA , Michael G. (b. 1896.01.20, d. 1976.11.26)	Liberal	1951.01.24	Saint-Laurent, Louis
BURKE , Vincent (b. 1878.08.03, d. 1953.12.19)	Liberal	1950.01.25	Saint-Laurent, Louis
BAIRD , Alexander Boyd (b. 1891.08.31, d. 1967.11.23)	Liberal	1949.08.17	Saint-Laurent, Louis
PENNY , George Joseph (b. 1897.10.24, d. 1949.12.04)	Liberal	1949.08.17	Saint-Laurent, Louis
PETTEN , Ray (b. 1897.06.01, d. 1961.02.16)	Liberal	1949.08.17	Saint-Laurent, Louis

Note: Between 1949 and 2002 there were 25 senatorial appointments from Newfoundland.

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Appendix 7

Women Candidates in Federal Ridings in Newfoundland and Labrador, 1949-2000

Election/ Party	Liberal	Progressive Conservative	CCF- NDP	Reform/Alliance or Other	Total Number of Candidates
1949					15
1953		1			16
1957					14
1958					16
1962					19
1963		1			18
1965					22
1968			1		22
1972	1				25
1974	1		1		23
1979					21
1980			1	2- one Ind. and one M-L	25
1984	1		3		23
1988	1		2		23
1993	2*	1	3	2- one N.L.P. and one Ref.	30
1997	1		3		29
2000			2	One Ind	32
Total Candidates, 1949- 2000	7	3	16	2 Ind., 1 M-L, 1 N,L.P. and 1 Reform	373

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Appendix 8

Women Elected to the Federal House of Commons From Newfoundland and Labrador Since 1949

Name	Political Affiliation at First Election	Constituency	Date of First Election
HICKEY , Patricia (Bonnie) (b. 1955.03.05)	Liberal	St. John's East, Newfoundland and Labrador	1993.10.25
PAYNE , Jean (b. 1939.05.12)	Liberal	St. John's West, Newfoundland and Labrador	1993.10.25

Total (2)

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Appendix 9

Regional Ministers of Newfoundland and Labrador, Reverse Chronological List, 1949-2002

Minister	Parliamentary History	Portfolio(s) & Date Appointed
BYRNE, Gerry (Liberal)	House of Commons Humber--St. Barbe--Baie Verte 1996.03.25 -	Minister of State (Atlantic Canada Opportunities Agency) 02.01.16 -
BAKER, George S. (Liberal)	Senate, Newfoundland and Labrador 2002.03.26 - House of Commons Gander--Twillingate 1974.07.08 - 1988.11.20 Gander--Grand Falls 1988.11.21 - 2002.03.25	Minister of Veterans Affairs 1999.08.03 - 2000.10.16 Secretary of State (Atlantic Canada Opportunities Agency) 1999.08.03 - 2000.10.16
MIFFLIN, Fred J. (Liberal)	House of Commons Bonavista--Trinity--Conception 1988.11.21 - 2000.11.26	Minister of Fisheries and Oceans 1996.01.25 - 1997.06.10 Minister of Veterans Affairs 1997.06.11 - 1999.08.02 Secretary of State (Atlantic Canada Opportunities Agency) 1997.06.11 - 1999.08.02
TOBIN, Brian Vincent (Liberal)	House of Commons Humber--Port au Port--St. Barbe 1980.02.18 - 1988.11.20 Humber--St. Barbe--Baie Verte 1988.11.21 - 1996.01.25 Bonavista--Trinity--Conception 2000.11.27 - 2002.01.25	Minister of Fisheries and Oceans 1993.11.04 - 1996.01.08 Minister for the Atlantic Canada Opportunities Agency 2000.10.17 - 2002.01.15 Minister of Industry 2000.10.17 - 2002.01.14 Minister of Western Economic Diversification 2000.10.17 - 2002.01.14 Minister responsible for the Economic Development Agency of Canada for the Regions of Quebec 2000.10.17 - 2002.01.14
REID, Ian Angus Ross (Progressive Conservative)	House of Commons St. John's East 1988.11.21 - 1993.10.24	Minister for the Atlantic Canada Opportunities Agency 1993.06.25 - 1993.11.03 Minister of Fisheries and Oceans 1993.06.25 - 1993.11.03
SIMMONS, Roger (Liberal)	House of Commons Burin--St. George's 1979.09.19 - 1984.09.03 Burin--St. George's 1988.11.21 - 1997.06.01	Minister of State (Mines) 1983.08.12 - 1983.08.22

ROMPKEY, William H (Liberal)	Senate North West River, Labrador 1995.09.22 - House of Commons Grand Falls--White Bay--Labrador 1972.10.30 - 1988.11.20 Labrador 1988.11.21 - 1995.09.21	Minister of National Revenue 1980.03.03 - 1982.09.29 Minister of State (Small Businesses and Tourism) 1982.09.30 - 1983.08.11 Minister of State (Mines) 1984.01.10 - 1984.06.29 Minister of State (Transport) 1984.06.30 - 1984.09.16
CROSBIE, John Carnell (Progressive Conservative)	House of Commons St. John's West 1976.10.18 - 1993.10.24	Minister of Finance 1979.06.04 - 1980.03.02 Minister of Justice and Attorney General of Canada 1984.09.17 - 1986.06.29 Minister of Transport 1986.06.30 - 1988.03.30 Minister for International Trade 1988.03.31 - 1991.04.20 Minister for the purposes of the Atlantic Canada Opportunities Agency Act 1991.04.21 - 1993.06.24 Minister of Fisheries and Oceans 1991.04.21 - 1993.06.24
MCGRATH, James Aloysius (Progressive Conservative)	House of Commons St. John's East 1957.06.10 - 1963.04.07 St. John's East 1968.06.25 - 1986.08.31	Minister of Fisheries and Oceans 1979.06.04 - 1980.03.02
JAMIESON, Donald Campbell (Liberal)	House of Commons Burin--Burgeo 1966.09.19 - 1979.05.21 Burin--St. George's 1979.05.22 - 1979.06.18	Minister of Defence Production 1968.07.06 - 1969.03.31 Minister of Supply and Services 1969.04.01 - 1969.05.04 Minister of Transport 1969.05.05 - 1972.11.26 Minister of Regional Economic Expansion 1972.11.27 - 1975.09.25 Minister of Industry, Trade and Commerce 1975.09.26 - 1976.09.13 Secretary of State for External Affairs 976.09.14 - 1979.06.03
GRANGER, Charles Ronald McKay (Liberal)	House of Commons Grand Falls--White Bay--Labrador 1958.03.31 - 1966.08.01	Minister without Portfolio 1967.09.25 - 1968.04.19 Minister without Portfolio 1968.04.20 - 1968.07.05
BROWNE, William Joseph (Progressive Conservative)	House of Commons St. John's West 1949.06.27 - 1953.08.09 St. John's West 1957.06.10 - 1962.06.17	Minister without Portfolio 1957.06.21 - 1960.10.10 Solicitor General of Canada 1960.10.11 - 1962.08.09

PICKERSGILL, John Whitney (Liberal)	House of Commons Bonavista--Twillingate 1953.08.10 - 1967.09.18	Secretary of State of Canada 1953.06.12 - 1954.06.30 Minister of Citizenship and Immigration 1954.07.01 - 1957.06.20 Secretary of State of Canada 1963.04.22 - 1964.02.02 Leader of the Government in the House of Commons 1963.05.16 - 1963.12.21 Minister of Transport 1964.02.03 - 1967.09.18
BRADLEY, Frederick Gordon (Liberal)	Senate Bonavista-Twillingate 1953.06.12 - 1966.03.30 House of Commons Bonavista--Twillingate 1949.06.27 - 1953.06.11	Secretary of State of Canada 1949.04.01 - 1953.06.11

Note: Although Secretaries of State in the current Parliament are all sworn of the Privy Council, they are not Cabinet portfolios.

Source: Library of Parliament, Information and Documentation Branch

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Appendix 10

Federal Deputy Ministers Since Confederation (1867) Born in Newfoundland

If we consider “born in”:

Out of the 392 different people benefiting from one or more appointments at DM level from 07-01 1867 to June 30th 2001, three were born in Newfoundland:

1. LASH, Zibulon Aiton, b. 01-09-1846
2. PEDLEY, Francis, b. 25-06-1858
3. MAY, Arthur William, b. 26-06-1932.

There were some 26 cases of UNKNOWN place of birth.

Source: Personal databank of Jacques Bourgault, academic expert on federal deputy ministers, UQAM, 2002.

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Appendix 11

Present and Former Judges of the Federal Court of Canada

Present Judges of the Federal Court of Canada

The Chief Justice

The Honourable John D. Richard

The Associate Chief Justice

The Honourable Allan Lutfy

Court of Appeal

The Honourable Arthur J. Stone*

The Honourable Barry L. Strayer*

The Honourable Alice Desjardins*

The Honourable Robert Décary

The Honourable Allen M. Linden*

The Honourable Julius A. Isaac*

The Honourable Gilles Létourneau

The Honourable Marshall E. Rothstein

The Honourable Marc Noël

The Honourable Marc Nadon

The Honourable J. Edgar Sexton

The Honourable John Maxwell Evans

The Honourable Karen Sharlow

The Honourable J.D. Denis Pelletier

The Honourable J. Brian D. Malone

* Supernumerary

Trial Division

The Honourable Paul Rouleau*

The Honourable James K. Hugessen*

The Honourable Yvon Pinard, P.C.

The Honourable Max M. Teitelbaum*

The Honourable W. Andrew MacKay*

The Honourable Donna McGillis

The Honourable Frederick E. Gibson

The Honourable Sandra J. Simpson

The Honourable Danièle Tremblay-Lamer

The Honourable Douglas R. Campbell

The Honourable Pierre Blais, P.C.

The Honourable François Lemieux

The Honourable John A. O'Keefe

The Honourable Elizabeth Heneghan (Newfoundland and Labrador)

The Honourable Dolores Hansen

The Honourable Eleanor R. Dawson

The Honourable Edmond P. Blanchard

The Honourable Michael A. Kelen

The Honourable Michel Beaudry

The Honourable Luc Martineau

The Honourable Carolyn Layden-Stevenson

The Honourable Simon Noël

The Honourable Judith A. Snider

* Supernumerary

Former Judges of the Federal Court of Canada

http://www.fct-cf.gc.ca/about/history/former_judges_e.shtml

Former Chief Justices

Period of Appointment

The Honourable Wilbur R. Jackett

71/06/01 - 79/10/01

The Honourable Arthur L. Thurlow

80/01/04 - 88/05/05

The Honourable Frank Iacobucci

88/09/02 - 91/01/06

The Honourable Julius A. Isaac

91/12/24 - 99/09/01

Former Associate Chief Justices

The Honourable Camilien Noël

71/06/01 - 75/07/04

The Honourable Arthur L. Thurlow

75/12/04 - 80/01/03

The Honourable James Alexander Jerome

80/02/18 - 98/03/04

The Honourable John D. Richard

98/06/23 - 99/11/03

Former Judges of the Court of Appeal

The Honourable Jacques Dumoulin

71/06/01 - 72/12/01

The Honourable Arthur L. Thurlow

71/06/01 - 75/12/03

The Honourable Louis Pratte

73/01/25 - 99/01/01

The Honourable John J. Urie

73/04/19 - 90/12/15

The Honourable William F. Ryan

74/04/11 - 86/08/01

The Honourable Gerald Le Dain

75/09/01 - 84/05/28

The Honourable Darrel V. Heald

75/12/04 - 94/08/27

The Honourable Patrick M. Mahoney	83/07/18 - 94/10/31
The Honourable Louis Marceau	83/07/18 - 00/05/01
The Honourable Marc R. MacGuigan	84/06/29 - 98/01/12
The Honourable Bertrand Lacombe	85/10/29 - 89/12/07
The Honourable Joseph Robertson	92/05/13 - 00/07/27
The Honourable Francis J. McDonald	93/04/01 - 01/09/06

Former Judges of the Trial Division

The Honourable Alexander Cattanach	71/06/01 - 84/07/26
The Honourable Hugh F. Gibson	71/06/01 - 81/12/14
The Honourable Allison Walsh	71/06/01 - 86/06/30
The Honourable Roderick Kerr	71/06/01 - 75/09/01
The Honourable Louis Pratte	71/06/10 - 73/01/24
The Honourable Darrel V. Heald	71/06/30 - 75/12/03
The Honourable Frank U. Collier	71/09/16 - 92/12/31
The Honourable Patrick M. Mahoney	73/09/13 - 83/07/17
The Honourable Raymond G. Décary	73/09/13 - 84/01/31
The Honourable George A. Addy	73/09/17 - 90/09/28
The Honourable Jean-Eudes Dubé	75/04/09 - 01/11/06
The Honourable Louis Marceau	75/12/23 - 83/07/17
The Honourable John McNair	83/07/18 - 90/08/31
The Honourable Francis C. Muldoon	83/07/18 - 01/09/04
The Honourable Barbara Reed	83/11/17 - 00/07/22
The Honourable Pierre Denault	84/06/29 - 01/11/01
The Honourable Louis-Marcel Joyal	84/06/29 - 98/12/31
The Honourable Bud Cullen	84/07/26 - 00/08/31
The Honourable Leonard Martin (Newfoundland and Labrador)	85/10/29 - 91/10/2
The Honourable Howard Wetston	93/06/16 - 99/01/11
The Honourable William P. McKeown	93/04/01 - 02/09/01

Source: Federal Court

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Appendix 12

Judges of the Tax Court of Canada

The Court consists of the Chief Judge, the Associate Chief Judge and 21 other judges including 4 supernumerary judges.

The members of the Tax Court of Canada are as follows:

Chief Judge

The Honourable Alban Garon

Associate Chief Judge

The Honourable Donald G.H. Bowman

Judges (in order of seniority)

The Honourable Michael J. Bonner*

The Honourable Alexander A. Sarchuk*

The Honourable Gerald J. Rip

The Honourable Gordon Teskey*

The Honourable Murray A. Mogan*

The Honourable Louise Lamarre Proulx

The Honourable David W. Beaubier

The Honourable Theodore E. Margeson

The Honourable Pierre R. Dussault

The Honourable Ronald D. Bell

The Honourable Terrence O'Connor

The Honourable Pierre Archambault

The Honourable Cameron Hugh McArthur

The Honourable Lucie Lamarre

The Honourable Alain Tardif

The Honourable Eric A. Bowie

The Honourable Joe E. Hershfield

The Honourable Diane Campbell

The Honourable Campbell J. Miller

The Honourable François M. Angers

The Honourable Leslie M. Little

*Supernumerary Judge

Deputy Judges not included

Source: Tax Court of Canada

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Appendix 13

Institutions for Co-Decision in Australia

Excerpted from Douglas M. Brown, *Market Rules*
(Montreal, Kingston: McGill-Queen's, 2002)

Figure 13-1
First Ministers and the Whole-of-Government Coordination in Australia

First Ministers' Level Forums	First Ministers Forums <ul style="list-style-type: none"> • Financial Premiers Conferences • Special Premiers Conferences • Council of Australian Governments 	Treaty Council	Leaders Forum
Officials Level	<ul style="list-style-type: none"> • Working Groups • COAG Steering Committee 	Standing Committee on Treaties	
Ministerial Level	<ul style="list-style-type: none"> • Ministerial Councils • Standing Committees and Task Forces 		

Figure 13-2
Institutions for Co-Decision in Australia

Ministerial Councils with legislated decision-making mandates -- including voting rules
<ul style="list-style-type: none"> • Australian Loan Council • Australia-New Zealand Food Standards Council • Ministerial Council on Corporations • Ministerial Council on Financial Institutions • Ministerial Council on the Australian National Training Authority • National Environmental Protection Council • Australian Transport Council • Ministers authorized to act with respect to the Mutual Recognition scheme • Ministers authorized to act with respect to the National Competition Council • Ministerial Council on Reform of Financial Relations [GST]

**Figure 13-3
Joint or Uniform Legislation Schemes in Australia**

Field	Type of Scheme
mutual recognition	referral of powers to Commonwealth (some states)
companies	adoption of uniform Commonwealth template
non-bank financial institutions	adoption of uniform Queensland template
disabilities services	complementary
competition	adoption of uniform New South Wales template -- cooperative
road transport	cooperative

**Figure 13-4
New National Agencies in Australia**

Agency	Type
Australian National Training Authority	Commonwealth-State
Australian Financial Institutions Commission	States only
National Food Authority	Commonwealth-State
National Environmental Protection Council	Commonwealth-State
Australian Competition and Consumer Council	Commonwealth
National Competition Council	Commonwealth-State
National Rail Corporation*	Commonwealth-State
National Road Transport Commission	Commonwealth-State
* Share-holders	

Appendix 14

Senate Composition Schemes, 1972-1990

Prov	Canada West, 1981		Joint Committee, 1984		Alberta Comm, 1985		MacDonald Comm., 1985		Newfoundland, 1989		Ghiz Proposal, 1990		Ottawa, June 1990	
	by province	by region	by province	by region	by province	by region	by province	by region	by province	by region	by province	by region	by province	by region
Nfld	6 -9.7		12 -8.3		6 -9.4		12 -8.3		10 -9.6		10 -8		8 -7.7	
PEI	6 -9.7	24 -38.7	6 -4.2	42 -29.2	6 -9.4	24 -37.5	6 -4.2	42 -29.2	10 -9.6	40 -38.5	5 -4	35 -28	4 -3.8	28 -26.9
NS	6 -9.7		12 -8.3		6 -9.4		12 -8.3		10 -9.6		10 -8		8 -7.7	
NB	6 -9.7		12 -8.3		6 -9.4		12 -8.3		10 -9.6		10 -8		8 -7.7	
Que	6 -9.7	6 -9.7	24 -16.7	24 -16.7	6 -9.4	6 -9.4	24 -16.7	24 -16.7	10 -9.6	10 -9.6	24 -19.2	24 -19.2	24 -23.1	24 -23.1
Ont	6 -9.7	6 -9.7	24 -16.7	24 -16.7	6 -9.4	6 -9.4	24 -16.7	24 -16.7	10 -9.6	10 -9.6	24 -19.2	24 -19.2	18 -17.3	18 -17.3
Man	6 -9.7		12 -8.3		6 -9.4		12 -8.3		10 -9.6		10 -8		8 -7.7	
Sask	6 -9.7	24 -38.7	12 -8.3	48 -33.3	6 -9.4	24 -37.5	12 -8.3	48 -33.3	10 -9.6	40 -38.5	10 -8	40 -32	8 -7.7	32 -30.8
Alta	6 -9.7		12 -8.3		6 -9.4		12 -8.3		10 -9.6		10 -8		8 -7.7	
BC	6 -9.7		12 -8.3		6 -9.4		12 -8.3		10 -9.6		10 -8		8 -7.7	
YK, NT	2 -1		2 -1.5		1 -0.8		2 -1.7		-		-		-	
Numavu	1 -1		2 -1.5		1 -100		-		-		-		-	
Total	105 -100	104 -100	130 (100)	130 -100	118 -100	118 -100	144 -100	144 -100	104 -100	104 -100	125 -100	125 -100	104 -100	104 -100
	Current		Joint Committee, 1972		Bill C-60, 1978		British Columbia, 1978		Task Force, 1979		Ont. Adv. Comm., 1978-79		Quebec Beige Paper, 1980	
	by province	by region	by province	by region	by province	by region	by province	by region	by province	by region	by province	by region	by province	by region
Nfld	6 -5.8		6 -4.6		8 -6.8		3 -5		4 -6.7		2 -6.7		3 -3.8	
PEI	4 -3.8	30 -28.8	4 -3	30 -23	4 -3.4	32 (27.1)	3 -5	12 -20	2 -3.3	14 -23.3	1 -3.3	7 -23.3	2 -2.5	13 (16.3)
NS	10 -9.6		10 -7.7		10 -8.5		3 -5		4 -6.7		2 -6.7		4 -5	
NB	10 -9.6		10 -7.7		10 -8.5		3 -5		4 -6.7		2 -6.7		4 -5	
Que	24 -23	24 -23	24 -18.5	24 -18.5	24 -20.3	24 -20.3	12 -20	12 -20	12 -20	12 -20	6 -20	6 -20	20 -25	20 -25
Ont	24 -23	24 -23	24 -18.5	24 -18.5	24 -20.3	24 -20.3	12 -20	12 -20	12 -20	12 -20	6 -20	6 -20	20 -25	20 -25
Man	6 -5.8		12 -9.2		8 (6.8)		4 -6.7		4 -6.7		2 -6.7		5 -6.3	
Sask	6 -5.8	24 -23	12 -9.2	48 -37	8 -6.8	36 -30.5	4 -6.7	12 -20	4 -6.7	22 -36.7	2 -6.7	11 -36.7	5 -6.3	27 -33.8
Alta	6 -5.8		12 -9.2		10 -8.5		4 -6.7		6 -10		3 -10		8 -10	
BC	6 -5.8		12 -9.2		10 -0.8		12 -20	12 -20	8 -13.3		4 -13.3		9 -11.3	
YK, NT	2 -1		2 -1.5		1 -0.8		-		-		-		-	
Numavu	1 -1		2 -1.5		1 -100		-		-		-		-	
Total	105 -100	104 -100	130 (100)	130 -100	118 -100	118 -100	144 -100	144 -100	104 -100	104 -100	125 -100	125 -100	104 -100	104 -100

Source: Canada: Responsive Institutions for a Modern Canada (Ottawa: Supply and Services Canada, 1991), p. 14.

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Appendix 15

Variations in the Selection, Composition, Powers, and Role of Second Chambers in Federations, 1990s

Selection	Composition	Powers	Role
Appointment by federal government (no formal consultation) e.g. Canada 1867, Malaysia 40% of seats)	Equal “regional” representation (e.g. Canada for groups of provinces)	Absolute veto with mediation committees (e.g. USA, Switzerland)	Legislative chamber only (e.g. Canada, USA, Switzerland, Australia, Austria, India, Malaysia)
Appointment by federal government based on nominations by provincial governments (e.g. Canada, Meech Lake Accord)	Equal state representation (e.g. USA, Australia, and 60% of Malaysian senate)	Absolute veto on federal legislation affecting any state administrative function (e.g. Germany)	Combined legislative and intergovernmental role (e.g. Germany, South Africa)
Appointment ex officio by state governments (e.g. Germany, Russia’s Federation Council, as of 2002)	Two categories of cantonal representation (e.g. Switzerland)	Suspensive veto: time limit (e.g. Malaysia, Spain)	
Indirect election by state legislatures (e.g. USA 1789-1912, India, Malaysia 60% of seats, Austria, South Africa)	Weighted state voting: four categories (e.g. Germany)	Deadlock resolved by joint sitting (e.g. India)	
Direct election by simple plurality (e.g. USA since 1913)	Weighted state representation: multiple categories (e.g. Austria, India)	Deadlock resolved by joint sitting (e.g. India)	
Direct election by proportional representation (e.g. Switzerland de facto, Australia)	Additional or special representation for others including aboriginals (e.g. Malaysia, India)	Deadlock resolved by double dissolution then joint sitting (e.g. Australia)	
Choice of method left to cantons (e.g. Switzerland)	A minority of regional representatives (e.g. Belgium, Spain)	Money bills: brief suspensive veto (e.g. India, Malaysia)	
Mixed (e.g. Malaysia, Belgium, Spain)			

Source: Modified from Ronald L. Watts, *Comparing Federal Systems in the 1990s*, 2nd ed., (Kingston: Institute of Intergovernmental Relations), p. 85.

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Appendix 16

Number of Members in Upper Houses in Federations Around the World

Federal State	Name of Upper House/ Lower House (# in each house)	Number of Provinces, States, Territories, etc.	# Members in Upper House by State (where applicable # for each territory, or highest & lowest #)
Argentina	Senado de la Nación/Cámara de Diputados de la Nación (72/257)	22 1 Federal District 1 National Territory 5 Regions	3 for each of the 22 states
Australia	Senate/House of Representatives 76/148	6 States 1 Capital Territory 1 Mainland Territory [7 External Territories]	12 for each state 2 for each of the 2 Territories
Austria	Bundesrat/Nationalrat (64/183)	9 States	Lower Austria 12, Burengland 3
Belgium	Senate/Chamber of Deputies (71/150)	10 Provinces, 3 Regions, 3 Communities	40 directly elected; of the 31 indirectly elected, 10 from each of the French and Flemish Community Councils, 1 from the German, and 10 appointed by Senators.
Bosnia and Herzegovina	Dom Narodu/ Zastupnicki dom-Predstavnicki dom (House of Peoples/House of Representatives) 15/42	2 Administrative Divisions	10 Bosniac/Croat Federation 5 Republika Srpska
Brazil	Senado Federal/Camara dos Deputados (81/513)	26 States 1 Federal District	Each state has 3 seats
Canada	Senate/House of Commons (105/301)	10 Provinces 3 Territories	Each region has equal representation (24), each territory 1; but Ontario and Quebec considered regions
Comoros	Senate/Assemblée Fédérale (15/42)	3 islands	5 from each island
Ethiopia	Yefederesh Mekir Bet/ Yehizbtewekayoch Mekir Bet (House of Federation/House of Peoples' Representatives) (112/548)	9 Member States/Regional States 2 Chartered Cities	n/a
Germany	Bundesrat/Bundestag (69/656)	16 States (Länder)	16 states have multi-seat representation, range 3-6 per state
India	Rajya Sabha/Lok Sabha (250/545)	28 States 6 Union Territories 1 National Capital Territory	Uttar Pradesh 34, Goa 1 12 appointed by President

Malaysia	Dewan Negara/Dewan Rakyat (69/193)	13 States 2 Federal Territories	Of the 26 elected members, each state elects 2 (43 are appointed)
Mexico	Cámara Federal de Diputados/Cámara de Senadores (128/500)	31 States 1 Federal District	Each of the states and the Federal District elects 3 senators for a total of 96; 32 chosen by PR at large
Nigeria	Senate/House of Representatives (109/360)	36 States 1 Territory	36 3-seat constituencies 1 from territory (Abuja)
Russia	Federation Council/State Duma (178/450)	89 constituent units (21 Republics, 49 Provinces, 10 Districts, 6 Territories, 2 Federal Cities of Federal Significance, 1 Jewish Autonomous Province)	2 delegates from each constituent unit
South Africa	National Council of Provinces/National Assembly (90/400)	9 Provinces	10 for each Province
Spain	Senado/Congreso de Diputados (259/350)	17 Autonomous Communities (ACs)	208 elected seats in the in the ACs; most constituencies have 4 representatives; the 51 appointed seats in the ACs range from 1 to 8
Switzerland	Ständerat/Nationalrat (46/200)	26 Cantons (20 Full Cantons, 6 Half Cantons)	2 from each of the 20 Full Cantons, 1 from each Half
United States of America	Senate/House of Representatives (100/435)	50 States Variety of other territories	Each State has 2 Senators
Venezuela	Unicameral: Asamblea Nacional	23 States 1 Federal District 1 Federal Dependency	n/a
Yugoslavia	Vece Republika/Vece Gradjana (Council of the Republics/ Council of Citizens) (40/138)	2 Republics: Montenegro and Serbia	Each republic has 20 members in the upper house, the Council of the Republics

Source: Derived by author from data provided in *Handbook of Federal Countries, 2002* (Ottawa: Forum of Federations, 2002)

Appendix 17

**Estimated Expenditures by Province, Canada Only,
Department of National Defense, 1996-1997 to 2000-2001**

Prov./ Terr.	1996-1997			1997-1998			1998-1999			1999-2000			2000-2001		
	% of CA Pop	DND Exp in \$M	Exp as % total	% of Cdn Pop	DND Exp in \$M	Exp as % total	% of Cdn Pop	DND Exp in \$M	Exp as % total	% of Cdn Pop	DND Exp in \$M	Exp as % total	% of Cdn Pop	DND Exp in \$M	Exp as % total
NL	1.9	90	1	1.9	107	1.3	1.8	122	1.4	1.8	115	1.2	1.8	118	1.2
PEI	0.5	7	0.1	0.5	7	0.1	0.5	8	0.1	0.5	10	0.1	0.5	56	0.6
NS	3.2	864	9.7	3.1	846	10	3.1	883	10	3.1	903	9.2	3.1	895	9.4
NB	2.6	359	4	2.5	294	3.5	2.5	287	3.3	2.5	293	3	2.5	287	3
QC	24.7	2066	23.1	24.4	1827	21.5	24.1	1998	22.7	24.1	2085	21.2	24	1787	18.8
ON	37.3	3795	42.4	37.7	3697	43.5	37.8	3781	42.9	37.8	4498	45.7	37.9	4547	47.7
MB	3.9	320	3.6	3.8	369	4.3	3.7	348	3.9	3.8	359	3.6	3.7	263	2.8
SK	3.4	85	1	3.4	76	0.9	3.4	79	0.9	3.4	69	0.7	3.3	73	0.8
AB	9.3	802	9	9.4	735	8.6	9.7	774	8.8	9.7	833	8.5	9.7	826	8.7
BC	12.9	541	6	13	524	6.2	13.2	504	5.7	13.2	635	6.5	13.2	642	6.7
YK	0.3	13	0.1	0.3	16	0.2	0.3	26	0.2	0.2	31	0.3	0.2	32	0.3
NUN										0.1	7	0.1		3	0

Source: Department of National Defence, Finance and Corporate Services (http://www.forces.gc.ca/admfincs/financial_docs/)

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Appendix 18

DND Personnel, Regular, Civilian and Reserve by Province in Canada, 1996-1997 and 2000-2001

Province	1996-1997			2000-2001		
	Regular	Civilian	Reserve	Regular	Civilian	Reserve
NL	743	461	966	615	130	1175
PEI	51	13	314	45	7	355
NS	10190	4032	2652	8849	2955	3008
NB	3404	656	1586	3404	786	1494
QC	11214	3973	8152	9028	3680	7409
ON	18954	6525	8641	17197	7050	11448
MB	3204	1042	1472	2435	832	1346
SK	1017	367	943	584	180	833
AB	7674	1863	2264	6421	1808	2703
BC	5782	2391	2511	4984	2079	2850
YK & NWT	93	11	0	119	13	36
NUN					1	2

Source: Department of National Defence, Finance and Corporate Services
(http://www.forces.gc.ca/admfincs/financial_docs/)

