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A marriage of necessity: The coming together of the federal, provincial and municipal governments.

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A MARRIAGE OF NECESSITY
THE COMING TOGETHER OF THE
FEDERAL, PROVINCIAL AND MUNICIPAL GOVERNMENTS

by

John C. Cunningham

A Thesis submitted to the
Faculty of Graduate Studies and Research
through the Department of Political Science
in partial fulfilment of the requirement
for the degree of Master of Arts
at the University of Windsor

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ABSTRACT

A MARRIAGE OF NECESSITY
THE COMING TOGETHER OF THE
FEDERAL, PROVINCIAL AND MUNICIPAL GOVERNMENTS

by

John C. Cunningham

This thesis examines the development of federal, provincial, and municipal interdependence in the area of urban and municipal affairs. The study suggests that the extensive and established nature of the tri-lateral relationship, resulting from the substantial increase in government interdependence during the 20th century, would make federal government withdrawal from municipal and urban affairs a difficult and undesirable, though neither impractical nor unlikely prospect.

In Chapter One, the influence of federal-provincial relations is examined. The study of the bi-lateral relationship is an integral component in understanding the tri-lateral relationship, for the tri-lateral relationship is a reflection of the ebb and flow of federal-provincial relations.

Chapter Two examines the impact of societal and political forces on the bi-lateral relationship. These forces, characteristics of the 20th century, have had a powerful influence on the direction and growth of the tri-lateral relationship. Included amongst several, is the impact of urbanization and industrialization, electoral politics, the
search for legitimation by the provincial and federal governments, and the role of special interest groups, especially the Federation of Canadian Municipalities.

In Chapters Three, Four and Five, the relationships themselves are examined. This includes an historical examination of the bases of the tri-lateral relationship, such as the constitutional sources of support for provincial and federal actions, and an analysis of the intricate financial and functional interdependencies (including federal departments, Crown corporations and federal regulatory bodies). This examination illustrates the extent and nature of the myriad policies and programs that have made the governments so interdependent in today's Canada.

Chapter Six examines the recent constitutional proposals and evaluates their impact on the tri-lateral relationship. The Charlottetown Accord, while it was the only constitutional document proposing federal withdrawal from municipal and urban affairs, was unable to meet its objectives and would likely have had only a modest impact on the federal government's presence in municipal and urban affairs.
To Phred, Phredette, and Alexi
among the world's most travelled companions.
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A MARRIAGE OF NECESSITY

THE COMING TOGETHER OF THE

FEDERAL, PROVINCIAL AND MUNICIPAL GOVERNMENTS

Thesis Introduction

This thesis will examine the development of federal, provincial, and municipal interdependence in the area of urban and municipal affairs. The study will trace relationships up to and including the proposal in the Charlottetown Accord that the federal government would be required to "withdraw partially or completely" from municipal and urban affairs in any province or territory, if so requested by a provincial/territorial government, and recognize exclusive provincial jurisdiction over municipal and urban affairs. The thesis will suggest that the extensive and established nature of the tri-lateral relationship, resulting from the substantial increase in government interdependence during the 20th century, would make federal government withdrawal from municipal and urban affairs a difficult and undesirable, though neither an impractical not unlikely prospect.

The first part of this study (consisting of Chapters One and Two), will examine how the tri-lateral relationship has been shaped by a number of political and societal forces. This will include an analysis of the impact of the shifting balance of federal-provincial relations, and the dominant political and societal forces of the 20th century which have encouraged Canada's governments to establish the tri-lateral
relationship; failure to examine these forces would severely limit the study of the tri-lateral relationship.

Chapter One will examine the development of federal-provincial relations by utilizing the conceptual model of James Mallory (supplemented by Edwin Black and David Milne). Mallory's model identifies five dominant approaches or 'faces' to describe Canadian federalism since 1867. For Mallory, each face describes a different approach that the federal or provincial governments have adopted in their dealings one another. The emerging dominance of one face over another serves to characterize the constantly shifting federal-provincial relationship.

The study of federal-provincial relations is integral to any analysis of the tri-lateral relationship, for it informs our understanding of the federal-municipal relationship. An important effect of the changing faces, therefore, is their influence on the nature of Canada's tri-lateral relationship. For example, generally, when federal-provincial relationships have been centralist, the federal government has tended to be more active in developing its federal-municipal ties. Conversely, when the provinces have been more assertive in federal-provincial relations and resisted Ottawa's actions, the federal government has tended to retreat from its commitments to the federal-municipal relationship. However, Ottawa's retreat has never been total, and over time the federal government has firmly established itself at the
municipal level. Indeed, even though a number of provinces have often resisted direct federal activity at the municipal level, they have also accepted a number of federal activities ranging from federal financial transfers to Ottawa's role in the maintenance of Canada's national transportation and communications infrastructures.

Chapter Two will identify the social and political forces that have underlain the establishment of the federal/provincial/municipal relationship. While in 1867 Canada shaped a constitution to address what was then basically an agrarian society, the emergence in the 20th century of societal and political forces associated with a modernizing, urbanizing and industrializing society, changed the thrust of government policy at all three levels.

Part Two (consisting of Chapters Three to Six) will historically review the development of the constitutional, financial, functional and administrative dimensions of the tri-lateral relationship, paying particular attention to the development of the federal-municipal relationship. It will illustrate that the nature of the tri-lateral ties arose from mutual needs as governments recognized that if they were to meet the demands of an urbanizing and industrializing society, all three levels of government would be required. Part II will also briefly examine the constitutional proposals of the last two decades and will evaluate their potential to alter the presence of the federal government in municipal and urban
affairs.

For the purpose of this study, municipal government will be defined as a political body which i) oversees the administration and provision of local public goods and services; ii) is incorporated by the provincial and territorial governments; and iii) has public input and/or control. This classification of municipal government includes regional and metropolitan municipalities, cities, towns and villages as well as rural municipalities and rural counties. Presently there are over 4,000 municipalities in Canada.¹

While the term municipality includes all types of local government in Canada, urban affairs refers only to a certain type of municipality; one that does not include rural municipalities or rural counties, but rather refers to larger urban centres and the related issues and areas that are unique to urban communities. Urban affairs is an important area relating to the study of the tri-lateral relationship, and as Canada's population has moved from the farm to the city, the importance of the urban centre has increased dramatically. Urban issues generally tend to focus on quality of living issues; including the problems associated with industrialization, such as pollution and the zoning of industrial/manufacturing facilities and their location vis a vis residential areas, as well as problems associated with urbanization including issues associated with the operation of mass transit systems, airport location and aircraft noise,
increased demands on the local infrastructure, housing problems, as well as issues surrounding urban related crime such as street prostitution and gun control, to identify a few. Indeed, while all municipal governments provide a number of services and public goods, rural operations are generally not faced with the issues and problems that the larger, urban centres must overcome on a regular basis, and this difference merits recognition.\(^2\)

Chapter Three will identify a number of defining characteristics that have shaped the relationships among the federal, provincial and municipal governments. This chapter will first focus on the political and distributive dimensions of the municipal government. For example, while the senior governments appreciate the distributional advantages of the municipality, the municipal government looks to the senior governments to provide the additional support it requires to meet the growing demands of its constituency.

The chapter will also review the history of tri-lateral relations among the three levels of government. While traces of the tri-lateral relationship date back to at least the Great Depression, the majority of tri-lateral relationships were established during the post-World War II period. This chapter will identify as well, the constitutional ties that support provincial and federal activities in municipal and urban affairs. It will reveal that while provincial governments possess direct constitutional jurisdiction over
municipal governments, the federal government is also constitutionally supported in its extensive activities. While constitutional sources have supported both federal and provincial activities, the non-constitutional ties have provided the tri-lateral relationship with its strengths. Indeed, as a result of the changes in Canadian society, the governments have had to change the ways they have interacted, in most cases without amending the constitution. The financial and functional dimensions of the tri-lateral relationship illustrate their actions.

Chapter Four will examine the financial dimensions of the tri-lateral relationship. The central focus of this relationship is the use of the federal government's spending power. This power has allowed Ottawa to influence the municipality directly through transfers or indirectly through a number of its national programs. For many of the national programs to work, all three levels of government are required; the federal government is needed to provide the financial support, the provincial government is needed because it has i) constitutional jurisdiction for the program and ii) provides financial support, and the municipality is usually involved either in whole or in part, in the program's delivery.

Chapter Five will identify the functional and administrative commitments and responsibilities of the federal government to the tri-lateral relationship. The dominant impact of the federal government's administrative bodies is on
the economic vitality of a local community. The bulk of Ottawa's actions, through federal departments, Crown corporations and regulatory bodies, generally affect the maintenance and development of the local infrastructure and/or employment in the local area (either directly or indirectly).

In today's global economy, the diverse range of federal activities as a national government has proven to be highly beneficial to national, regional and local economies.

Chapter Six will trace the constitutional discussions since 1980 and will evaluate their potential to affect the trilateral relationships; it will also review the study's findings and observations. Prior to the Charlottetown Accord, the issue of municipal and urban affairs was rarely mentioned as provincial and federal governments focused on other issues of national and provincial concern. The analysis will suggest that even if it had not been rejected in the referendum, the Charlottetown Accord would have had a limited effect on establishing exclusive provincial jurisdiction over municipal and urban affairs. However, while the Accord's inclusion of municipal and urban affairs was indicative of a larger movement by a number of provinces to decrease the role and dominance of the federal government (exhibiting elements of both classical and compact federalism), this study will demonstrate that the interdependencies of the federal, provincial and municipal governments in the area of municipal and urban affairs were too extensive and established for the
proposals in the Charlottetown Accord to undermine. Indeed, the nature of the tri-lateral relationship would have made the probability of federal withdrawal as proposed in the rejected Charlottetown Accord both an impractical, and undesirable, prospect. This chapter will conclude with some final comments and observations related to the tri-lateral relationship.

CHAPTER ONE

FEDERAL-PROVINCIAL RELATIONS
AND THE TRI-LATERAL RELATIONSHIPS

Introduction

This chapter will examine the evolution of Canadian federal-provincial relations since 1867, surveying the characteristics of federal-provincial relationships utilizing James Mallory's conceptual models of Canadian federalism. By detailing a number of unique characteristics and associating these with a number of historical periods in Canada's past, Mallory identified five dominant approaches characterizing the evolution of Canadian federalism.

Mallory's models, supplemented by Black and Milne, can shed light on the evolution of the tri-lateral relationship. These models illustrate the broad effects of Canada's federal-provincial relations, that extend also to Canada's tri-lateral relationship. During periods when the federal government has pursued centralist policies, it has tended to be more active in developing its federal-municipal ties. Conversely, when several of the provinces have resisted Ottawa's actions, the federal government has tended to retreat from its commitments to the federal-municipal relationship. In this respect, the tri-lateral relationship is a reflection of the dominant trends occurring at the federal-provincial level; it mirrors the ebb and flow of the senior governments.
Federal-Provincial Relations since Confederation

Mallory introduced five different approaches evident in the evolution of federal-provincial relations in Canada. These five approaches are: i) Quasi-federalism; this was most marked in the Macdonald Era; ii) Classical federalism which was characterized by the co-ordinate and autonomous relationship of the central and regional organs; iii) Emergency federalism which occurred during the periods of extreme centralization in wartime; iv) Co-operative federalism; this reached its zenith in the period since 1945; and v) Double-Image federalism which included both the straightforward central-regional relationship between the central and provincial organ and a special relationship between the French and English.

These approaches describe what are essentially the different 'face(s)' worn by federalism. Underlying Mallory's analysis is his recognition that at any one time more than one face, or one approach, may appear to describe a federal or provincial action; that is, the approaches are not mutually exclusive. Indeed, as Canada has matured, new 'faces' of federal-provincial relations have emerged, and become superimposed on already existing ones.

Utilizing a similar approach Edwin R. Black in Divided Loyalties identified five conceptual models of federal-provincial relations. As did Mallory, Black identified or distinguished each concept by isolating certain sets of
differentiating criteria. Through this approach he classified 
"five fairly distinct ways in which Canadians think of their 
federal arrangements." He classified the five major sets of 
ideas as centralist, administrative, coordinate, compact, and 
dualist. The models developed by Black are similar to those 
of Mallory. These similarities are particularly evident in 
Black's centralist model (Mallory's Quasi-federalism), his 
Coordinate model (Classical federalism), and finally his 
Dualist concept (Double-Image).

Quasi-Federalism

Following Wheare's description, Mallory associated quasi-
federalism with the Macdonald era, extending from 1867 and 
lasting into the late 1800's. This period reflected the 
strong dominance of the federal government over the provinces 
as Canada's tri-lateral relationship had yet to evolve. 
Ottawa was more concerned with exerting its authority over the 
provinces and had yet to consciously turn toward developing 
any relationships with the municipality, for in the rural 
Canada of the 19th century, the municipality had yet to attain 
the importance it was to enjoy in the 20th century. Indeed, 
Canada was still in its infancy and Ottawa's attention was 
focused on pursuing national policies, based on a number of 
constitutional, as well as socio-political strengths.

Constitutionally, the dominant position of the federal 
government was supported through a number of centralizing 
characteristics contained within the 1867 British North
America Act (renamed the Constitution Act, 1867). These powers ranged from the federal government's ability to reserve and disallow provincial legislation to its control over trade and commerce. In addition to the centralizing nature of the constitution, a number of socio-political factors were also present, including a general flow of political talent towards the federal government. This flow resulted in a "national coalition and concentration of political talent in Ottawa" and left little in the provinces. The result was a federal willingness to use its declaratory authority and its powers of reservation and disallowance in an effort to "curb the growth of provincial powers of self-government."

In comparison, the provinces had not yet developed a strong constitutional position to counter the federal government's dominance, nor had they developed strong political leadership to offset and challenge Ottawa. As Mallory suggests, it seemed "more appropriate to think of the dominion-provincial relationship at that time as similar to the relationship of the imperial government with a colony enjoying limited self-government."

Elements of federal dominance over the provinces were not seen again until the Trudeau years (although the federal government dominated the provinces during the two World Wars, this position was based on the Peace, Order and Good Government provisions of the constitution). The Trudeau government's attempt to unilaterally patriate and amend the
constitution was an example of Ottawa acting without due regard for provincial wishes. It was not until the emergence of Classical federalism that the municipal level of government became influenced, albeit indirectly, by federal-provincial actions.

**Classical Federalism**

Mallory associated Classical federalism with the period of the late 1800's to 1914 and the beginning of World War I. This emerging approach to federal-provincial relations developed as the dominance originally enjoyed by Ottawa was successfully challenged. It was during this 'face' of federalism that municipal government felt the first impact of federal and provincial relations as a number of judicial rulings on the division of powers had a spillover effect on municipal actions.⁹

Indeed, by the late 1800's, the Judicial Committee of the Privy Council (JCPC) had made a series of rulings that articulated a narrow interpretation of federal powers and simultaneously began building protective foundations around provincial authority and rights;¹⁰ however, this is not to imply that the JCPC deliberately moved to hobble the federal government. The JCPC's development of, and adherence to, the notion that the division of powers was in fact meant to be interpreted as conferring 'watertight compartments'¹¹ on the federal and provincial governments, led to the position that they were to operate strictly within the prescribed areas as
stated in the constitution. For example, in the 1896 **Local Prohibitions Case** ¹², the Ontario provincial government sought to expand its authority through its control over municipal operations (see below - Chapter Two); however in this case, while the JCPC did permit the provinces to enact their own local prohibition policy, it also limited provincial actions to those in section 92; thus it had the effect of limiting provincial (and municipal) authority to the headings specified in the constitution and the attempt to expand provincial authority through municipal government was thus thwarted by the judiciary.¹³

In addition to the influence of the judiciary, a number of provincial governments were slowly developing their political and bureaucratic capacity¹⁴, although compared to today's provincial administrations, they were still neophytes. Indeed, at the political level the leadership of Ontario under Mowat and Quebec under Mercier served both provinces well, much to the chagrin of the centralists.¹⁵ Although these two leaders furthered the cause(s) of their respective provinces, their positions were not always shared by leaders of the other provinces and they even at times came into conflict with the other provincial leaders.

In Black's description of the Coordinate Concept, he characterizes a number of qualities similar to those Mallory identified in his description of classical Federalism. Indeed, Black identifies the strengthening of both orders of
government, specifically identifying the autonomy of the provinces to act within their assigned constitutional spheres and the restriction of the federal government to its explicitly designated areas of jurisdiction. In his description Black also includes the judiciary and its role to ensure that the de jure relationship between the federal and provincial governments, as contained in the Constitution, was maintained as another key element of Coordinate federalism.  

Black also classifies schemes "such as the Fulton-Favreau or the Trudeau-Turner proposals for amending the federal constitution" as amending formulae that co-ordinate, or classical federalists would favour, and suggests that they were examples of the face of Classical federalism showing itself in 1960's and 1970's Canada. The importance of the judiciary as a force affecting federal-provincial relations should not be underestimated, for the rulings of the JCPC were to affect both the bi- and tri-lateral relationships in Canadian history (refer to Emergency and Double-Image federalism and Chapter Two - The Judiciary and the Division of Powers below).  

Emergency Federalism  

This face of federalism emerged with the onset of the First World War, subsiding during the 1920's and 1930's, only to re-emerge during the Second World War. This approach to federal-provincial relations reflected the federal government's widespread use of the Peace, Order, and Good
Government clause contained in the preamble of Section 91 of the Constitution Act, 1867. This clause constitutionally supported federal encroachment on areas of provincial jurisdiction during the two wars as Ottawa assumed "a wide range of powers over matters of civil rights and property which in peacetime belonged to the sacrosanct powers of the provinces."¹⁸ This created highly centralized relationships as the war effort consumed the country.¹⁹ During the inter-war period, in particular during the Depression of the 1930's, the federal government introduced legislation designed to combat the severe economic depression, in an attempt to assist the provincial and municipal governments. However, as the proposed pieces of federal legislation involved federal intrusions into provincial jurisdictions, they were challenged in the courts where they were declared ultra vires due to the intrusive nature of the legislation into provincial domains.²⁰ The courts "succeeded in interdicting effective action by the federal authorities to deal with the economic problems of the depression."²¹ These judicial decisions served to realign federal-provincial relations back towards those characteristics exhibited by classical federalism.

Unfortunately for the municipalities, these judicial decisions prevented badly needed funds from the federal government reaching them. Although there was no guarantee that these funds would have benefitted all provinces/municipalities across Canada equally, this federal
funding was designed to alleviate the financial pressures that a number were facing as a result of the dramatic increase in welfare roles and the decrease in revenues. Although various pieces of the federal government's 'New Deal' legislation were declared ultra vires, Ottawa did succeed in intervening in municipal and urban affairs. Based upon federal control over banking and insurance, it passed the National Housing Act in 1935; this marked its first direct move into the urban domain. It was during this inter-war period that federal-municipal ties began to emerge. Indeed, the Canadian Federation of Mayors and Municipalities (CFMM) was formed in 1937 with the purpose of seeking federal aid. Concomitantly the federal government was seeking ways to act at the municipal level in an effort to serve a burgeoning population. However, with the onset of the Second World War, and the resulting war effort, the CFMM (to be discussed further below) was faced with a challenge, as the survival of the organization became "problematic because the problem of unemployment relief no longer applied," (a major reason for the organization's creation and existence at that time).

The re-emergence of traits of Classical federalism during the thirties was to only last until the outbreak of World War II when the federal government invoked the War Measures Act, re-establishing its dominant position. As a consequence, elements of both Classical and Emergency federalism were exhibited.
Characteristics of Emergency Federalism, based on federal powers over Peace, Order and Good Government were not to re-emerge until Canada faced two new threats, one terrorist and one economic. The federal government enacted the War Measures Act in response to the October Crisis in Quebec in 1970; and the Peace, Order and Good Government clause was used in the 1976 Anti-Inflation Board Case. In this case the Supreme Court of Canada ruled that federal controls and intrusions into provincial domains were allowable due to the emergency provisions contained in the Constitution; implicit in the judgment was the suggestion that the nature of an emergency implies an end to the threat.  

Co-operative Federalism

As the Second World War drew to a close, Canadian society entered a new era of rapid urbanization and industrialization, growth that placed tremendous pressure upon all levels of government to respond to a large and increasing number of demands for greater public goods and services. In addition to the changes within Canada, the world economy was beginning a transformation (see Chapter Two Urbanization and Industrialization below).

In response to these changing conditions, the federal and provincial governments adopted a more co-operative approach to federalism, and worked jointly in a number of areas. This 'face' of federalism extended from the end of the Second World War to the mid-1960's and it led to the formation of a number
of key tri-lateral relationships. Indeed, with the end of the Second World War, the federal government moved in a number of directions that affected municipalities. While these actions were encouraged by Canada's municipalities, a number of provinces were not supportive, but rather were suspicious of the federal government's motives and actions, particularly if Ottawa's actions were seen as a federal attempt to bypass the provincial government and work directly with the municipality. However, at this time the provinces lacked the ability (political or otherwise) to effectively resist federal-municipal ties; it would take nearly 20 years until they were able to do so.

Following the war, it appeared on the surface that the central and regional governments operated within their separate jurisdictions; but in fact there were increasing contacts and discussions among ministers and civil servants from both levels of government and many changes in legislation were the result of joint decisions. As a result of the centralizing effects of the Second World War effort, the federal government found itself in a dominant position and this dominance enabled it to take a lead role in initiating, designing, and implementing a number of national programs that were directed at federal-provincial and federal-municipal relations.

Central to a number of these federal initiatives and national programs was the use and support of Ottawa's superior
(in comparison to the provincial governments) fiscal capabilities from which it entered into a number of cooperative agreements. This form of administrative co-operation served as "an effective device for control and initiative"27 over provincial, and at times municipal, policy directions and provided the federal government with influence it would not otherwise possess.

At the provincial level, this infusion of federal funds allowed governments to pursue a number of policies and actions that they otherwise may not have been able to support. However, while federal assistance allowed the provinces to meet and overcome a number of difficulties, Mallory argues that provincial priorities were "distorted by the inability of a province to forgo, for political reasons, a program which (might) inhibit financing its other obligations. The result (was) to starve areas of provincial jurisdiction in which the federal government (was) not, for various reasons, interested."28 Created in the early 1960's, the development of the Canada Assistance Plan (CAP) is an excellent example of co-operative federalism (refer to Chapter Four below).29 Although CAP was a federal-provincial agreement, the program's implementation generally involved the municipality, either directly or indirectly, in a program that it had neither any input nor control over; rather its only recourse was to respond to a set of decisions and agreements made outside its control. Canada's municipalities were to find themselves
facing a number of similar situations where they had to respond to federal-provincial decisions made outside their control.

The federal government's role during co-operative federalism was further enhanced given the emerging globally competitive environment and Ottawa's role over key areas such as the economy, trade currency, transportation, communications and treaty making powers (as qualified by the Labour Conventions decision, 1935). The federal government's control over these areas has made acceptance of a partnership with Ottawa more important, for it alone could ensure that intra-national and international standards in areas such as transportation and communications are maintained and developed.

Federal dominance extended to municipal governments through the provision of a number of different programs based on both federal spending initiatives and federal departmental and administrative actions. Examples of this include the Diefenbaker government's move through its Winter Works program (refer to Chapter Four below). By the "late 1960s more than 117 distinct programs administered by 27 departments in Ottawa influenced metropolitan development plans" including the creation of the Ministry of State for Urban Affairs in 1971 (refer to Chapter Two - Bureaucratic Self-Interest and Chapter Five - Ministry of State for Urban Affairs, below). Throughout cooperative federalism, the Canadian Federation of
Mayors and Municipalities remained both supportive of, and receptive to, this active federal involvement at the municipal level and responded positively to federal initiatives and encouraged Ottawa's involvement and support in municipal and urban affairs.\textsuperscript{32}

In addition to the federal government's extensive spending powers on matters which fell within provincial jurisdictions\textsuperscript{33}, cooperative federalism facilitated the emergence of executive federalism, or the development of new ties between the political and bureaucratic executives of the federal and provincial governments\textsuperscript{34}, and ii) "the delegation by parliament of regulatory functions to provincial agencies."\textsuperscript{35}

Co-operative federalism marked the most extensive period of growth for both the bi-lateral and tri-lateral relationships. However, the dominant leadership of the federal government, characteristic of the early stages of co-operative federalism and largely responsible for the growth and entrenchment of a number of federally initiated programs and activities, was increasingly resisted by the provinces and was eventually challenged on a number of fronts. Gradually, the post-war era of "co-operative" and centralized federalism (a result of the federal government's extensive control of the war effort during the Second World War), was transformed into a "co-operative" - but relatively decentralized pattern of relationships.\textsuperscript{36} By the mid-late 1960's there was a
resurgence in the strength of the provinces and with this resurgence, a challenge to federal-municipal ties, much to the chagrin of Canada's municipalities.

**DOUBLE-IMAGE FEDERALISM**

For Mallory, Double-Image federalism represented the dual views of federalism centred around the divisions between the French and the English speaking people of Canada. These divisions were reflected in the nationalist movement of French Canadians seeking to develop a provincial strategy focusing on the building, guarding and security of the 'fortress-province' of Quebec. As with the other faces of federalism, federal-municipal relations were affected by the emergence of Double-Image federalism.

Mallory attributed the roots of this position to the Canadian Constitution, and concluded that the adoption of this strategy by the Quebeccois was unavoidable and was "the only possible defense against the aggressive nationalism of the dominant English-speaking majority." Mallory suggested that Quebec's desire for greater constitutional control over its own affairs would come to pose the greatest threat to Canadian federalism. This has been evident with subsequent referenda, the Meech Lake Accord proposals and ultimately the proposal to alter important parts of the Canadian constitution during the so-called 'Canada Round' of the Charlottetown Accord.

Black, in his development of the Dualist Concept also
focuses on the dominance of the Quebec issue in federal-provincial relations, observing that this concept of federalism includes the promotion of two co-equal founding cultures, French and English.

Writing at a later date, David Milne⁴⁰, while accepting Mallory's depiction of Double-Image federalism, extrapolated from this model to include the growth of provincialism as a force in Canadian federalism. For Milne, the attempts by Quebec to develop a more autonomous stance independent from the federal government were not that far from the 'English' provinces which were themselves seeking greater autonomy from Ottawa. In Milne's analysis of federal-provincial relations in the late 1960's and 1970's, he cited the growth of provincial administrative and executive power as well as the drive to build provincial states and economies. He identified Alberta as a leader in developing 'provincialism', only to be followed by a number of other provinces, in particular, British Columbia and Ontario, as well as Quebec. Indeed, province-building had taken federal-provincial relations into a realm that focused on province-first economic strategies, gang-ups on the constitutional powers and authority of the federal government, and into massive spending and persistent demands on the federal treasury.⁴¹ By the end of the 1970s issues such as Quebec separatism and provincialism, supported by a number of provinces (listed above) began "to redefine the balance of power in the country. This in turn provoked an
Ottawa counterreaction: first, consternation, defensiveness and a search for accommodation; later,..., a vigorous counterattack." The preoccupation of Canadian federalism with the balance of federal-provincial power became even more pronounced.

The effects of this drive for increased provincial autonomy from Ottawa extended to the municipal level through either the alteration of existing federal-municipal arrangements or federal departments and organizations. Indeed, in the face of growing provincial strengths and challenges, the federal government withdrew from some of its activities that reached into municipal and urban affairs. For example, in 1967 Quebec entered an agreement with Ottawa whereby the "Quebec Housing Corporation would assume full responsibility for organizing and implementing housing programs and Ottawa would only certify eligibility for loans and subsidies." This established the provincial role over this area and worked to curtail federal government involvement at the local or municipal level.

The attempt by Ottawa to offer "direct grants to municipalities under its own job creation program" is illustrative of Ottawa's 'counterattack' against the province building characteristic of this face of federalism. However, the Quebec government moved to restrict federal to municipalities by opposing Ottawa's action. While a number of provinces opposed this action, Quebec went further, passing legislation
to penalize municipalities that received any federal funds. Thus municipalities, and the development of direct federal-municipal ties, were caught in the cross-fire of federal-provincial relations, as both levels challenged the other's actions.\textsuperscript{45}

Provincial concerns over federal-municipal ties were further reflected in provincial responses to, and wariness of, the federal Ministry of State for Urban Affairs (established in 1971). The minister in charge of intergovernmental affairs for Ontario, Darcy McKeogh, bluntly accused the federal government of "crude intervention in matters of provincial jurisdiction."\textsuperscript{46} The provinces feared the Ministry of State as the opening wedge in a federal campaign to gain control over urban affairs, even though "federal officials toyed only briefly with the idea of imposing policy on the provinces"\textsuperscript{47}; the provinces remained sceptical. Eventually, the ministry was "caught in the escalating conflict between the federal and provincial establishments"\textsuperscript{48} as provincial concerns and opposition to federal intrusions grew. Also caught in the crossfire were the series of national tri-level conferences in the early 1970's (discussed below). Double, or Dual Image federalism marked the rise of provincial resistance to federal dominance in both the bi-lateral and tri-lateral relationships. Although this resistance was not uniform across all the provinces, dominance in the bi-lateral relationship was nevertheless shifting away from Ottawa and
towards the provinces; a flow that would modify, but not eliminate the federal government's role in the tri-lateral relationship.

**Compact Federalism**

In a number of areas Milne's emphasis on provincialism and Black's compact theory contain similarities, including an "emphasis on strengthening the provinces rather than the central power." Black held that to 'strengthen' the provinces they would have to attain a strong fiscal base and autonomy from the federal government, have full political independence within their constitutional spheres, and each province would have to be consulted on matters concerning the constitution - including the provincial veto, and finally, the provinces should enjoy representation in federal institutions such as the House of Commons, the Senate and the Judiciary. Elements of Black's compact theory are evident throughout both the Meech Lake and Charlottetown Accord (refer to Chapter Six below).

Compact federalism is likely to remain a dominant form of federalism, especially since a number of provinces are still seeking enhanced provincial powers as outlined in the compact theory.

**The Residual Effect of Co-Operative Federalism and the Provincial Self-Interest**

Throughout both Double-Image and Compact federalism, a number of characteristics of co-operative federalism remained
active. Indeed, while a number of provinces, though not all, were actively resisting many federal initiatives (as outlined above) they were also entering into a number of federal-provincial agreements, and still meeting federal requirements for several national programs. This underlies an important dimension of the tri-lateral relationship. On the one hand, since provincial control over municipal and urban affairs is upheld in the constitution (refer to Chapter Three below), the provinces have tended to generally resist federal activities affecting this area (particularly if the federal activities threaten to bypass the provincial administration and/or represent a direct and visible action at the municipal level); on the other hand they have also been influenced by a number of practical considerations and have been receptive to a level of federal activity in municipal and urban affairs.

Indeed, Ottawa's influence over the economy and its ability to assist the provinces, has made its presence advantageous to the provinces, especially those with a weaker economic base (evident throughout co-operative federalism - see above). The interdependent nature of the ties is exemplified in the cooperation between the governments in such areas as housing and welfare, for example Tindal and Tindal say that:

Welfare and social housing are part of one policy. Housing density depends on transit or the automobile. The latter affects the environment and depends on energy policy. Add the need for planning and financing and there is no escaping the fact that governance in our society requires a lot of
communication among the various levels.\textsuperscript{51}

By the time the provinces were capable of resisting federal activity, a number of programs were already in place, and both the federal role, and indeed, the tri-lateral relationship had become established through an extensive list of programs and policies that involved all three governments. Thus while a number of provinces resisted federal activity, they were also guided by the practical consideration that it was necessary for both economic as well as societal considerations (the maintenance of a number of national programs). An appreciation of this factor assists in the understanding of the sustained activity involving federal-provincial agreements and executive federalism (two characteristics of co-operative federalism) while at the same time, several provincial governments resisted a number of federal activities in municipal and urban affairs.

Although several provincial governments have at times opposed federal activities, this resistance does not always include all ten provinces. Indeed, even if all provinces are opposed to federal initiatives, it was not always with the same intensity or conviction. Generally it is the larger and more self-sufficient provinces that tend to challenge Ottawa; this usually includes Quebec, Ontario, Alberta, and British Columbia. The remaining provinces have generally been less adamant in their resistance.

\textit{Federal-Provincial Relations since Confederation}
As Mallory, Black and Milne have shown, there are at least six relevant conceptions of Canadian federal relationships. While the quasi-federal and classical approaches have mainly involved relationships between the two senior levels of government (except in specific periods of centralization), the remaining approaches have more explicitly involved three-way relationships, federal, provincial and municipal. It is evident however, that at all times, the municipal government was clearly the junior partner.

In this respect, the tri-lateral relationship was a reflection of dominant trends occurring at the federal-provincial level, and mirrored the ebb and flow of senior government's relationships. When the federal government was in a central position, it tended to be more active in developing its federal-municipal ties (as experienced during co-operative federalism). Conversely, when the provinces have been more assertive in federal-provincial relations and have resisted Ottawa's actions, the federal government has tended to retreat from its direct commitments to the federal-municipal relationship, as during double-image. Indeed, during Compact federalism, the provinces have continued the trend towards decentralization, modifying, but not eliminating the federal role in the tri-lateral relationship including municipal and urban affairs.


3. Ibid., 15.

4. Ibid., 4.

5. Additional sections include; Section 56 governing Powers of Reservation; Section 57 and Powers of Disallowance; and Section 91 including the general areas of jurisdiction listed within; Section 92 -10(a-c) and federal declaratory powers; federal paramountcy in agriculture and immigration; and control of natural resources over any province joining the Confederation after 1867; Constitution Act, 1867 (Ottawa: Department of Supply and Services, 1989), refer also to D.V. Smiley, The Federal Condition in Canada (Toronto: McGraw-Hill Ryerson Limited, 1987), 36-42.


7. Ibid.

8. Ibid.


10. The position of the JCPC was developed over a series of key judicial decisions in the late 1800's. These decisions include Citizens Insurance Co. v. Parsons, 1881; Russell v. The Queen, 1882; Liquidators of the Maritime Bank v. Receiver General of New Brunswick, 1892; and the Attorney General of Ontario v. Attorney General of Canada (Local Prohibition Case), 1896. For an excellent account of these cases, rulings, and impacts refer Knopff, R., Morton, T., and Russell, P. Federalism and the Charter: Leading Constitutional Decisions, see especially Introduction, 5-7.
11. Mallory refers to the JCPC's adherence to the 'watertight compartment' theory of jurisdictions as articulated in Mallory, The Five Faces of Federalism, 7.


17. Ibid.


19. Ibid., 7-9.

20. Ibid., 8-9.

21. Ibid., 7.


23. Ibid. 2.


27. Ibid., 9.

28. Ibid., 11.


32. T. Price, The Rise and Demise of the Ministry of State for Urban Affairs, refer pages 9 and 19 for a brief outlining of the actions, goals and activities of the Federation of Mayor's and Municipalities.

33. Ibid.

34. It is here that Malory associates D. Smiley with first using the term executive federalism, Mallory, The Five Faces of Federalism, 10; D. Smiley has defined executive federalism "as the relations between elected and appointed officials of the two orders of government in federal-provincial interactions and among the executives of the provinces in interprovincial interactions." D. Smiley, Canada in Question: Federalism in the 80's (Toronto: McGraw-Hill Ryerson, 1980), 7; for more on executive federalism refer Chapter Four in D. Smiley, Canada in Question: Federalism in the 80's; See also R. Watts, "Executive Federalism: The Comparative Context" in D. Sugarman, R. Whitaker, eds. Federalism and Political Community: Essays in Honour of Donald Smiley (Peterborough: Broadview Press, 1989).

35. Ibid.


38. Ibid., 12.

39. Ibid., 13 - 14.

40. Mallory completed his article, The Five Faces of Federalism in 1965, around the time he attributed to the beginning of Double-Image Federalism. Milne, writing in 1986 added to his


42. Ibid.


44. D. Milne, Tug of War: Ottawa and the Provinces Under Trudeau and Mulroney, 133.

45. Ibid.

46. Ibid., 15.


48. Ibid., 261.

49. E. Black, Divided Loyalties: Canadian Concepts of Federalism, 149-170.

50. Ibid., 170.

51. Ibid., 125.
CHAPTER TWO
THE PRESSURES OF MODERNIZATION
AND THE 20TH CENTURY

Introduction

This chapter will examine the impact of political and societal pressures on federal-provincial and federal-municipal relationships. It will examine eight societal pressures associated with the modernization of Canada and the catalytic effect they have had on the evolution of federal-provincial as well as federal-municipal relations. As Canadian society matured, a number of political and societal forces pressured the municipal, provincial and federal governments to accommodate a list of new demands emerging from a growing and modernizing nation. An examination of these forces provides insight into many of the reasons underlying the increased interest and activity of the senior, and in particular the federal, governments in municipal operations and urban affairs. From the studies of Stevenson and Duchacek, one can identify eight of these catalytic pressures.

In his analysis of the division of powers for the Royal Commission on the Economic Development and Prospects for Canada, Garth Stevenson¹ identified a number of these evolutionary pressures and he examined their effects on the division of powers and federal-provincial relations. He listed these pressures under two general headings focusing on a) the role of the judiciary and b) the effects of state
expansion. The dominant role and influence of the judiciary centred around the Judicial Committee of the Privy Council (JCPC) and a number of its key rulings which interpreted the division of powers in Canada. The second category focused on the post-World War II expansion of state activity. This "largely unplanned and uncoordinated expansion of activity by both levels of government in the era of the interventionist state" resulted from the impact of; i) urbanization and industrialization; ii) electoral politics; iii) legitimation; iv) bureaucratic self-interest; v) corporate capitalism; and vi) special interest groups.

Contributing to this list, Ivo Duchacek identified the orientation of a political party and its predisposition towards federalism as an additional catalyst. When a political party attains power, its bias towards a centralized or decentralized relationship between Ottawa and the provinces will have a key impact on the direction of federal-provincial relations.

A) Judicial Rulings and the Division of Powers

Historically, the judiciary has played a significant role in defining the division of powers between the federal and provincial governments. From its position as the final appeal court (although it was not a formal court) for Canada, the Judicial Committee of the Privy Council was in a position to interpret the parameters of federal and provincial jurisdictions and to limit a number of federal and provincial
actions. It held this position until 1949 when the Supreme Court of Canada became the final appeal court for Canada.

The JCPC primarily developed its position on the division of powers over a series of decisions made in the late 1800's, and supported in a series of decisions throughout the 1900's. These cases revealed a judicial body that often applied a narrow interpretation to the use of federal powers while it simultaneously adopted a protective stance confirming provincial rights and powers. As Lord Watson observed to "attach any other construction to the general (federal) power...would, in their Lordships' opinion, not only be contrary to the intendment of the Act, but would practically destroy the autonomy of the provinces." While judicial decisions essentially defined federal and provincial activities, a number of specific cases that interpreted the division of powers, had a direct impact upon municipal and urban affairs by firmly placing municipal affairs within provincial jurisdiction.

At the heart of one of the earliest cases involving municipal operations and federal-provincial relations was the battle that erupted between Ontario and the federal government over that provinces delegation to its municipalities the power to regulate the consumption and sale of liquor. This provincial action was subsequently challenged in the 1896 case of A.-G. Ontario v. A.-G. Canada and Distillers and Brewers Association (The Local Prohibition Case) where it "raised the
question of whether a province could provide a system of local prohibition at least for those districts which had not availed themselves of the provisions of the Canada Temperance Act."\(^8\)

Although this case was decided in favour of the Ontario government, the JCPC ruled that "the post-Confederation provincial jurisdiction over "municipal institutions" cannot authorize local governments to become involved in activities outside the constitutional scope of the provincial order of government."\(^9\) A side effect of this decision was that municipal government was prohibited from any areas that fell under federal jurisdiction.

A varied number of additional cases serve to illustrate the broad impact of judicial decisions regarding federal jurisdiction and municipal by-laws. In the St. Leonard v. Fornier, (1956) a "town by-law relating to the licensing of theatres was found to be invalid on the ground that it was inconsistent with both the provincial Theatres Act and certain provisions of the federal Criminal Code relating to indecent performances"\(^10\). Concerning municipal noise by-laws, in R. v. Rice (1963), a municipal by-law designed to regulate boat racing was found to contravene federal regulations governing shipping and navigation.\(^11\) In Westendorp v. the Queen (1983) a Calgary city by-law designed to curtail prostitution was found to contravene federal authority over criminal law\(^12\). While these cases do not nearly exhaust the number of court decisions affecting municipalities\(^13\), they illustrate the
wide ranging impact that judicial rulings relating to the
division of powers can have on municipal government and urban
affairs.

B) EXPANDING STATE ACTIVITY

Following the rapid modernization of Canada after the
Second World War, the federal, provincial and municipal
governments came under a number of societal pressures that
encouraged the three governments to expand their range of
activities. These forces acted as catalysts on governments
of all levels, and they initiated a number of changes which
affected federal-provincial, as well as federal-municipal,
relations. In Canada, these pressures gained in significance
in the mid-20th Century and their examination provides insight
into the development of increasingly complex federal-municipal
ties.

Stevenson and Duchacek identify a total of seven forces
under the rubric of expanding state activity (listed above).
These headings cover many of the different forces that have
been at work in the non-judicial, political arena of federal-
provincial relations and they have had a tremendous impact
upon Canada's division of powers (in the de facto sense) and
federal-provincial relations following the Second World War.
While some of these categories primarily affected senior
levels of government, there were many important spillover
effects on municipal government.

1) Urbanization and Industrialization
The growing urbanization and industrialization of Canada has placed tremendous pressures upon all levels of government to respond to an increasing number of demands for service and the provision of public goods, and these have been the strongest forces to influence the tri-lateral relationship. Indeed, the other societal and political forces that have influenced the tri-lateral relationship are really corollaries to the pressures arising from the urbanization and industrialization of Canada.

A cursory examination of Canada's population reveals that in "1871 only 9 municipalities had a population of over 10,000, but by 1971 there were 246 municipalities, and although representing only 5.7% of all municipalities, they contained 62% of the Canadian population."14 By 1976, 75.5% of the population was urban, and at that time Canada had the fastest pace of urban growth of any other Western industrial nation in the world.15

This shift from a largely rural population to an urban based population represented one of the most influential forces to affect all levels of government. These changing demographic patterns have precipitated much "debate over appropriate urban development policies."16

In their response to the shift in population the federal, provincial and municipal governments adopted two approaches. The first approach arose in the area of spending and was in part a response to the "lessening of the independence of the
individual and the family, and the resulting need for social insurance and income support programs, or what is generally known as the welfare state." 17 In response to the rise and development of Keynesian economic policy, the federal and provincial governments introduced numerous programs designed not only to balance the cyclical fluctuations of the business cycle but also to justify the development of various social support programs. 18 McBride and Shields say that the "provisions of welfare became part of a consensus stretching far beyond the notion of a simple safety net. The state was to have a primary role in the guaranteeing of a "basic entitlement to a reasonable standard of living and the provision of social resources, such as schooling and health care." 19 This resulted in numerous government spending and support programs including the development of pensions, unemployment insurance, welfare programs and the Canada Assistance Plan among others.

The second approach included federal, provincial and municipal responses to the various logistical problems that arose in the areas of housing, transportation, pollution, poverty, infrastructure development and maintenance, public services, as well as financial assistance and responsibilities at the municipal level. 20 Provincial jurisdiction, beyond responsibility for municipal institutions, ranged from control over areas of education, health and welfare, to the licensing of various businesses, such as shops and saloons. Although
the increased pressures associated with urbanization and industrialization moved the provincial governments into accepting greater responsibility(s) for the logistical problems, the municipalities were themselves involved and delegated a number of the responsibility(s).

However, while a number of powers were delegated to the municipality, with this delegation came greater provincial control and supervision over municipal operations. While the delegation of some duties varies between provinces, (for example in the area of education, Newfoundland still retains direct control while the other provinces do not), the general duties for local government have remained very similar. This is especially true in the "two key areas of finance and planning (where with) minor variations, all provinces and territorial governments exercise approval power over municipal long term borrowing and municipal planning."21 Provincial control over the delegation of responsibilities to the municipality may have an impact on federal-municipal relations for the provincial administration has the authority to remove the municipality from its involvement/commitment to a federal-municipal program and, in turn, the province will accept the responsibility for the program itself. This would have the effect of forcing the federal government to work with the provincial government and not to bypass it. Alternatively, the provincial governments may impose financial penalties on the municipality should it enter into a federal-municipal
agreement (as Quebec has done, see below - Legitimation), forcing municipalities to decline various federal proposals. While these options do illustrate the nature and extent of provincial control based on its powers of delegation (refer to Chapter Three - Provincial-Municipal Constitutional Connection - below), they have rarely been used, and when they have, it has been used only by a limited number of provinces.

At the federal level, the government expanded its activities in a number of areas ranging from housing, transportation (rail, motorized, navigation and aviation), environment and telecommunications to the provision of postal services all of which have greatly increased federal responsibility affecting activities that take place within the municipal domain. In the 1970's, the federal government made a decisive move into municipal affairs with the development of the Ministry of State for Urban Affairs. Indeed, while:

the cities and towns are clearly within provincial jurisdiction the federal government historically has been in the forefront of developing policy and program solutions to housing and related issues through its superior power of the purse. Since 1935 the federal government has initiated ever-expanding housing legislation, often including land planning requirements and infrastructure installations which have shaped post war urban Canada.\textsuperscript{22}

Urbanization has clearly become an "over-arching national phenomenon in Canada. More than 80 percent of all Canadians live in cities and towns and all of us are making our living by the city. Regardless of where we live, our values are urban, our aspirations and economic driving forces are
urban."²³ It appears unlikely that the federal government will pull out completely without i) risking a violation of responsible government by failing to address the needs of the majority of the population, and ii) violating its central role as a national coordinator of not only the economy but also of the transportation and communication infrastructures, to name but only two. At the same time, provincial governments are not willing to abandon their constitutional responsibilities and direct control over municipalities; indeed, the provinces are faced with the 'provincial paradox' (refer to Chapter One above). The pressures associated with urbanization and industrialization are unlikely to alter as Canada continues to develop and grow, and thus they will remain a powerful force sustaining the tri-lateral relationship.

2) Electoral Politics

In an effort to gain the support of the electorate during elections, politicians at all levels have occasionally "impelled the state to make expenditures and to provide services"²⁴ in areas that are outside their constitutional jurisdiction, or are in conflict with another level of government. In this way they may produce platforms that will profoundly affect federal and provincial relations.

Typically, these actions tend to focus on the spending and service sectors of the state.²⁵ Examples of these electoral promises include the "federal commitment to family allowances in 1942, Ontario's involvement in commercial
aviation in 1971, and Alberta's program to subsidize interest payments on residential mortgages in 1982." While these are good examples of buying votes with the taxpayers' money, regardless of the merits of the programs concerned, they are also examples of promises that have affected municipal operations and life in an urban setting.

Stephen McBride argues that many of these 'electoral' practices are now coming under greater scrutiny by members of the voting public. This enhanced scrutiny has resulted in a heightened awareness of issues such as a balanced budget, greater government control over the deficit (either federally or provincially) and the need for governments to be held more accountable for the financial repercussions of their spending practices. Even though "restraint has become a key word in electoral politics" and was a central theme during the federal Liberals' campaign trail during the last federal election, when elected they still found the funds to support a national infrastructure program. However, while the infrastructure program was one that was long sought after by Canada's municipalities and the Federation of Canadian Municipalities, Canada's municipalities do not always receive the type of program or policy that they desire. Ironically, while Ottawa supported an infrastructure program, the federal Liberals simultaneously moved to decrease Ottawa's financial support for a number of programs that would ultimately affect municipal operations and issues affecting urban living (refer
to Chapter Four below). Indeed, while both the infrastructure and fiscal restraint programs were electorally popular, the issue of fiscal restraint has proven to be detrimental to the municipality.

Indeed, at the provincial level, and in part a response to federal transfer reductions, the recent election of the Ontario Progressive Conservative government and its numerous announcements regarding transfer cutbacks to the municipality, (which may be politically popular) will force municipalities to face a number of difficult decisions in dealing with the loss of funds (refer to Chapter Four below).

3) Legitimation

Stevenson identified the search for representative legitimacy as an important catalytic force leading governments of all levels in Canada to expand their state activities. Following the Second World War, a number of programs were "devised to reinforce the legitimacy of the state in the eyes of a population that is increasingly heterogeneous, rootless and uncertain in its loyalties."28 At the heart of the fight over the electorate is the nature of a federal system whereby one individual (voter and/or taxpayer) is represented by two levels of government, both seeking to provide him/her with services and public goods, in exchange for their electoral support.

A central dimension of legitimacy is the degree of competition it engenders between the provincial and federal
government's as each vie for the support of the same electorate. For the provincial or federal governments to effectively compete, both levels of government will seek "to mobilize support among the population for (their) battles against the other level and (will) use all the techniques of legitimation to this end"29; this may at times lead to federal-provincial conflicts.

At the federal level, examples of legitimizing activities fall into fiscal, functional and administrative responsibilities. A number of financial programs illustrate the federal government's search for legitimizing recognition by intruding into both provincial and municipal and urban affairs. A recent example includes the federal infrastructure program, complete with extensive signage acknowledging the presence of the federal government. While the federal government's fiscal responsibilities are an important component of federal legitimacy, so too are its functional and administrative duties. Examples of federal functional and administrative activities that affect municipal life include the use of federal departments (for example the Department of Transportation, Public Works, etc.), agencies (the Transportation Advisory Board or the Canadian Radio-Television and Telecommunication Commission) crown corporations (Ports Canada, Canada Mortgage and Housing Corporation, etc.) and federal control over the Criminal Code; all areas that address a number of issues and problems (refer to Chapters Three and
Five below).

By the 1960's, the federal government recognized that the "urban situation had become a high profile issue which for political purposes it would be as well to appear to be doing something positive about."30 The federal government responded with greater levels "of assistance to municipalities to arrest urban decay, to revamp older areas and to develop social housing."31 In 1971 the federal government created a Ministry of State designed to coordinate federal activity in municipal and urban affairs. It has been apparent that as more and more economic, social, and demographic characteristics revolve around the urban area, the municipality serves as a major focal point which the federal government must recognize and address.32 Even though the areas of health and urban issues are provincial in scope, the federal government has sought and maintained an active and visible role in these areas through a number of its programs, departments and agencies in an effort to enhance its legitimacy.

Provincial examples of legitimating activities are movements aimed at focusing attention on the provincial government as the best voice and representative of the electorate. These activities range from financial support for various organizations to the "massive celebrations of the 75th anniversaries of Alberta and Saskatchewan."33 Quebec is a provincial leader that actively seeks to legitimize itself in
the eyes of the electorate, and its activities have often conflicted with the federal government. Quebec's actions range from a refusal in the early 1950's to participate in several federal-provincial shared-cost programmes (relating to post-secondary education, civil defense, general social assistance, vocational training, the Trans-Canada Highway and hospital insurance)\textsuperscript{34} to its resistance to Ottawa's attempt to bypass the Quebec government and deal directly with the municipality. Indeed, Ottawa began to issue direct grants to municipalities under its own job creation program of June 1983. Although all provinces condemned this intrusion into their constitutional responsibilities, Quebec went further with legislation to penalize municipalities that received federal funds without provincial approval. Ultimately, Ottawa was forced to sign an accord with Quebec restoring the principle of funding through provincial governments.\textsuperscript{35}

Other provincial governments "particularly those engaged in conflicts with the federal government over natural resources, have also made legitimation a priority in recent years,"\textsuperscript{36} precipitating federal-provincial tension.

4) Special Interest Groups

As Canadian society has become more complex and diverse, and as the interventionist welfare state of Canada has developed, pressures upon the state have increased. Accompanying this development, a burgeoning number of organizations, groups and special interests of all kinds have appeared, each with their own demands that the state do something on their behalf.\textsuperscript{37}
In 1867, Canada had approximately "15 'national relevant associations', 70 in 1900, and more than 700 by 1980, with the most important period of association formation occurring during the two world wars and between 1960 and 1975." Much of this growth stems from the expansion of government. As governments grew, interaction with the many federal and provincial agencies "became increasingly difficult, both for smaller pressure groups and for individuals. Group formation, the elaboration of established groups, and the formation of 'peak' associations became necessary."

Special interest groups often make their choice of which government to align with more as a result of 'pragmatic considerations' rather than based upon the constitutionally allocated responsibilities of either the provincial or central government. This dimension is apparent in the near contradictory orientation of both the Federation of Canadian Municipalities (FCM) and its predecessor, the Canadian Federation of Mayors and Municipalities (CFMM). The Federation of Canadian Municipalities is comprised of individual member municipalities and it can trace its roots back to 1937. Although the CFMM/FCM provides a national voice for municipalities, it has had a steady fight to maintain its membership across Canada. Indeed, the organization has had its own internal difficulties, including the problems associated with reconciling the different interests of the larger municipalities with those of the small
(and largely rural) municipalities. Even after a restructuring and the creation of a series of regional committees, the organization has continued to face a number of difficulties; and the larger municipalities have loosely formed their own national organization. In addition to these difficulties facing the organization, a number of provincial governments still harbour suspicions about the FCM and its direct ties with the federal government. The CFMM/FCM represents a national voice for a sector that falls directly under provincial control, and the notion of furthering the municipal cause at the federal level has been somewhat problematic.

A central point of attraction between the CFMM/FCM and the federal government centres around the purse strings of Ottawa. The financial activities of the federal government have long been a major attraction for both the FCM and the CFMM, they have actively encouraged federal financial activity in municipal and urban affairs. The CFMM was formed during the Great Depression "to pressure the federal government on the matter of financial relief for the unemployed", and it initially achieved some success. The quest for financial support from the federal government has continued to be an important concern for both the CFMM and the FCM; this has included a long time advocacy of a national infrastructure program. However, given Ottawa's current policy of fiscal restraint the financial focus of the FCM has
on one hand become more difficult, while on the other, it has increased the importance of the FCM as a representative body at the federal level competing among a number of interest groups and organizations for shrinking federal funds.

In addition to the FCM's pursuit of financial support from Ottawa, it has also sought to gain a greater role for municipalities in the making of federal and provincial policy decisions that will have an impact on their operations. To this end the FCM has sought to enhance the position of the municipality. For example, in 1969 the CFMM and a number of provincial associations of municipalities "formed a joint working group to pursue questions of intergovernmental relations and in particular the role of municipal government in a new Canadian constitution." Indeed, the CFMM pressed for a greater role in decisions that deal with matters of mutual interest and by 1971 the first national tri-level conference was convened. However, a number of the provinces feared "that the federal government could end up taking initiatives toward municipal government without consultation with the provinces" thereby weakening their control over municipal government, this proved to be a major stumbling block for the CFMM and it's initiative to establish a series of annual tri-lateral conferences. As a consequence, the third national tri-level conference was postponed indefinitely "despite the efforts of the Ministry of State for Urban Affairs and the municipalities to arrange it." The FCM saw an ally in the federal government
in its search for greater financial assistance, but the provinces were not anxious to support strong federal-municipalities. The Quebec government's blockage of federal job-creation funds transferred directly to the municipality is an example of this mistrust (discussed above).

On the constitutional front the FCM has actively worked to promote the constitutional recognition of the municipality as an independent level of government complete with constitutional status.\textsuperscript{45} However, its drive has yet to bear any fruit. Indeed, the ability of both the CFMM and the FCM to affect federal involvement at the municipal level has been hindered by a number of obstacles, such as the lack of effective research and staff services, the fact that they represent divergent interests of all kinds of municipalities, and because they are special interest groups, and also because they are at times opposed by a number of provincial governments.\textsuperscript{46}

5) Bureaucratic Self-Interest

Stevenson suggests that the:

bureaucracies are motivated less by a desire to expand then by a resistance to any change in their established routines, and a change that leads to expansion may be almost as threatening as one that leads to contraction...\textendash;(and)...new programs or initiatives by government often lead to the creation of a new bureaucracy...rather than the expansion of bureaucratic structures already in place.\textsuperscript{47}

It was to this dimension of bureaucratic self-interest that the Ministry of State for Urban Affairs (MSUA) was subjected to throughout, and even before, its operation.
Although MSUA was a member of the federal bureaucracy, it was not fully staffed by civil servants but was rather staffed with a large number of academics and people from outside the bureaucracy, so the ties between it and other bureaucracies were not entrenched, and the ties that did emerge took time to develop. The Task Force on Housing and Urban Development, which was instrumental in establishing MSUA recruited people outside the bureaucracy. CMHC - a major federal agency involved in municipal and urban affairs - was only given observer status, and this did not help MSUA establish initial ties with other members of the federal bureaucracy and over its outsider status to the established bureaucracy. Indeed, bureaucratic resistance manifested itself even before MSUA was officially established.\(^{43}\) Initially, it was proposed that MSUA be developed into a full-fledged Housing and Urban Development Department, but this was resisted, in part due to the "firm antagonism among many senior bureaucrats against a new department"\(^{49}\); eventually a compromise was made which resulted in the establishment of a junior ministry.

Even after it was established as a junior ministry, "the two main agencies whose programs had a major impact (on municipal and urban affairs) - Transport and CMHC did feel threatened and did not cooperate harmoniously with Urban Affairs."\(^{50}\) The resistance of these federal bureaucrats to MSUA "was sufficiently entrenched to persuade political authorities of the potentially unpleasant consequences of an
increase in the authority of the Ministry of State." In conjunction with a number of other factors, MSUA was eventually dismantled after operating for less than a decade. With the loss of MSUA, the FCM, and Canada's municipalities lost an important ally in their goal of soliciting federal interest, activity, and support.

6) Corporate Capitalism

In Stevenson's analysis, he suggests that the "externalities created by corporate capitalism are another, and according to some observers the most significant, factor contributing to the growth of the state. The profit-making activity of the private sector is possible only through extensive, direct and indirect assistance from the state."

Indeed, only government can help a community cope should the consequences of business activity, such as increased pollution levels or expanded pressure on the local infrastructure) change a community's social and economic life. "Though some of these changes will occur whatever the government does, most will generate some kind of public debate and government intervention." This demand for an increase in the provision of government services has affected all levels of government as business turns to the appropriate level of government for the support services it wants.

At the federal level, business and government have coalesced around Ottawa's responsibility for areas that are national or international in scope. Provincial-business
interaction is centred around provincial responsibility for areas of licensing, training, industry safety and health, and labour standards, the environment, provincial powers of incorporation and control over natural resources. Further interaction is established by the fact that many corporations are small to medium sized in operations and are therefore "confined to a single province [and] find it easier to gain access to their provincial government than to the federal government."55

Indeed, as many Canadian businesses have expanded, their activities have often come into contact with both the provincial and federal governments. When business activity has included inter-provincial and international activity, it has involved the federal government; while at the same time they could be subject to a number of provincial regulations and requirements. Thus the combined regulatory authority of the two levels of government has developed into a complex maze of requirements, creating a mountain of red-tape problems for business.

A recent creative example of joint government action in response to business complaints regarding this complex maze of provincial and federal business regulations is found in the Business Service Centre pilot project in Vancouver. "The logic is simple: bring together under one roof all the information needed for business to work through the maze of government services - from taxation and business registration
to loans and subsidies."\textsuperscript{56} The essential idea is one-stop shopping to minimize the maze of red tape and the web of federal and provincial regulations. This joint program is an example of the interdependence that exists between the federal and provincial governments, in this case regarding the regulation and management of the economy.

7) Political Party Orientation

The orientation of a political party towards centralized or decentralized federalism will have a significant impact upon the direction of federal-provincial relations. Should the federal political party in power favour a strongly centralized federal structure it could lead to confrontations as the provinces resist Ottawa's attempt(s) to make decisions that could limit provincial actions. Alternatively, should Ottawa favour a decentralized federal structure, provincial activity(s) could dramatically increase as the provincial governments are included in a greater number of nationally related decisions.

In Ivo Duchaceks' examination of federal structures, he identified three influential factors defining a political party's orientation towards centralized or decentralized federal relationships. These factors include:

(a) the party's ideological and personal commitment to federalism that may change with a generational or factional change of leadership; (b) the party structure, i.e., whether it is centralized, decentralized, or internally federal; (c) the number of parties active on the federal scene.\textsuperscript{57}
An active federal party in power favouring a strong, centralized national government in Ottawa, will be more inclined to involve itself in municipal and urban affairs and bypass the provincial government. For example, in 1983 the Trudeau government provided grants directly to the municipalities, repudiating "its earlier policy of sending such monies through provincial governments... (as it) began to issue direct grants to municipalities under its own job creation program." 58 Conversely, a federal government in favour of decentralization will be less inclined to develop direct federal-municipal ties and bypass the provincial governments. The Progressive Conservatives under Prime Minister Mulroney illustrated the influence of a party favouring a decentralized approach to the trilateral relationship through its willingness to work with the provinces on a number of issues. Indeed, there "were no development programs announced over the heads of the premiers, nor any circumventing of provincial governments." 59

In contrast to the approach of the Trudeau Liberals cited above, the current federal Liberal Party of Canada appears to have adopted a party approach that includes a decentralized federal structure, a factor that could modify, but not negate the role of the federal government in the tri-lateral relationship.

**Conclusion**

This chapter examined and identified a number of forces
that have pushed the senior governments into greater areas of activity. Both the judiciary and the general trend towards greater state activity moved the senior governments into new areas of governing not generally entered into before the 1930's. While all the forces identified by both Stevenson and Duchacek played a role in expanding government activity, of particular importance was the force of urbanization and industrialization. Indeed, even though federal-provincial relations have changed and the provinces appear to be gaining greater influence over a number of national issues, the pressures associated with urbanization and industrialization will continue to direct the senior, and especially the federal, government's attention towards municipal and urban affairs.

Furthermore, as the governments moved to meet many of the new demands that were being created, they were gradually being forced into an almost 'incestuous' relationship where they found it necessary to combine their efforts to meet these demands by overcoming the separation of their jurisdictions inherent in the division of powers. The development of Canada's federal-provincial relations has illustrated a general trend towards governmental interdependence and interactivity in municipal and urban affairs, attributable in many areas to the catalytic forces developed in the models of Stevenson and Duchacek and as reflected in the six approaches identified by Mallory, Milne and Black.

2. Ibid., 87.


5. The key cases that defined the position of the JCPC included Citizens Insurance Co. v. Parsons, 1881; Russell v. The Queen, 1882; Liquidators of the Maritime Bank v. Receiver General of New Brunswick, 1892; and Attorney General of Ontario v. Attorney General of Canada (Local Prohibition Case), 1896. For further information on all cases relating to the division of powers and federal-provincial relations that have been adjudicated by either the JCPC or the Supreme court of Canada, refer to Part One: The Division of Powers in Knopff, Morton, Russell, Federalism and the Charter: Leading Constitutional Decisions (Ottawa: Carleton University Press, 1989).


13. For an extensive listing of different cases that involve the division of powers and affect municipal operations refer, Federation of Canadian Municipalities, Municipal Government in a New Canadian Federal System, Chapter 1.


15. Ibid.


17. Stevenson, The Division of S were themself


20. For a full account of the difficulties municipalities faced with the rapid urbanization and industrialization refer to Chapter 4 in C.R. Tindal, S. Nodes Tindal, Local Government in Canada.


23. Ibid. 12.


25. Ibid.

26. Ibid.


28. Stevenson, The Division of Powers, 103.

29. Ibid., 105.


31. Ibid., 5.

33. G. Stevenson, The Division of Powers, 106.


36. Stevenson, The Division of Powers, 106.

37. Ibid., 108.


39. Ibid., 66.


42. Ibid., 105.


44. D.G.H. Higgins, Local and Urban Politics in Canada, 104.


47. Stevenson, The Division of Powers, 104.


50. Ibid., 17.

51. E. Feldman, J. Milch, Coordination or Control? The Life and Death of the Ministry of State for Urban Affairs, 261.

53. Stevenson, The Division of Powers 106.

54. A. Paul Pross, Group Politics and Public Policy, 50-51.


57. Ivo D. Duchacek, Power Maps: Comparative Politics of Constitutions, 131.


59. Ibid., 141.
CHAPTER THREE

THE MUNICIPALITY, THE TRI-LATERAL HISTORY

AND THE CONSTITUTION

Introduction

Chapter Three will examine a number of characteristics that have shaped the relationships among the federal, provincial and municipal governments. It will i) review the two-fold contribution of municipal government towards the process of governing; ii) examine the historical development of federal, provincial and municipal interactions; and iii) identify the constitutional sources that support federal and provincial activity in municipal and urban affairs.

Section One will first focus on the different functions that local governments currently fulfil in Canadian society. This will illustrate the political nature of municipal government as well as the administrative function it provides through the allocation of public goods and services to the local area. Section One will also review the history of tri-lateral relations among the three levels of government in Canada, illustrating the complex web of ties and commitments that underlie federal and provincial activity at the municipal level. This activity has steadily increased during the 20th century.

Section Two will identify the constitutional ties that support both federal and provincial activities in municipal
and urban affairs. It will reveal that while provincial governments possess extensive and direct constitutional de jure control over municipal governments and their operations, the federal government can also find constitutional support for its interventions in municipal and urban affairs.

SECTION I

THE MUNICIPAL ROLE

Municipal government makes a two-fold contribution towards the operation and management of a nation. Local governments first contribution focuses on the political nature of municipal government as it endows a group of people with semi-autonomous political authority over local decisions and responsibilities, while its second contribution centres on the municipal role of administrator and distributor of public goods and services.¹ As the most accessible level of government, the municipality is the closest level of government to those whose everyday lives the municipality affects, and its proximity is a crucial factor in contributing to the political/distributional dimensions of government.

Key to the political dimension of local government is that "the municipality is a source of local initiative and independence: it allows the people of the place to be represented."² By facilitating the individual's access and input into the local political decision-making process, the
municipality fosters a sense of 'individual contribution and input' towards the political system and participatory democracy. Indeed, a key dimension underlying this individual 'sense of contribution' is that local government enables residents to settle their own neighbourhood problems and establish the services that correspond to their own needs. This process results in a quality of life corresponding to their preferences through the political structures and processes within the local area. Facilitating this public input are a myriad number of avenues that provide the individual/group access to the local representative and officials, including numerous municipal meetings, rate-payers association and other local meetings, as well as the local, and usually accessible, municipal officers. Local issues such as sewage, zoning, parking fines, schools, and garbage collection are but a few of the issues that directly affect an individual and are directly associated with local government.

The democratic/political nature of local government has been associated with municipal government since Canada's inception. Even in provinces where the populace was at first reluctant to have municipal institutions, once they were in place the democratic nature of local government "developed a legitimacy of their own in the eyes of the local inhabitants". Indeed, the democratic nature of government was adopted and transformed into an image that
emphasized that the local government was far more democratic and more intimately linked to the average citizen than were the 'remote' senior levels of government.

However, this interpretation was to change when, in an attempt to correct the over-excesses of local politics in the late 19th century, a number of reforms in the early 20th century removed a number of responsibilities from council control and these were in turn allocated to separate, appointed boards so as to take a number of local issues out of politics. With the resulting expansion of boards, political participation and control was altered and diffused.

However, following the Second World War, many of these reforms became increasingly controversial as "the affected populace felt that their views and concerns were at least as important as the advice and recommendations that council might receive from their technical experts" - including municipal boards and administrators. While this has unfortunately contributed to a diminished view of the democratic nature of municipal governments, as reflected in low voter turnout on election day for example, (though a number of additional factors also account for low voter turnout), this has not led to the demise of individual and interest group activity. Local rate payer associations are still active in municipalities across Canada (for example the local rate payers association was instrumental in the
City of Windsor adoption of a permit parking program around the University of Windsor).

Hand in hand with the political dimensions of municipal government is its ability to administer and distribute public goods and services at the local level. A key reason for the provincial creation of municipal structures stemmed not from "any apparent belief in the values of local democracy - rather it was motivated by a desire on the part of the provincial administrations to shift at least some of the growing burden of expenditures to the local level" and was particularly evident in the Atlantic and Western provinces. Provincial interest in local government centred around the municipalities' ability to distribute public goods and services in a manner that was more efficient than if provided by the senior governments. Due to the size of the area they serve, municipal governments are uniquely positioned to fulfil this requirement.

Today's municipal government is responsible for a wide array of public services and goods ranging from the maintenance of roads and sidewalks to the provision of water and electricity to the operation of a varied number of social service programs. While the list varies to some degree from province to province, the list of duties is relatively consistent across the provinces.

While in some areas the distribution of a public good or service is best achieved by one level of government
(local, regional or national), in other areas more than one level is required to distribute a service or good efficiently and responsibly.\textsuperscript{10} A number of situations have arisen where local government was no longer able to meet its distributional obligations. Structurally some municipalities have been unable to efficiently and effectively distribute governmental services or goods according to the demands of its constituency.\textsuperscript{11} Secondly, situations have also arisen as the problems municipalities have faced have outgrown their capacity to service them. Municipalities have experienced this in the fields of health, education and welfare and this has eventually led to the "gradual shift of responsibility to the senior levels of government and an increasing sharing of responsibilities between two or more levels of government."\textsuperscript{12}

A third difficulty Canadian municipalities have encountered is the financial restraint under which they operate. The difficulty associated with municipal finances surfaced when municipalities were faced with a crisis situation that resulted from the backlog of expenditures relating to the Depression and the extensive costs of Post-World War II urbanization\textsuperscript{13} (refer to Chapter Four - Municipal Finances). As a consequence, municipalities have either i) turned to the senior levels of government for financial assistance (evident in many CFMM and FCM activities - refer to Chapter Two above) or ii) formed into
small regional governments in an attempt to achieve significant cost savings and/or increase service capabilities through the resulting larger economy of scale and the streamlining of services (although municipalities still require provincial approval prior to the forming of a regional government).

Should the provincial governments desire to replace the municipal order of government they would face a number of problems including, amongst others, the difficulties of replicating the close and responsive relationship that can exist at the local level, as well as the ability to actively respond to the needs of the local area and its constituency. Indeed, senior governments would face a number of problems when confronted with both the overwhelming administrative burden associated with municipal operations as well as responding to the inevitable deluge of local grievances and concerns which would compete with broader regional issues.¹⁴

Today, the greatest asset of the municipality lies in the value of its usefulness as a distributor of public goods and services, and this is its key contribution to the tri-lateral relationship.

The Historical Development of Municipal-Provincial-Federal Interdependence

With the development of Canada into an urban and industrial society both the provincial and federal
governments have moved increasingly into municipal and urban affairs. By the late 1800's and very early 1900's, the provincial governments were moving to exercise their control over municipal operations, part of an evolving pattern of increasing provincial supervision, influence and control over the municipality; and as early as the 1930's the federal government began to intervene in municipal and urban affairs by advancing its role as the national government. Indeed, within the 20th century the ties between all three governments have undergone extensive developments as all levels of government have found it necessary to co-ordinate their policies and programs to meet the need of the urbanizing Canadian citizen.

Provincial control over municipal institutions was agreed upon in the original Charlottetown Conference and was written into the then British North America Act, 1867 as section 92(8), "Municipal Institutions in the Province". Even though the provinces were awarded jurisdiction over municipal institutions, during the early stages of Confederation municipal governments enjoyed a wide degree of independence and authority over their own operations. However, by the beginning of the twentieth century, the actions of local government were increasingly subjected to growing levels of provincial supervision as the provinces were either putting "in place, or were about to establish, a system of municipalities."
A primary motivating factor underlying provincial actions to create and foster a municipal level of government arose as "provincial governments came to regard a network of local governments as not just administratively convenient but almost essential. Without such local governments, the provincial authorities would face an overwhelming administrative burden."\(^{17}\)

However, while the provinces found municipal structures to be a useful distributor of public goods and services, they were also finding it necessary to maintain a degree of control. This "need was first evident in the Western provinces where a rapid development of local government institutions was made necessary by a sudden expansion of population."\(^{18}\) By the early 20th century a number of provincial-municipal departments were formed\(^{19}\) with the purpose of providing "leadership and guidance in municipal development and to provide for the continuous study of the problems of the municipalities."\(^{20}\)

From the 1900's until the Great Depression, municipal governments underwent a period of extensive growth, and with it a corresponding increase in municipal expenditures. However, the Depression of the 1930's severely curtailed this period of extensive growth as municipalities were hit hard by rapidly decreasing revenues (as people were no longer able to pay their municipal taxes) and increasing expenditures (resulting from the significant swelling in
their social and welfare support programs). Consequently, municipal resources were strained to i) provide adequate social and welfare programs, and ii) stave off financial collapse. However, with the financial collapse of four Ontario municipalities during the Depression of the 1930's (the City of Windsor included)\textsuperscript{21}, Ontario, as well as other provinces exercised their constitutional authority and increased their regulatory controls and surveillance over municipal operations and structures in a number of areas ranging from financial decisions to overseeing housing development, social and welfare services to the operation of public utilities.\textsuperscript{22} To achieve this the provincial governments i) established provincial-municipal offices if not already established or expanded those offices that were already established, and/or ii) created a number of boards responsible for a variety of financial, administrative and quasi-judicial responsibilities relating to the operation of municipal government.\textsuperscript{23}

In particular, provincial control over municipal finance was extended to either provincially created boards or directly to provincial-municipal departments and away from the municipality.\textsuperscript{24}

Eventually, provincial control was gradually extended over personnel and the conditions of employment of municipal staff...In addition, provision was made for the inspection or investigation of the affairs of a municipality both on a regular basis and as a special inquiry at the request of council or citizens or on the undertaking of the province.\textsuperscript{25}
"As a result of the Depression of the 1930s, municipalities experienced increased provincial surveillance over their financial activities and they lost their historical place in the social services field to the senior governments, increasingly the federal government."²⁶

It was at this time that the federal government made its first move into the urban field as the "provinces demonstrated their lack of financial and administrative ability to come to the rescue of municipalities which were in dire distress as a consequence of the depression."²⁷ In response to "the drastic decline in housing stocks occasioned by the Great Depression and as a sort of anti-depression public works device to alleviate unemployment and stimulate house construction"²⁸ the federal government passed the Dominion Housing Act in 1935.

Indeed, the Canadian Federation of Mayors and Municipalities (CFMM) was specifically formed in 1937 "to pressure the federal government on the matter of financial relief for the unemployed."²⁹ This marked a significant point in federal-municipal relations for now Canadian municipalities had a national organization through which they could press Ottawa with the needs of Canada's municipalities (refer to Chapter Two above re. Special Interest Groups for more information on the CFMM and the FCM). By 1946 the federal government created the Canada Mortgage and Housing Corporation, signalling a federal
willingness to remain within the area of municipal and urban affairs.\textsuperscript{30}

Following the Second World War, the number of federal-provincial and federal-municipal ties and interdependencies greatly increased. At the senior levels of government this led to a number of programs and activities designed to offset increased municipal expenditures and establish provincial and federal direction in these areas. The federal government adopted a more activist role in a number of programs based in part on a "federal concern about the ability of local government to deal with the consequences of the rapid urbanization of Canada in the postwar period that provided a major impetus to federal-local relations."

Likewise the provincial governments were similarly involved in a number of programs (refer to Chapter One Cooperative Federalism and Chapter Two Urbanization and Industrialization above).

By the 1960's, municipal governments found themselves being pulled increasingly into the orbit of the senior levels of government and were confined to their historical dependence upon the real property tax as a result of the centralization of government and tax-rental and tax-sharing agreements brought on by the Second World War. The greatly increased demands of the postwar period resulted in further provincial and federal encroachment on the operations of local government.\textsuperscript{32}

By the late 1960's, "more than 117 distinct programs administered by 27 departments in Ottawa influenced
metropolitan development plans."

Federal recognition of the need for coordination and for some form of national policy on urban issues (in part a response to the Federal Task Force on Housing and Urban Development - The Hellyer Report and the Lithwick report, Urban Canada: Problems and Prospects) eventually led to the creation of the Federal Ministry of State for Urban Affairs in 1971. The creation of the ministry was a reflection of co-operative federalism, and its demise, only eight years later, was in part a reflection of the changing shifts in Canadian federalism as Double-Image federalism (refer to Chapters One - Cooperative and Double-Image federalism above).

However, the federal government was not the only actor that sought to develop tri-lateral relationships. The CFMM successfully promoted a series of tri-lateral conferences. Indeed, as early as 1969 the CFMM sought to develop a national tri-level conference series. While only two were held (in 1971 and 1973), they did represent the nature of the tri-lateral ties at that time and this was reflected in the objectives of all the participants. The expressed federal and municipal objectives for this meeting had a striking number of similarities (though the position of the municipalities was somewhat broader). They focused on creating "some means of continuing consultation that would include all three levels and proposed that a permanent
national body be established to co-ordinate the
discussions."36 However, the provinces were suspicions of
a federal government that "could end up taking initiatives
toward municipal government without consultation with the
provinces and that provincial control over municipalities
would thereby be weakened."37 As with provincial
resistance to MSUA, provincial resistance to the tri-level
conferences led to the permanent suspension of the third
national tri-level conference. In spite of the demise of
these conferences and MSUA, there would continue to be "some
form of tri-lateral relations in Canada. Such a
relationship is unavoidable given the interdependence of
programs and policies at all three levels of government."38

In 1867 when Canada shaped its Constitution it was
basically an agrarian society. However, only 100 years
later it had become a growing post-industrial society with
75% of its population living in urban areas.39 Through the
Depression, the Second World War, the influence of
Keynesianism, and the urbanization and modernization of
Canada, the interests and actions of the senior governments
have increasingly focused on municipal and urban affairs.
Eventually the senior governments adopted policies and
actions that involved them in a number of highly interactive
relationships, with their pursuits greatly affecting
municipal operations and urban affairs.

THE CONSTITUTIONAL CONNECTIONS
Asefore undertakinl constitution the division of powers defines the areas of responsibility or jurisdictions of the national and regional governments.\textsuperscript{40} Without sources of constitutional support neither level of government would possess the legal authority to support their actions. As contained within the Canadian Constitution Act, 1867 the federal government is responsible for issues that are generally considered national in scope and influence while the provincial governments are responsible for matters of a local or regional nature.

The primary source of the federal government's authority is located in section 91 with a number of additional sources located throughout the constitution.\textsuperscript{41} Provincial jurisdiction is primarily restricted to section 92 and is listed in only a number of limited additional sections of the constitution.\textsuperscript{42} The only constitutional reference to the municipal level of government is as a subsection of section 92 stating that municipal institutions fall under provincial jurisdiction.

**THE PROVINCIAL-MUNICIPAL CONSTITUTIONAL CONNECTION**

Provincial jurisdiction over municipalities is in section 92(8), "Municipal Institutions in the Province": this gives the provinces sole authority over matters such as the "creation of municipal corporations, the determination of qualifications for holding municipal office, and the reorganization of financially-troubled municipalities."\textsuperscript{43}
The provinces clearly "have exclusive jurisdiction in the matter of municipal institutions. Only they can create municipal institutions and only they can control the municipal institutions they have created."44

The importance of this control is evident in the history of municipalities dating from the late 1800's with the establishment of provincial-municipal offices, and again during the depression when a number of municipalities ran into financial difficulty. In addition to section 92(8) the provincial governments also have control over many of the powers that municipalities require to adequately function and meet the demands of their constituency.

Beyond 92(8) - Provincial Delegation and Municipal Authority

Although the constitution clearly sets out provincial control over the composition and operation of municipal institutions, this does not provide the constitutional support for a large number of areas within which municipal governments currently operate. "The provinces have, independently of section 92(8), extensive jurisdiction over most matters with which local government is likely to concern itself,"45 and any municipal authority to act in these areas is dependant upon provincial willingness to delegate its responsibility to the municipality. 46 Provincial governments are under no obligation to delegate responsibility and duties to the local government; however, the municipality affords the provincial government with a
number of benefits, namely to "carry out the duties imposed upon local authorities by the provinces that have created them, and to which they are ultimately answerable." Indeed, the provincial administrations may assign a duty to a local government which may benefit the provincial administration, but not the local.

To provide municipalities with the ability to tax and otherwise raise revenue, provincial governments have delegated authority from a number of headings contained within Section 92 of the Constitution Act, 1867. Taxation and other revenue raising methods are located in Section 92(2) covering direct taxation, 92(5) allows for the selling of public lands; and section 92(9) covers the important area of general licensing, in particular the licensing of "Shop, Saloon, Tavern, Auctioneer, ... in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes." Providing local government with additional sources of revenue is section 92(15), permitting the "imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province" which furnishes municipal government with the power to stipulate penalties or punishment for the breach of any law including municipal by-laws. These areas cover all the primary sources of municipal revenue generation including property taxes, licensing fees, fines and penalties.

However, this delegation is not without restrictions as
the provincial governments exercise an extensive degree of supervision over:

the financial affairs of local governments. Local governments are not allowed to budget for an operating account deficit. Capital budgets are also closely scrutinized. The nature and mechanism of control vary widely among the provinces, but the situation is that local authorities in all provinces are required to obtain provincial approval before undertaking long-term borrowing. All provinces, however, provide local governments with some form of assistance in raising capital, ranging from assistance in marketing local debentures to subsidized loans.46

Provincial delegation is also required to grant municipalities the powers to provide many of the service functions that are demanded by the local population. Concerns over law and order are supported through provincial delegation under headings 92(14) and 92(6). Heading 92(14) refers to the "administration of Justice in the Province"; and is supplemented by section 92(6) governing the "Establishment, Maintenance, and Management of Public and Reformatory Prisons." These two headings provide municipalities with the constitutional sources required to support local police, courts, and jails. Additional support over law and order is found in section 92(15) regarding the "imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province" furnishing municipal government with the power to stipulate penalties or punishment for the breach of any law including municipal by-laws.

All municipal actions related to health and welfare,
including hospitals and other institutions, are supported through provincial delegation under Section 92(7) which "embraces many of the health and welfare activities in which local governments engage." 49

Municipal authority over most local utilities and services is permitted only with the provincial support of Section 92(10), 92(13), and 92(16) of the Constitution Act, 1867, conferring power to legislate with respect to "local works and undertakings," "property and civil rights within the province" and "matters of a merely local or private nature within the province." 50 Section 93 provides the necessary constitutional support for education delineating provincial authority over the municipal administration of the province's school systems.

While these headings cover many areas of municipal operation they do not support all areas of local activity and any gaps that are left "between these various specific heads of jurisdiction ... can usually be plugged by relying on the two major general strands of provincial competence: "Property and Civil Rights" (92-13) and generally all matters of a "Merely Local and Private nature (92-16)." 51

Common to all of these provincial powers is that they i) are delegated to municipal government at the sole discretion of the provincial government and can be unilaterally changed without prior municipal knowledge or input, and ii) they cover central aspects of municipal and
urban affairs without which local government could not operate. "Because of the statutory and distinctly subordinate nature of municipalities to their provincial governments, municipalities are frequently characterized as "creatures" of the provincial governments."\textsuperscript{52}

**THE FEDERAL-MUNICIPAL CONSTITUTIONAL CONNECTION**

Unlike the provincial governments, the federal government has no direct jurisdictional authority over the actions of a municipal government nor does it possess the same degree of control over its operations. Although the federal government lacks the ability to directly control a municipality and its operations, it does have the constitutional sources to support a variety of its activities that indirectly affect municipal operations and urban affairs. The only area in which the federal government retains direct responsibility for urban and municipal affairs is in the "Canadian territories which have not yet attained provincial status."\textsuperscript{53}

While the constitutional sources underlying federal authority relate to the management and operation of a nation (in keeping with the original intentions of the founding fathers), they do support federal actions that ultimately intervene in municipal and urban affairs. The impact of federal actions can therefore "be felt with respect to interprovincial pipelines, interprovincial telegraph and telephone lines, Indian reserves, transport and criminal
law" to cite a few.

How Federal Powers affect Municipal Operations

The federal government has the power to affect the internal generation of municipal revenue through i) its federal spending power, and ii) its tax exempt status. The federal spending power has become an effective means through which the federal government has sought to influence provincial and municipal policy directions and goals. The constitutional authority supporting the federal spending power appears "to flow from the federal power to tax (s. 91, head 3), to legislate in relation to "public Property" (s. 91, 1A) and to appropriate federal funds (s. 106)." The federal government "has used this power widely and often in order to intervene directly in municipal affairs" (refer to Chapter Four below).

Under section 125 of the Constitution Act, 1867 municipalities are prevented from taxing the federal government (this includes its substantial property holdings, Crown corporations and federal agencies). This has effectively denied municipal government access to a valuable source of needed revenue. While municipalities may impose fees for services, such as running water, they are prevented from imposing a number of taxes including property tax. It has been held that section 125 even prevents municipalities from "requiring federal authorities to either maintain their sidewalks in good condition or reimburse the municipality
for doing so."^57 However, while the federal government is exempt from municipal taxation it provides the municipality with restitution through its grants in lieu of taxation payments which are designed to offset this loss of revenue (see Chapter Four below).

The Departments of Transportation, Communication, and Public Works, a number of Crown corporations including Ports Canada and Canadian National Rail, as well as the National Transportation Agency of Canada comprise the major bodies whose actions flow from the federal government's constitutional authority covering the areas of transportation and communication, two primary areas of federal activity affecting municipal and urban affairs (refer to Chapter Five – Departments of Transportation and Public Works, and the National Transportation Agency of Canada and Canadian Radio-Televisions and Telecommunications Commission below). Federal control over aviation and the location and operation of all airports within Canada is based on the "peace, order, and good government" provisions contained in the preamble of section 91.\(^58\) This power also extends federal jurisdiction over inter-provincial communications and poses serious local consequences over issues such as the location of telephone lines, cables, and satellite transmissions.\(^59\)

Federal control over navigation and shipping is covered by sections 91(9) (Beacons, Buoys, Lighthouses, and Sable
Island) and 91(10) (Navigation and Shipping) and 91(2) Trade and Commerce. These sections place such vital planning decisions over the location and type of port facilities, harbour fronts and the passage of all shipping and boating traffic around a municipal area under federal control and beyond the reach of local planners.60

Subsections 91(29) (the residual powers) and provisions contained within section 92(10) jointly "assign jurisdiction to Parliament over what have become known as "interprovincial undertakings."61 Section 91(29) "confers on the federal government the power to legislate with respect to classes of subjects expressly excepted from provincial jurisdiction."62 As a consequence any new forms of interprovincial transportation or communication may fall to the federal government. Section 92(10) "is as important for what it excludes from the realm of provincial jurisdiction as for what it includes."63 While section 92 covers provincial jurisdictions, heading 92(10) places a number of specific types of "local works and undertakings" under federal authority and outside the control and influence of either the province and/or municipal authorities (Refer to Appendix 1 for a listing of local works and undertakings under federal jurisdiction). As Dalfen and Dunbar conclude, this is an extensive list noting that should an;
form an integral and necessary part of an interprovincial undertaking, that local undertaking will also fall subject to federal jurisdiction.\textsuperscript{64}

In a country as wide as Canada, this has afforded Ottawa a powerful source to influence municipal and urban affairs, since most communities were built either around, or connected by a railroad, port or telegraph, and later by an airport and/or telecommunications; all areas that fall under federal jurisdiction.

In addition to federal activity surrounding transportation and communication, the federal government is active in a number of other areas. Section 91(2A) allocating federal control over unemployment insurance, including control over Canada's manpower centres and the attendant employment and retraining activities, can have an important economic impact on a local area, particularly if it has been economically depressed (Refer to Chapter Five - Department of Immigration and Employment below).

Section 91(3) supports federal income tax policy and while tax increases or tax breaks are designed to attain national objective(s) they may indirectly affect municipal and urban affairs. For example a "provision in the Income Tax Act that allows businessmen to deduct the cost of employee parking, for example, may contribute significantly to traffic congestion."\textsuperscript{65}

Section 91(5) and federal control over postal service affects the quality of urban life and urban planning (see 
Chapter Five below re. Canada Post Corporation). Federal defense (91(7)) and penal establishments (91(28)) influence local areas through either expenditures made within a community where either a base or penitentiary is located, or through a number of non-monetary impacts ranging from aircraft noise to safety factors such as the possibility of penitentiary escapes (see Chapter Five below re. Department of National Defense).

Federal control over currency and coinage in section 91(14) and banking, incorporation of banks and the issue of paper money, in section 91(15), provides the federal government with authority over Canada's monetary policy. As this includes the control over interest rates, which has a direct affect on the housing market, the federal government can have a powerful impact over urban development and growth. However, this control is generally restricted to only its de jure elements for the de facto control resides in the Governor of the Bank of Canada, who operates independently of the government (although the government does have the authority to 'discuss' the actions of the Bank of Canada with the Governor, and indeed, it may even replace the Governor, federal governments have proven to be very reluctant to pursue this course).

Federal responsibility for natives and native lands contained in section 91(24) has become more pertinent to municipal government and urban affairs with the
proliferation of native land claims, desires for self government, as well as a growing native urban population. This can affect local government through alterations to the provision of municipal services as well as land ownership (See Chapter Five below Department of Northern and Native Affairs).

Federal authority over criminal law in Section 91(27) can have a significant impact on local government and urban affairs. In the case of Westendorp v. the Queen, a city of Calgary by-law designed to curtail street prostitution was found to be "unconstitutional in that it invaded the federal jurisdiction with respect to criminal law." This area can have a severe impact on a municipalities attempt to deal with local crime related issues. Such issues as street prostitution, gun control and most recently in Ontario, Lap Dancing are several areas that are concerns in major urban centres, yet they fall outside provincial, and consequently municipal, control.

Section 93 supports federal jurisdiction over Roman Catholic and Protestant educational rights. The federal government is only involved if "the rights of these groups under section 93 were encroached upon by the provinces. Under such circumstances, there could be an appeal to the federal cabinet, but if cabinet's efforts to right the situation were ineffective Parliament might enact "Remedial laws."
It is the support from these constitutional sources that a number of federal activities may indirectly intervene in the areas of local government and local, urban affairs. Federal intervention originates from two sources; the first source arises from the fact that the federal government is constitutionally mandated authority in a specific number of jurisdictions affecting the national interest and as such, it is essentially operating on the premise that its actions are national and not regional or local in nature. As a consequently while federal decisions are made on the basis of a nation, they may never-the-less affect municipal and urban affairs, and as such the tri-lateral relationship. For example in the national interest the federal government may close and consolidate two Canadian Forces Bases, while this may be in the national interest, the local area where the bases are located will be affected. The second source of constitutional support for federal intervention in municipal and urban affairs focuses on the federal spending power. Constitutionally the federal government is restricted from directly entering the areas of health and welfare; however, Ottawa was able to overcome this constitutional impasse by enter into these fields through the use of the spending power provisions contained within the constitution, the will came first, the means came second.

The indirect nature of federal intervention in
municipal and urban affairs allows the federal government an amount of constitutional freedom that is not open to the provincial governments. Indeed, constitutionally the federal government is free to either expand and enter into, or conversely contract and withdraw from, a number of fiscal arrangements with the municipal government. This is in addition to Ottawa's indirect activities that may intervene in municipal and urban affairs.

FEDERAL-PROVINCIAL CONCURRENCE AND THE MUNICIPALITY

Section 95 of the Constitution Act 1867, provides for federal and provincial joint, or concurrent authority over immigration and agriculture with federal paramountcy. Immigration decisions made at either the provincial or federal levels may have an important impact on local government, for it is in:

the cities and districts where people live and carry on their daily lives. It is here they require services to be provided at the local level, from education to police protection, and certainly our immigration policies have a dramatic effect of the requirements for those services which are provided and funded at the local level.69

In the Greater Vancouver Region, for example, the general rule is that it receives 70 percent of the immigrants to British Columbia. The immigration that does occur in this area is "encouraged by the presence of existing large immigrant communities since many immigrants are sponsored."70 Unfortunately for the Greater Vancouver Region, and many other municipalities/regions, immigration
policies tend to be made without municipal input at either the provincial or federal levels regardless of the fact that this level "will have to deal with the impacts from a settlement perspective, for example impact on housing, community relations, and the economy."\(^7\) The federal government provides a wide number of support services for new immigrants into the country in an effort to achieve a smooth transition into the local community (refer to Chapter Five - Department of Immigration and Employment below).

**MUNICIPAL GOVERNMENT AND THE CONSTITUTION**

Constitutionally neither the existence of municipalities nor their autonomy is guaranteed, only their position as a provincial responsibility is identified in the Constitution Act, 1867.\(^7\) Municipalities have found themselves in the unenviable position of living under total provincial control earning the title 'creatures of the provinces'.

This municipal 'reality' has resulted in a number of restrictions that they have come to live with. First, municipalities have no power in their own right and must therefore depend upon provincial willingness and support in order to function and maintain those powers that the province chooses to delegate to them. Secondly, as municipalities have only delegated powers, they can not in turn delegate those powers to other bodies "without express legislative permission unless they are powers of a
ministerial nature"; leaving little room to manoeuvre as a government. A third restriction placed on local government affects municipal by-laws and can lead to the annulment. Indeed, if it is ascertained that the by-laws were passed for improper reasons, or that irrelevant consideration were used that were either discriminatory or made in bad faith, or that the municipality failed to observe procedure or that the by-laws passed contravened federal or provincial legislation, the municipal by-law can be declared ultra vires.

However, while the municipality is highly dependent on the provincial government for its constitutional status and existence, the service and representational roles have "bequeathed a de facto security to municipalities' and they may be said to occupy a quasi-constitutional position vis-à-vis the provinces." Indeed, the Federation of Canadian Municipalities has been actively calling for enhanced constitutional status and powers. However a number of questions remain as to what degree of constitutional status the municipal level of government should receive and whether this would create and/or solve a number of the current difficulties that municipalities find themselves in today is by no means clear.

Conclusion

While municipal government makes a two-fold contribution towards the operation and management of a
nation and although its first contribution is political in nature, its strongest contribution appears to lie in its distributional role of public goods and services.

The history of federal-provincial-municipal interaction and interdependence revealed a relationship that developed as the Canadian population urbanized; as Canadians moved into the cities, government interest did also. The result was a dramatic increase in federal and provincial activity in the area of municipal and urban affairs (particularly following the Second World War), leading to a large number of programs and policies that brought all levels of government together. Indeed, as the history of the tri-lateral relationship revealed, as the relationship of interdependence developed and became firmly established; it did not do so only in a number of intergovernmental agreements, but also in the minds of the Canadian electorate.

The second part of Chapter Three examined the sources of constitutional authority which support provincial and federal activities in municipal and urban affairs. This examination illustrated the sources of constitutional support for direct provincial control over all the facets and operations of municipal government. This constitutional control allows the provincial governments to impose duties on local governments, generally in accordance with provincial objectives and not necessarily their own. The
analysis also revealed constitutional support for federal influence and *intervention in* municipal and urban affairs. While many federal decisions are made on the basis of national priorities and concerns, their impact is nevertheless translated to the municipal and urban level. Indeed, the constitutional support for the federal governments' activities provides it with the freedom to either enter into, or withdraw from, its activities that affect municipal and urban affairs without violating its de jure, though not necessarily its de facto, responsibilities.
Appendix 1

Section 92-10 of the Constitution Act, 1867 identifies the following areas as Federal in domain:
(a) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province:
(b) Lines of Steam Ships between the Province and any British or Foreign Country:
(c) Such Works as, although wholly situate within the Province, are before or after their Execution declared by the parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more Provinces.
Additionally, the Third Schedule of the Constitution Act 1867 must also be included which states:
Provincial Public Works and Property to be the Property of Canada.
1. Canals, with Lands and Water Power connected therewith.
2. Public Harbours.
3. Lighthouses and Piers, and Sable island.
4. Steamboats, Dredges, and public Vessels.
5. Rivers and Lake Improvements.
6. Railways and Railway Stocks, Mortgages, and other Debts due by Railway Companies.
8. Custom Houses, Post offices, and all other Public Buildings, except such as the Government of Canada appropriate for the Use of the Provincial legislatures and Governments.
9. Property transferred by the Imperial Government, and known as Ordinance Property.
10. Armouries, Drill Sheds, Military Clothing, and Munitions of War, and lands set apart for general Public Purposes.


3. Ibid., 182.


5. Ibid., see Chapter Three: Turn of the Century Reform Era, and Chapter Four: Cracks in the Foundation: The Pressures of Growth and Change.

6. Ibid., 4.

7. Dupre identifies governments as purveyors of “public goods,” or perhaps more accurately, “non-private goods”. It is an important property of public goods that they have “externalities” or “spill-over effects.” Now, it should be readily evident as a matter of common sense that “not all public goods are of the same scale. Scale implies both the geographic domain and the intensity or weight of the externality. A playground creates externalities which are neighborhood-wide in scope, while national defense activities benefit a whole nation—and affect many outside it. Thus for each public good there corresponds some ‘public’. J. Stephan Dupre, “Intergovernmental Relations and the Metropolitan Area” in Lionel Feldman, ed., Politics and Government of Urban Canada: Selected Readings, 151.

8. Ibid., 40.

9. As illustrated through economic analysis municipalities possess a positive or beneficial economy of scale in the distribution of public goods at the local level. The utility of municipal government in the distribution of public goods and services is underscored by the scientific assignment of public goods. The scientific assignment of goods holds that the responsibility of governing and its commensurate duties should be placed upon the level of government that is best able to effectively handle the task responsibly and efficiently. Refer Harry M. Kitchen and Melville McMillan "Local Government and Canadian Federalism", in Intergovernmental Relations Vol. 63 of Research Studies for the Royal Commission on the Economic Union and Development Prospects for Canada (Toronto:
10. A number of factors are considered in determining the appropriate level of government and the services and goods. These factors include the financial and physical capabilities of the different levels of government, the impact of spillover effects, the area to be serviced all need to be included as well as finding the lowest level of government that will have the lowest level of costs associated with the political decision-making process. For further information refer either J. Stefan Dupre, *Intergovernmental Relations and the Metropolitan Area*, 151-154; or, Harry M. Kitchen and Melville McMillan *Local Government and Canadian Federalism*, 216-218.


16. C.R. Tindal, S. Nodes Tindal, *Local Government in Canada*, 39. Many of these similarities owed their origins to the widespread influence of the 1849 Baldwin or Municipal Act of Ontario which mapped out in legislative form the design and parameters of municipal government. Central to this act was the responsibility it accorded to local councils over roads, municipal officers, taxing, justice, education and welfare; see C.R. Tindal, S. Nodes Tindal, *Local Government in Canada*, 22.


19. Ontario created an office of the Provincial-Municipal Auditor by 1897, and a Bureau of Municipal Affairs in 1917, but no full department until 1935. In 1935 Nova Scotia created a Department of Municipal Affairs, and in 1936 New Brunswick created a Department of Education, Federal and Municipal Relations. Manitoba established a Department of Municipal Commissioner by 1886, Saskatchewan in 1908, and Alberta in 1911, British Columbia established an Inspector of Municipalities in 1914, but did not create a full


22. Indeed, "many of these bodies were assigned responsibility for controlling municipal financing as well as jurisdiction in other areas such as zoning and assessment. As an example, the Ontario Railway and Municipal Board, created in 1906 primarily to deal with railway matters, was reconstituted as the Ontario Municipal Board in 1932. That same year, the Municipal and Public Utility Board of Manitoba, which had been established in 1926, was given responsibility for approving debenture issues and the Quebec Municipal Corporation was established., C.R. Tindal, S. Nodes Tindal, *Local Government in Canada*, 126-127.

23. A number of these bodies had originally been formed to regulate public utilities and their relations with municipal authorities. As a result of the financial difficulties of the 1930s, many of these bodies were assigned responsibility for controlling municipal financing as well as jurisdiction in other areas such as zoning and assessment. As an example, the Ontario Railway and Municipal Board, created in 1906 primarily to deal with railway matters, was reconstituted as the Ontario Municipal Board in 1932. That same year, the Municipal and Public utility Board of Manitoba, which was established in 1926, was given the responsibility for approving debenture issues and the Quebec Municipal Corporation was established. C.R. Tidal, S. Nodes Tidal, *Local Government in Canada*, 126-128.

24. For example, municipalities were now required to get approval of capital expenditures, or any cost outlays, that would require a loan to be taken out by a municipality., *Ibid.*, 130.


29. Ibid., 104.

30. Ibid.


32. Ibid., 128-129.

33. Ibid., 142.


37. Ibid., 146.

38. Ibid., 147-148.


41. In addition to the 29 enumerated heads of power in section 91 additional federal powers include the Peace, Order, and Good Government (POGG) Preamble, also known as the Emergency Doctrine; further federal authority outside section 91 includes section 56 (Federal powers of Reservation), 57 (Federal powers of Disallowance), section 92-10 and federal authority over various classifications of public works (Federal Declaratory Powers), 93 minority educational rights, section 94A federal control over Old Age Pensions, section 101 federal control over the general court of appeal, and section 132 regarding treaty agreements and obligations. For further reading and excellent classification of government jurisdictions refer to Garth Stevenson, The Division of Powers, 74-78, in addition to

42. Additional Sections include Section 92A, 93, 95, 109. Refer G. Stevenson, The Division of Powers, 75 - 78.


44. J. L'Heureux, Municipalities and the Division of Powers, 183.


46. Provincial governments are judicially restricted from delegating authority to a municipality that exist outside their own constitutional domain. This restriction is based on a number of judicial rulings which reviewed either i) different attempts by various provinces to delegate to a municipality control over areas that are outside its jurisdictional authority, or the actions of various municipalities which were ruled by the judiciary to be outside provincial jurisdiction authority and therefore were without effect. Refer Federation of Canadian Municipalities, Municipal Government in a New Canadian Federal System, 10 - 13; or J. L'Heureux, Municipalities and the Division of Powers, 183 - 184.


52. H. Kitchen, M. McMillan, Local Government and Canadian Federalism, 220.


58. This was based on the 1932 JCPC ruling in the case Regulation and Control of Aeronautics in Canada, 1932. In this case the JCPC ruled that the federal government possessed the authority to legislated over aviation as this was "a matter of such general concern to the whole body politic of Canada that it could be brought under Parliament's power of making laws for the peace, order, and good government of Canada." R. Knopff, T. Morton, P. Russell, *Federalism and the Charter: Leading Constitutional Decisions*, 86.


CHAPTER FOUR

FEDERAL-MUNICIPAL FINANCIAL RELATIONSHIPS

AND FEDERAL POWERS OF INTERVENTION

This Chapter will examine the financial dimensions of federal interaction with municipal government and will discuss the direct and indirect effects that federal-provincial taxation agreements, conditional and unconditional grants and transfers have on municipal and urban affairs.

Federal direct transfers to the municipality provide local government with an important source of revenue that supplements the revenue received from the provinces. However, the impact of the transfer of funds from the federal to provincial governments also extends to a number of its national programs which indirectly affect municipal government (these programs were originally designed to provide national standards across the country and include programs such as the Canada Assistance Plan and those covered by the Established Program Financing agreements, although they are currently being replaced by the Canada Health and Social Transfer). These national programs comprise the bulk of the federal indirect transfers that, while they are made to the provinces, ultimately affect municipal and urban affairs. These transfers affect a number of related programs that i) are operated by the municipality or ii) directly affect the quality of life in the local region. Common to all these programs is that they are national programs designed to
provide uniform standards to benefit all citizens. With the rapid political modernization of the late 20th century, these national programs have come to focus on the municipality as a key level of government that is both i) close to the majority of Canadians, and ii) a distributor of government services. Many of these programs, then, are based on Ottawa's superior fiscal capacities, provincial control over many of the areas associated with the welfare state, and the municipalities' distributional role. Consequently, when the federal government changes its funding for its national programs, it can have an impact on municipal operations. If the province is not willing to compensate for any decrease in funding, the municipality will be responsible for overcoming any difficulties that could arise. This chapter will therefore review the provincial-municipal financial ers from external sources have governments are not only an important source of revenue for the municipality, but they are also responsible for the redistribution of federal funds (originating from a number of national programs) that are in turn transferred to the municipality. However, it is first necessary to examine the nature of municipal finances, as this reveals the dependencies of the municipal government and its need for outside assistance.

Municipal Finances - An Overview

Since the early 1900's, the problem of internally generating a sufficient amount of municipal finances has
presented local governments with their greatest obstacle. As the cost of goods and services has increased over time, and in particular since the 1930's, municipalities have come under increasing pressure to raise more money to support a growing list of new programs demanded by the public. However, the provincial governments of Canada have generally restricted the municipality to a finite number of revenue sources, effectively denying local government access to "the autonomous tax sources which would allow them to collect the amount of monies they need." In response to this financial situation, and with increased demands associated with the 20th century for greater services and goods, Canada's municipalities were forced to turn to the provincial and federal governments for the funds they needed to fulfil their local obligations. Over time the "federal and provincial governments have gradually accepted greater responsibilities" in providing the necessary financial support in a number of fields including welfare and social support programs. Indeed, as early as the 1930's, Canada's municipalities (as represented by the CFMM) turned to the federal government in search of additional funding to meet their needs (see Chapter Two above).

Internal Sources of Finance

The property tax is the chief source of internal revenue generation for the municipality. Although this is the main source of municipal revenue, it is augmented by a variety of
other internal sources including amusement taxes and business
taxes\(^4\), licenses, fees, permits, fines and penalties, user and
developer charges.\(^5\) As transfers from external sources have
either decreased or levelled off during the recent rounds of
federal and provincial spending initiatives, internal revenue
generation has taken on a renewed importance, gaining:

expression through the recent growth of user fees,
the expanded use of developer charges and lot
levies, and the return on investment derived from
improved techniques of short term money management.
Particularly striking is the situation in
Metropolitan Toronto, where user fees account for
34\% of municipal revenues, almost as significant
as property taxes (35\%) and more important than
transfer payments (31\%).\(^6\)

However, while Toronto was able to generate 69\% of its revenue
internally, in 1990 the national average was only 54.3\%.\(^7\)
Even with the increased development of these internal sources,
municipalities are still dependent on transfers from the
senior governments.

**External Sources of Finance**

The remainder (45.7\%) of municipal revenues is provided
by the senior levels of government\(^8\), and the bulk of these
transfers originates from the provincial governments. "In
1990, local governments received $25,245.8 million in transfer
payments from the provincial governments, $522.0 million from
the federal government, and $656.8 million from government
enterprises."\(^9\) These transfers are made in the form of either
unconditional, (general purpose) or conditional (specific
purpose) transfers.
An unconditional transfer or grant is a transfer of monies from one level of government to another provincial transt to any use by the recipient government (including its use to reduce local tax revenues).\textsuperscript{10} The majority of unconditional transfers consist of grants in lieu of taxes on federal and provincial property. Other forms of unconditional transfers include "a variety of provincial to local revenue-sharing and equalization-type programs."\textsuperscript{11} Total unconditional transfers for the year 1990 from both the federal and provincial governments to municipal governments equalled $2,970.1 million.\textsuperscript{12}

The majority of all transfers from the senior to municipal governments are conditional or shared-cost transfers. A conditional or shared-cost transfer is the transfer of monies or tax-room from one government to another with the restrictions that the monies "must be spent in a particular way, such as for health, education or roads."\textsuperscript{13} An important category of the conditional grant/transfer is the shared-cost program which requires the recipient to "spend some of its own funds, over and above what it receives in the grant."\textsuperscript{14}

Federal to municipal cost-shared programs range from funding directed towards municipal airports to the restoration of historical sites. Many provincial to municipal programs include assistance for roads and support for mass transit operations, education and welfare programs. Total conditional
grants (including shared-costs payment grants) for the year 1990 from the provincial and federal governments to municipal governments totalled $23,454.5 million.\textsuperscript{15}

Although conditional grants are significant sources of revenue for the municipality, they come with a non-monetary price tag. As either the federal Parliament or provincial legislatures award a conditional grant, they impose their "own standards and conditions on the municipality, which then loses control of the area for which the grant is given."\textsuperscript{16}

Ultimately the municipality loses its ability to design and develop priorities that reflect the immediate region. Because of the continued weakness of municipal finances, municipalities have had little choice but to participate in more and more conditional grants and shared cost programs; consequently, their local expenditures have increasingly reflected the priorities of the senior governments.\textsuperscript{17}

However, this dependence on external financial support has further implications for the municipality than the distortion of municipal priorities. In today's climate of fiscal restraint the municipality has been forced to deal with the decisions of the senior governments as they downloaded their financial responsibilities onto the lower level of government in an effort to balance their own financial accounts. As the federal government decreases its financial commitments and support to the provinces in an effort to put its own financial house in order, the provincial governments
have similarly decreased their financial support to the municipality, exposing the municipalities' vulnerability to changes in external support. In some provinces these changes have triggered a number of similar alterations in provincial to municipal financial commitments and this is "one illustration of the effect that federal actions have on municipalities." 18 As the lowest order of government, the municipality is usually left to find a 'creative' solution to the downloading of the senior governments, or to reduce services and public goods.

The Federal-Municipal Financial Relationship

Although the federal government is not directly responsible for the financial status of municipal governments, through its myriad financial policies, programs and commitments, it is an active participant at the local level of government. The financial actions of the federal government can be classified into three general categories which are: i) tax-rental agreements; ii) unconditional grants; and iii) conditional or cost-shared transfers.

In these three areas federal actions have both direct and indirect impacts on municipal and urban affairs. Direct federal involvement includes transfers or payments from the federal government characterized by their straightforward impact upon municipal revenues. Federal indirect influence has a trickle down effect; it occurs when federal actions affect the funding levels of a third party (usually a
the growing demand of the electorate) it has since retreated from its once active level of financial support.

Even though fluctuations have existed, the overall federal transfers which were beginning to take their toll on the federal government's coffers. From this point it moved to restrain its transfers, with the introduction of the Electronic Funds Program (EFP) in 1977. The various restraints on the growth of transfers to the provinces, especially the EFP, have brought with it close scrutiny on the financial arrangements for the provinces.

While the federal government was financially active in the 1960's and early 1970's, it has since retreated, turning its attention to the growing demand of the electorate. The overall federal transfers, which were once active, have been reduced. The federal government's coffers have been strained, with the introduction of the Electronic Funds Program (EFP) in 1977. The various restraints on the growth of transfers to the provinces, especially the EFP, have brought with it closer scrutiny on the financial arrangements for the provinces.
payment for embassies and consulates, etc.). Total transfers in lieu of taxes in 1990 for both the federal government and its enterprises amounted to $409.7 million.25

Municipalities also receive a limited number of conditional grants from the federal government for specific projects although these grants are generally not very large per municipality. Examples of federal-municipal conditional grants include funding:

for the construction and operation of municipal airports, low-income housing programs, the financing of trunk sewers and water-supply projects, grants for land development for housing, the Neighbourhood Improvement Program, urban renewal programs, and the restoration of historic sites.26

Additional "federal grants are also given directly to local authorities when the province does not choose to pass through the grants under one of its own programs. These federal grants are for purposes such as...manpower programs, winter works programs, and assistance from the Department of Industry, Science and Technology."27 The infrastructure program marks a strong renewal of federal interest in the area of municipal government and it is indicative of the ease with which the federal government can actively intervene fiscally in the activities of municipalities'. Much of Canada's municipal infrastructure has been deteriorating and is in need of extensive repairs as the developments related to 20th century growth (from increased traffic flow to the greater demands of sewage treatment plants), have placed greater stress on it. Unfortunately, the local government is not
always capable of financing the scope of repairs independently and it requires senior government assistance, as advocated by the FCM. Federal direct transfers also represent one of the most visible areas of the federal-municipal relationship and they are a reflection of the current state of federal-provincial relations, an important influence on the tri-lateral relationship. For example, during cooperative federalism the federal government enjoyed a dominant position over the provinces and created a number of direct federal-municipal financial ties, including the Municipal Development and Loans Board (MDLB) in 1963. The MDLB was established to provide loans directly to municipalities for capital works programs.28 Conversely, during Double-Image federalism, in 1983 the province of Quebec successfully resisted a federal attempt to develop a direct federal-municipal Jobs Creation Program.29

Federal-Municipal Indirect Impacts

The federal government indirectly affects local government whenever it alters the funding of a federal program that i) affects the financial support of provincial programs active in municipal and urban areas which are assisted or supplemented with federal funds (for example, CAP or EPF); ii) affects the general consolidated revenues of an entire province (Federal-Provincial Taxation Agreements), or iii) affects the levels of its financial support of individuals (those receiving Unemployment Insurance or Canada Pension Plan
payments for example) causing some individuals to fall under the responsibility of provincial and municipal welfare programs. The federal government is indirectly active in municipal affairs through existing federal-provincial taxation agreements, unconditional and conditional/shared-cost grants as well as its commitments to fund pensions and unemployment insurance programs. Considering that federal transfers currently "play a large part in provincial financing, and provincial transfers are vital to municipal budgets"30, the potential for federal indirect impacts on municipal finances is further heightened.

Federal-Provincial Taxation Agreements represent a mutually beneficial form of tax harmonization between the federal and provincial governments and affect the general consolidated revenues of the provinces. These agreements allow the federal government to occupy and collect the monies generated from certain tax fields and then return the funds collected to the provincial governments.31 Through these agreements, the federal government is able to "maintain a dominant position in the income tax field"32 and it may make changes that benefit the fiscal policies of Ottawa at both the expense to, and detriment of provincial revenues. Such unilateral changes include the federal government's ability to force the harmonization of the tax base, a standardized rate structure, or both onto the provinces.33

Further federal influence extends over the collection of
personal income taxes. Since provincial personal income taxes are "levied as a percentage of the basic federal tax, changes in basic federal tax rate or base can affect provincial tax collections" and any revenue shortfalls that arise will affect the general consolidated revenues of the respective provincial governments. Due to the extensive dependence of municipalities upon provincial transfers, this trickle down influence can have an effect on the size of provincial to municipal transfers.

Federal unconditional grants also affect the general consolidated revenues of each province and they include federal support for Established Program Financing block funding agreements. Established Program Financing represents another example of a financial program which is an unconditional and tax federal to provincial governments that affects the latter's revenues. EPF was established in 1977 to stabilize federal commitments to the areas of health and education and represented a "major overhaul of the federal-provincial grants in aid. Three of the major conditional grants - hospital insurance, medicare, and post-secondary education - were consolidated into a single unconditional grant entitled the Established Programs Financing." The transfer of the monies from the federal to provincial governments is made through a combination of cash payments and tax points.

Since the mid-1980's, federal unilateral actions have
"imposed assorted restrictions that have significantly reduced entitlements"\textsuperscript{36} to the provinces. In addition, even though the value of the tax transfers will grow over time, in actuality federal cash transfers will decrease. "Current estimates suggest that in the presence of the freeze, federal cash transfers should fall to zero by the end of the decade."\textsuperscript{37}

At the municipal level, these changes to the levels of funding can have a very real impact. For example in the area of health expenditures, the Greater Vancouver Regional District is responsible for contributing 40\% of the costs towards hospital construction, while it has little opportunity to influence federal and provincial health care policies. Given that "the approach to health care taken by federal and provincial governments will inevitably affect costs for the region"\textsuperscript{38} it has little choice but to accept the decisions of the senior governments and find the required resources. A federal change in the amount it transfers to the provincial governments is but one method (in coordination with other actions) that the federal government may affect municipalities in the area of health. Canada's government administered health programs have greatly enhanced the role of the senior governments in the field of health, including hospitals and their construction.

In Post-Secondary Education, universities and colleges are major contributors to the local economy. As transfers are
decreased, they are forced to decrease expenditures and/or increase tuition costs, having an impact on the local economy. Due to municipal dependence on the provincial government for transfers in the areas covered by EPF, the impact of these federal changes to EPF can translate into an impact on municipal finances.

The largest and most important federal conditional grant program indirectly affecting municipalities is the Canada Assistance Plan. The Canada Assistance Plan (CAP) combined four major shared-cost programs in the area of social welfare; namely Old Age Assistance, Blind Persons Allowances, Disabled Persons Allowances, and Unemployment Assistance. Additionally it covers others who require public support such as "needy mothers dependent children, homes for special care, nursing homes, homes for unmarried mothers, hostels for transients, child-care institutions, work activity programs, and welfare for native people." Grants under CAP are matching and open-ended. Under CAP Ottawa is committed to contributing 50 percent of all provincial expenditures for assistance to person in need for welfare services, and these expenditures need only meet a few requirements to be eligible. While the provinces are free to choose their own rates and categories of assistance, they "must agree to meet adequately the basic requirements of the recipients, including food, shelter, clothing, fuel, utilities, household supplies, and personal requirements."
While made in the name of federal budgetary restraint, changes and/or freezes to CAP transfers have had a fiscal impact upon municipalities. The federal government has capped the annual growth rate of CAP transfer payments to the 'have' provinces stating that "the have provinces are better able to finance their own social welfare programs"¹¹, and consequently do not require additional funding. The municipality is invariably affected by federal changes to a program's financial support; especially since the provinces have generally passed any decrease onto the municipality. The municipality, often the administrator of a number of services that are eligible for CAP contributions, is then saddled with finding the required financial resources to maintain services and/or projects while lacking input into the decision making process.

As a result, when changes are made to the levels of funding, the municipality is left with several decisions to make. An area that has come under particular focus in the province of Ontario includes subsidized child daycare eligible for subsidization under CAP.¹² In Ontario in the mid-1970's "municipalities expanded their day care facilities when the province funded 80% of the costs. Here again, 1976 saw the province limit the funds for this service to a 5.5% increase, with municipalities locked into more rapidly expanding expenditures over which they had little control."¹³ Daycare and municipal contributions were to again be cut with
little or no notice given municipal governments. In the third week of July, 1995 the recently elected Progressive Conservative government announced that municipalities would have to pick up 20 per cent of the costs associated with the operation of day-care spaces, "something they have not budgeted to do."

The municipality will be left with the option of either replacing the lost financial support or cutting day-care spaces; "Eves (the Finance Minister for Ontario) has left it to the municipalities to do his dirty work for him."

Indeed, given that the provincial Ministry of Community and Social Services has cut its special municipal relief fund by 30 million dollars, the options facing Ontario's municipal governments are not promising.

The Canada Health and Social Transfer

The federal government announced in its last budget that it is replacing the Established Programs Financing (EPF) and the Canada Assistance Plan (CAP) with the Canada Health and Social Transfer (CHST). "Unlike the current system which is based partly on cost-sharing arrangements, CHST will be a block fund, like EPF. The new transfer will be provided through cash payments and tax points." The CHST "represents a new approach to federal-provincial fiscal relations marked by greater flexibility and accountability for provincial governments, and more sustainable financing arrangements for the federal government." This new block funding program represents a continuation of the recent
decreases of federal to provincial transfers that have been occurring over the past number of years (as discussed above). This change has signalled a strong federal intention to withdraw from these areas and allow the provinces greater control over their own areas, free from federal conditions.

Federal Commitments to Pensions and Unemployment Insurance

Changes in federal funding and regulations to the Canada Pension Plan as well as Unemployment Insurance support programs both have an impact upon provincial and municipal expenditures. For example, when the federal government sought to make changes to the regulations governing unemployment insurance, in particular eligibility requirements, in the late 1970's and again in the early 1990's it faced considerable resistance from "the provinces themselves, primarily over the greater welfare costs they expected because of tighter UI provisions." Sharing this increase in welfare costs are the municipalities who are also responsible for contributing to costs associated with welfare (depending upon provincial government requirements).50

Provincial to Municipal Transfers

Provincial control and dominance in municipal and urban affairs is reflected in the area of transfers and municipal finance. Indeed, this control is reflected in the size and types of provincial to local transfers as well as through its constitutionally supported controls over any decisions that pertain to municipal finance. The degree of municipal
dependency on the province for both financial support, as well as the control it holds over their financial activities is striking, leaving the municipality in a highly vulnerable position.

This provincial predominance is primarily reflected in the size of provincial transfers to the municipal governments. In 1990, local governments "received $22,245.8 million in transfer payments from the provincial government"\textsuperscript{51}, this is in comparison to the $522.0 million from the federal government (these figures represent direct transfers and do not include the impact of federal indirect financial transfers).

Provincial control (or municipal dependence) is further reflected in the type of transfer. Conditional grants, due to their nature, lend themselves to a greater degree of control than do unconditional grants which free the recipients to use the funds as they see fit. Indeed, as provincial transfers to municipalities are predominantly specific purpose, while only 90 percent specific purpose, 10 percent are general purpose,\textsuperscript{52} they represent "a major source of provincial influence on local decisions. By reducing the local costs of specific services, conditional grants may lead to greater expenditures in the favoured areas. The growth in the importance and number of conditional transfers has been seen as reducing local autonomy and distorting local priorities."\textsuperscript{53}
Specifically, conditional transfers are directed towards general government expenditures, the protection of persons and property, transportation and communications, health, social services, education, environment, regional planning and development, debt charges among others. These grants are dominated by "those for schooling, but grants for health and social welfare are also important. Transfers cover more than one-half of local expenditures on each of these three functions. Although their share of the specific expenditures is smaller (25%), transportation and communication transfers are significant for local budgets." For 1990 total provincial conditional grants (including provincial government enterprises) amounted to $23,171.1 million.

Unfortunately the extent of this fiscal dependence on the province places the municipality in a fiscally vulnerable position. As a consequence, municipalities have a justified concern regarding provincial unilateral decreases in their transfers in the name of fiscal restraint. Examples of vulnerability include the provinces of both Ontario and British Columbia which froze their contribution to shared cost programs due to province-wide budgetary restraint initiatives, leaving "the municipal sector out on a limb when attempting to budget for an ongoing responsibility."

The chances of significant improvements in provincial support to the municipality are unlikely given that the provinces themselves are having their own difficulties in
maintaining the existing levels of financial support from the federal government. This trickle down effect is yet another example of how federal actions can affect the municipality.

In addition to conditional grants, 10% of provincial transfers are unconditional. These grants consist of payments in 'lieu of property taxes' as well as a "variety of provincial-local revenue-sharing and equalization-type programs are in place." For 1990 provincial grants in lieu of property taxes amounted to $894.4 million (figure includes provincial enterprises).

**Conclusion**

Chapter Four examined the complex financial relationships that exist among the three orders of governments. Indeed, through the extensive and integrated nature of the federal government's indirect and direct financial activities, the federal government has become involved at the municipal level through both direct and indirect means. Its direct transfers to the municipality provide the municipality with important sources of revenue that supplement those funds transferred by the provinces. However, the federal impact also extends to a number of its national programs (that are designed to provide national, and uniform, standards across the country and include programs such as the Canada Assistance Plan); these represent an indirect federal transfer. This in turn affects a number of programs that are either i) operated by the municipality or ii) directly affect the quality of life in the
local region. The need for all three levels of government to work together to meet the needs of the population arises from the depth and availability of federal funds, provincial jurisdictional control over the areas in demand, and the need for the municipality to administer a number of the programs at the local level, reinforcing the tri-lateral relationship. Consequently, when the federal government changes its funding for these programs, it can have an impact on municipal operations, and unless the province is willing to compensate for any decrease, the municipality will be responsible for overcoming any difficulties that could arise.
1. In comparison to the provincial governments the federal government has a superior fiscal capacity in a number of areas. First it enjoys unlimited taxation abilities - 19(3) whereas the provincial governments are generally limited to direct taxation and royalties; in addition the federal spending power allows the federal government to spend in areas that it chooses.


4. The business tax is not allowed in all provinces and is an "additional tax on business at a rate on a stipulated percentage of the assessed value of the property"; C.R. Tindal, S. Nodes Tindal, Local Government in Canada (Toronto: McGraw-Hill Ryerson, 1990), 131.

5. Ibid., 134.


7. Canadian Tax Foundation, Provincial and Municipal Finances, 1991 (Toronto, Canadian Tax Foundation, 1991), 13:9. The citing of national averages and the internal generation of revenue by Canada's municipalities provides a useful benchmark for it informs us of not just the national average, but it also informs us of the medium figure whereby a number of municipalities tend to fall either above or below in terms of generating internal sources of revenue. The provinces of British Columbia, Alberta, Ontario and Quebec fall above the national income average and are generally referred to as the 'have' provinces as they are capable of generating a greater amount of revenue internally in order to provide a certain number of essential services. Similarly the municipalities located within these provinces are generally able to generate a greater amount of revenue internally, as for the example of Toronto. While this does not imply that they are free from needing provincial and federal financial assistance, they are still able to internally generate a greater amount of revenue than municipalities that are located in the provinces that fall below the national average. Indeed, these municipalities, operating on a lower economic base and income level, are generally not able to generate the same percentage of revenue as the municipalities located in the 'have' provinces, and as such tend to be more dependant on provincial
and federal financial support.

Of further importance to this information is the correlation between the provinces and municipalities that fall below the national average, generally, are, and have been, less likely to actively resist federal-municipal interaction, especially financially based transfers.

8. Ibid.


11. Robin Broadway, Paul Hobson, Intergovernmental Fiscal Relations in Canada: Canadian Tax paper No. 96 (Toronto: Canadian Tax Foundation, 1993), 75.

12. General purpose transfers include: (all totals are in millions of dollars) Grants in lieu of taxes from the federal government equalled $337.0, federal enterprises $72.7, provincial government equalled $415.8, provincial enterprises 478.6 and Other general purpose transfers from provincial governments equalled $1,666.0 for a total of $2,970.1. Canadian Tax Foundation, Provincial and Municipal Finances, 1991, Table 13.4, 13:10.

13. R. Broadway, Intergovernmental Transfers In Canada, 2.

14. Ibid.

15. Federal government conditional grants include: (all totals are in millions of dollars) General government $5.3, Protection of persons and property, $3.6, Transportation and communication, $28.1, Environment, $26.9, Regional planning and development, $2.5, Recreation and culture, $16.3, Other services, $102.2 and Federal enterprises $98.4, totalling $283.4. Provincial government conditional grants include: General government $48.3, Protection of persons and property, $54.7, Transportation and communication, $1,233.1, Environment, $600.3, Health, $2,763.8, Social Services, $1,599.3, Regional planning and development, $24.6, Education, $15,053.7, Debt charges, $854.5, Other services, $931.8 and Provincial enterprises $7.1, totalling $23,171.1. The combined total equal $23,454.4 million. Canadian Tax Foundation, Provincial and Municipal Finances, 1991, Table 13.4, 13:10.


23. In "1990 the federal government imposed a 5% ceiling on the annual growth of CAP contributions to the fiscally stronger (non-equation receiving) provinces of Ontario, British Columbia, and Alberta for a period of two years. The 1989-90 fiscal year was selected as the base year for establishing the ceiling on federal contributions. In 1991 the federal government extended the 5 percent ceiling to 1994-95." Canadian Tax Foundation, *Provincial and Municipal Finances, 1991* (Toronto: Canadian Tax Foundation, 1992), 7:2.

24. "All the equalization provisions were subject to an overriding limit or cap on total federal equalization payments, which were not allowed to rise above the 1982-83 figure by a rate of increase greater than that shown by the increase in gross national product (GNP) over the 1982 calendar year. The entitlements for the individual recipient provinces were reduced accordingly." Canadian Tax Foundation, *The National Finances, 1994* (Toronto: Canadian Tax Foundation, 1995), 9:10.

25. Federal Government Transfers equalled $337.0, and federal government enterprises equalled $72.7 for a total of $409.7 million. Canadian Tax Foundation, *Provincial and Municipal


28. Although it is no longer a departmental corporation, the board had $44.5 million in outstanding loans in 1993; Canadian Tax Foundation, *The National Finances. 1994*, 18:18.


31. Payments are received in uniform per capita payments which escalate automatically with the growth of the GNP. Refer G. Stevenson, *Unfulfilled Union*, (Toronto: Gage Publishing Limited, 1982), 136.


33. Ibid., 33.

34. Ibid.


36. Recent examples of federal restrictions include the '6 and 5' anti-inflationary program restrictions on transfers in 1983-4, in 1986-7 and in subsequent years, growth in EPF transfers were limited to the rate of growth of GNP less 2 percent (later it was increase to 3 percent), the 1990 budget froze EPF transfers at their 1989 levels for 5 years. Refer, R. Boadway, P. Hobson, *Intergovernmental Fiscal Relations in Canada*, 67.

37. Ibid.


41. R. Broadway, P. Hobson, *Intergovernmental Fiscal Relations in Canada*, 70.

42. A. Sancton, Social Service Delivery at Relevant Government Levels, in H. Symonds, H. Oberlander eds., *Meech Lake: From Centre to Periphery*, 77.


45. Ibid.

46. Ibid.


48. Ibid.


54. R. Broadway, P. Hobson, *Intergovernmental Fiscal Relations in Canada*, 73.


56. Total provincial government conditional transfers equalled $23,164.0 million, while total provincial government conditional transfers equalled $7.1 million for a total of


CHAPTER FIVE

FEDERAL-MUNICIPAL NON-CONSTITUTIONAL RELATIONSHIPS AND FEDERAL POWERS OF INTERVENTION

This Chapter will examine the federal government's extra-constitutional powers of intervention into municipal and urban affairs. It will reveal that the federal government has become a major actor in municipal and urban affairs through the fulfilment of its functional and administrative responsibilities as a national government. The nature of the federal government's functional and administrative influence on municipal and urban affairs is essentially centred around its impact on the economic viability and health of a municipal area. The federal departments that have the greatest potential to affect the economy of municipalities include the Departments of Transportation, Public Works, National Defense, Industry, Science and Technology and Immigration and Employment Canada; federal Crown corporations with influence include the Canadian National and VIA Rail, Ports Canada, and the Canada Mortgage and Housing Corporation; and federal regulatory agencies include the National Transportation Agency and the Canadian Radio-Telecommunications and Television Commission. In addition to its economic impact, the federal influence also affects the quality of urban life through such department as the federal department of Native and Northern Development, as well as a number of Crown corporations including the Canada Mortgage and Housing Corporation and
Canada Post Corporation. This chapter will also focus on the failed Ministry of State for Urban Affairs - an acknowledgment in Ottawa of its impact at the municipal level and the need to co-ordinate i) its own activities and ii) its activities with other affected parties, including the provinces, municipalities, and the FCM among others.

FEDERAL FUNCTIONAL ACTIVITIES

Ministry of State for Urban Affairs

During the 1970's, the federal government introduced a ministry with direct responsibility for municipal and urban affairs; the department was the Ministry of State for Urban Affairs (MSUA). While it was to last only eight years it represented the only direct attempt by the federal government to officially address its role in the area of municipal and urban affairs. Indeed, the establishment of MSUA reflected the height of federal-municipal relations and Ottawa's recognition of its need to "develop a coherent urban policy and to co-ordinate the urban activities of federal agencies and departments." Furthermore, the creation of MSUA represented an important attempt by Ottawa to develop and establish federal political legitimacy at the local level.

Federal impetus for the creation of a ministry in this area arose in large part from the recognition at the federal level of the need not only to address on a national level the pressures associated with urban decay in the city, but also the need to coordinate federal policy. This recognition
eventually prompted the Trudeau government to create two Task Forces to first study the area, (the *Federal Task Force on Housing and Urban Development* - the Hellyer Report* and the Lithwick Report, *Urban Canada: Problems and Prospects*) and secondly to develop an appropriate federal response. The federal government moved to create the Ministry of State for Urban Affairs (refer above to Chapters One and Three).

MSUA's mission was to coordinate and maximize federal policies, actions and resources (both financial and material) at the municipal level. To achieve its goals, MSUA originally attempted to pursue the role of persuader, bringing together different governmental bodies and co-ordinating policy at the local level. However this met with limited success and MSUA adopted a more aggressive strategy "attempting to increase its own sphere of influence by obtaining a direct role in federal programs affecting the cities." This too was unsuccessful and after only a few years of operation the department ran into severe difficulty. Other federal parties (federal departments) did not trust it and resented the intrusion it represented into their domain. It was perceived by the provinces to be either too weak in Ottawa to fulfil its mandate or as a threat to provincial integrity.

It came as no surprise when in 1975 and 1976 the structure was reorganized due to its inability to fulfil its mandate and the friction between it and other political actors, including other federal bureaucrats and ministers (see
Chapter Two above) as well as a number of provinces (refer to Chapter Three above). During its reorganization it was reduced to the point of merely responding to, rather than initiating, policy initiatives. The final dissolution of MSUA came in 1979. MSUA's demise arose from a number of factors including its inability to fulfil its mandate, friction with other federal departments and agencies (in particular CMHC and the Department of Transport - refer to Chapter Two, Bureaucratic Self-Interest above), and finally provincial resistance and suspicion that the federal government wanted to by-pass provincial governments and work directly with municipal governments (indeed, this provincial position was in keeping with double image federalism - see Chapter One above).

The federal government has never since made such a direct overture into the area of urban affairs, rather it has concentrated on using the levers that existed before MSUA was created, those of its own line departments, Crown corporations and regulatory bodies. However, given the growth of provincial resistance to federal-municipal ties exhibited within double image and compact federalism, this is to be expected.

Transportation Canada

The activities of the Department of Transportation represent a direct effect on municipal and urban areas throughout Canada. Indeed, this department wields extensive influence over the transportation infrastructure within an urban centre, in addition to its control and influence over
the transportation networks that connect these communities to the global market. In today's global economy the transportation system of a region/municipality has had a "substantial impact on a region's economy and livability."\textsuperscript{10} The quality and capacity of an area's port, air, and/or rail facilities to move products, commodities or people to other destinations has an important bearing upon the economic development and viability of an area.

In Canada, federal transportation authority can be grouped under three headings: i) the federal Department of Transportation; ii) the National Transportation Authority of Canada; iii) related Crown corporations (ii and iii will be examined below).

The federal Department of Transportation itself is divided into four operational groups; Aviation; Airports; Marine (essentially the Canadian Coast Guard); and Surface. All four operational groups affect urban and municipal areas through their functional mandates and regular duties. For example, the Aviation Operational Group is responsible for issues such as air traffic control, Canada's airspace, compliance with federal legislation and regulations, etc. The Airports Operational Group is responsible for providing financial assistance to various airports, airport facilities, and emergency response services. The Marine Operations Group has responsibility for port facilities across Canada (encompassing some 389 ports and harbours).\textsuperscript{11}
The Surface Operations Group is responsible for the transportation of dangerous goods by surface. In addition to these operational groups, the Policy and Co-ordination Group is responsible for overseeing the development of federal transportation policy and regulations. The effect of the Department of Transport's pursuit of cutbacks to rail services provides an illustrative example of the nature of its "impact on the economic vitality of communities. It is hard to imagine a more dramatic impact on Canadian communities than the threatened cutbacks to passenger rail service in Canada." A number of cutbacks materialized and were expanded to include commerce carrying lines, such as the eventual demise of the century old Crow's Nest Pass Rate Subsidies; this had an effect throughout western Canada reaching from Thunder Bay in the east to the port of Vancouver in the west.

Public Works Canada

Public Works Canada fulfil a number of important roles and responsibilities affecting the operation and liveability of many municipalities and urban centres throughout Canada. The diversity of its activities affects both the financial position of a municipality (through transfers) as well the development and maintenance of a region's/municipality's economic infrastructure.

The department's numerous duties include its general responsibility for the management of the real property of the
Government of Canada including custodial responsibility for federal offices, certain bridges, highways, dry docks, dams, and one canal lock. Its second function is as a service agent with responsibilities for architectural and engineering services, the provision of real estate services concerning federal property, and property management services.¹³

Key additional departmental responsibilities involve the maintenance and development of regional infrastructure. To fulfil this function the Department of Public Works has three sections, the Marine Works, the Air and the Land Transportation Sections. The Marine Works Section provides a number of services, many centring around the maintenance of harbour facilities for both pleasure and commercial craft.¹⁴ The Air Transportation Section is responsible for airport facilities ranging from passenger terminals to runways to parking lots. The Land Transportation Sector provides specialized services relating to highways and bridges.¹⁵

Also falling under the responsibility of the Department of Public Works is the National Capital Commission which directly affects the National Capital Region of Ottawa/Hull. Through its control over federal buildings, properties and lands that dominate the Ottawa/Hull region, it has become a significant participant in the regions planning and development.¹⁶

In addition to the above duties, the Department of Public Works is also responsible for the administration of the
Municipal Grants Program through its Real Estate Services Section (discussed above). In many areas and in many respects the Public Works Department and the Department of Transport are closely related in that their responsibilities and activities can have an important impact upon a municipality's economic vitality.

Department of National Defense

The Department of National Defense (DND) affects a number of urban centres across Canada through the direct operation of Canadian Forces Bases and/or its extensive procurement programs. While all decisions relating to Canada's military clearly fall within the federal domain, the operation of a Canadian Forces Base (CFB) has an important impact upon the local community(s). The recent series of federal budgetary decreases in military expenditures (the combination of deficit reduction goals and the end of the cold war) has resulted in a number of military base closings. The closing of CFB Chatham is an example of the impact a closing can have on a local community. Presently the base "pumps more than $40 million a year into the local economy in wages alone,"17 and this figure is magnified by the spinoff or multiplier effects. In an attempt to offset this loss, the federal government has set up a $9 million grant to assist the community in attracting new business(s) to the area, regardless of whether the existing base facilities are utilized.18 However, the base closing will still represent a serious loss to the local
economy.

The impact of the DND extends beyond the direct operations of CFB's to include the department's extensive procurement programs. A major orientation of the DND's procurement policy "has been to enhance Canadian economic development and growth through the use of industrial benefits" through the discretionary awarding of defense contracts.

The scope of military expenditures is heightened by their size, especially when they include a large capital project, usually located in an urban centre. Recent examples include the well documented case of the CF-18 service contract. The awarding of the contract to a firm in Montreal represented economic benefits for the local economy of between $1.2 -1.8 billion over an extended period. Additional major DND procurement programs include the Long-Range Patrol Aircraft and the Canadian Patrol Frigate Program. The size and maintain their wo contracts offers a number of economic benefits for a local community and its impact is similar to that of CFB's on the local community affecting the quality of urban life by affecting its economic health.

**Industry, Science and Technology Canada**

The primary impact of the Ministry of Industry, Science and Technology (ISTC) is the economic influence of its investments in the development of various industries, sciences, and technologies. Through the infusion of federal
monies the ISTC affects the economic development and viability of a number of communities across Canada.

The mission of ISTC includes the encouragement, development and promotion of Canadian indigenous industry and science. In particular its focus is on supporting the efforts of Canadian business - particularly small- and medium-sized business - to expand their domestic and international sales. Various programs at the department's disposal include projects such as the Technology Outreach Program or the Advanced Manufacturing Technology Application. These programs are just two of an extensive list of programs that the federal department operates which provide both financial support as well as information and advice. Thus the ISTC has an indirect and extensive impact on municipal and urban affairs through its influence on issues based on

Department of Indian Affairs and Northern Development

Federal jurisdiction over aboriginal land claims and self-government can have an important effect on municipal and urban affairs. The issue of land claims and municipal jurisdiction rose to national attention several years ago as the Mohawk natives at the Oka reservation and nearby Kanesatake and the municipal government of Oka located west of Montreal came into conflict. The struggle focused on a Mohawk land claim to an ancestral burial ground where the local municipality wanted to build a golf course. As the issue involved an aboriginal land claim it also involved the federal
government. After an unfortunate incident the issue became a tense standoff ultimately requiring federal military action (and eventually political action with the federal commitment to purchase the lands in dispute). However this was only after extensive disruption to both the immediate community as well as Montreal.

While this is an extreme case involving violence, numerous other land claims within municipal boundaries exist. Unfortunately for municipalities, any settlement agreed to by the federal government does not require their approval even though it may have a significant effect on municipal life and urban affairs.

The second issue which involving the Department of Native Affairs and Northern Development includes the issue of local self-government and the aboriginal off-reserve population. Presently "three out of four aboriginal people now live off-reserve", with a large portion living in urban areas. One proposal relating to self-government postulates that the urban aboriginal could exercise control over:

- the delivery of services to their own constituency...Aboriginal people in urban settings could easily take over the administration of specific services that are intended for them. Or they could create new institutions to deal with previously unmet needs. The goal in each case would be to provide more effective services to their own population.

An example "currently exists in Vancouver, where U.R.B.A.N. co-ordinates the funding and activities of up to sixty service delivery agencies." This form of parallel government would
certainly require accommodation by the local government. This would of necessity involve the federal government due to its constitutional responsibility over native affairs.

**Immigration and Employment Canada**

This department is responsible for the implementation of all federal policy decisions regarding immigration, employment, and unemployment insurance. As of 1993 the federal government had 503 Canada Employment Centres and 117 Canada Immigration Centres throughout Canada. Under its employment operations the department is responsible for a number of programs ranging from helping individuals to find work by offering programs on job search techniques, to retraining programs. Under its Unemployment Insurance division the department administers financial aid and income support programs as well as a work sharing program to minimize layoffs and a job creation program. For example its Job Creation program allows individuals eligible for unemployment insurance to maintain their work skills by working without suffering a loss of benefits. Various organizations and business may submit proposals, including a municipal government, if the provincial government raises no objections.

The immigration division is responsible for the introduction of immigrants into the local community. In this area the department runs a wide variety of programs that are designed to assist an immigrant acclimatize to their new
environment. In this regard the department has a number of programs ranging from the Settlement Language Program providing up to 500 hours of language instruction, to the Immigrant Settlement and Adaptation Program designed to provide a variety of settlement services to help immigrants successfully adapt to life in Canada.\textsuperscript{32}

In both the areas of employment and immigration this department administers a variety of programs that affects both the economic health of a community through its unemployment programs, as well as shaping urban life styles through its programs to assist the entry of new immigrants into both Canada, and the local community.

\textbf{Crown Corporations}

Since their inception, Crown corporations have allowed all levels of government to further their goals in specific areas by utilizing the unique advantages inherent to the Crown corporation.\textsuperscript{33} A number of federal Crown corporations have affected municipal and urban life and include the Canada Mortgage and Housing Corporation (CMHC); Canadian National Rail (CN Rail) and VIA Rail; numerous Port Corporations; and Canada Post Corporation.

The history of the Canada Mortgage and Housing Corporation dates back to 1935 and represents Ottawa's first move into the field of municipal and urban affairs. Indeed, the CMHC perhaps has had the greatest direct impact on this area of any other federal agency, including MSUA. It has
affected most areas of municipal planning by influencing a wide ranging number of planning issues.

The purpose of the CMHC is to "promote the construction of new houses, the repair and modernization of existing houses, and the improvement of housing and living conditions." To accomplish this the CMHC insures mortgage loans and guarantees mortgage-backed securities and makes funds available for public and co-op housing projects, loans to municipalities for the construction of sewage treatment plants, and universities and others for the construction of residences. In addition to a number of its financial roles, it actively administers federal social housing programs and carries out a variety of housing support activities designed to enhance the utility of housing and community planning through research, development and the dissemination of information, and to act as a policy advisor to the government."

Through its control over extensive property holdings, its active financial programs, and the variety of its non-fiscal activities in the area of research and co-ordination, the CMHC has played an active role in urban and municipal affairs over its 50 years of operation. Numerous examples of CHMC's actions and their wide-spread effects on local planning exist and include a number of joint federal-provincial-municipal programs that have had a lasting impact on municipal organizations affecting urban issues. As early as the 1950's,
the CMHC began to implement an urban renewal program "with the corporation splitting with the provinces the costs of acquiring and bulldozing slum areas on the condition that the cleared land be used exclusively for the construction of low-rental housing. The provincial governments tended to pass their share of the costs of this infamous bulldozer approach to urban renewal on to the municipalities."\textsuperscript{37}

The CMHC was also instrumental in developing the Neighbourhood Improvement Program (NIP) and its companion Residential Rehabilitation Assistance Program (RRAP). These programs superseded the old 'bulldozer approach' to urban renewal and sought to conserve and rehabilitate housing stock. As the program came to an end in 1978, over 478 areas throughout Canada had been designated for NIP assistance, each area having its own residents' planning committee.\textsuperscript{38} Although these programs only lasted a short time they produced a number of spinoff effects that "still persist. One of those consequences is the now common practice in many Canadian municipalities of involving area residents in local area planning processes... Another spinoff consequence was the formation of area-based community groups involved in all kinds of activities and programs beyond just matters of planning."\textsuperscript{39} Another impact of CMHC's actions is the much criticized phenomenon of 'suburbia' - single-family detached houses built on large lots on the outskirts of cities - has left a legacy ... of commuter traffic and expensive mass
transit systems."\textsuperscript{40} Toronto, Vancouver, and Montreal have all experienced this phenomenon. CMHC action has also worked to benefit municipal planning, for in one case the CMHC withheld funding until the residents of a local community, who initially opposed the local planning process, were brought into the planning process.\textsuperscript{41} While federal CMHC actions have affected municipal and urban affairs directly, the federal and provincial governments have also worked jointly on a number of areas including the assembly of land and the construction of housing projects. Although federal housing activities have at times been a source of conflict, they have also been a source of cooperation between the two orders of government including the joint assembly of land for housing construction among other areas. Even still, there is "considerable suspicion among provincial governments regarding direct federal-municipal relations."\textsuperscript{42}

The two rail Crown corporations, Canadian National Rail and VIA Rail, have played a significant role in urban areas thereby providing vital economic links connecting one community with others. CN Rail is responsible for national freight transportation ranging from grain to intermodal cargo transportation reaching into the far corners of Canada. However, as CN Rail moved in recent years to rationalize its operations, it has reduced its service on a number of rail lines. For a number of remote communities, the effect was traumatic as they had to search for an alternative means to
remain not only connected to the economic market, but also to remain competitive.

CN Rail also has an extensive impact upon municipal planning due to its large land holdings as operated through CN Real Estate. As a large number of communities in Canada were formed along, and around railway lines, control over these lines and any related property holdings has made CN Rail a major actor in the local planning process. The development of the Toronto Railway Lands by the City of Toronto is an example of CN Rail's extensive land holdings and without whose participation and willingness, the development would not have advanced.

VIA Rail provides vital passenger service that connects many communities cheaply and efficiently, allowing commuters to move outlying urban areas to larger urban centres, influencing tourism through its fares and special packages, as well as connecting business people from one urban area to another (the Windsor-Quebec Corridor).

Ports Canada covers the operation of 15 ports in total with seven ports operating as autonomous corporations while the remaining eight are classified as non-corporate ports directly operated by Canada Ports Corporation. Nearly half of all Canadian port traffic and more that 95 percent of container traffic is handled by these ports,43 supplementing the approximately 400 ports operated by Transport Canada. In addition to operating and maintaining the port facilities,
Ports Canada is also responsible for the implementation of national port policy. Specific port corporations include the Halifax Port Corporation, Montreal Port Corporation, Saint John Port Corporation, St. John's Port Corporation, the Vancouver Port Corporation, and the Canada Harbour Place Corporation (in Toronto). The effect of these corporations is related to the health of Canada's key ports that service international shipping companies and products. The different Port Corporations service and maintain the related port and harbour infrastructure. The maintenance, type of cargo facilities and capabilities of each Port Corporation have a significant impact on the local and regional economies.

Canada Post Corporation plays a significant role in affecting the quality of life in the municipal setting. The decision by Canada Post to halt door-to-door delivery for all new home construction, as well as the privatization of post offices, affected the quality of life in the municipality. An additional impact of Canada Post is through its control over the location of its postal offices. Indeed, the location of a postal office can have an effect on pedestrian and traffic flows, commercial development (including both retail and office), parking and commercial and retail rental rates.

**FEDERAL REGULATORY BODIES**

The federal government also affects municipalities through its various federal regulatory bodies which include the National Transportation Agency of Canada and the Canadian
Radio-Television and Telecommunication Commission.

National Transportation Agency of Canada

The impact of the National Transportation Agency of Canada (NTA) upon municipal operations is based upon its responsibility for the economic regulation of all aspects of the transportation sector throughout Canada that fall under federal jurisdiction; this includes air, rail, water, and commodity pipelines.

The authority of the NTA reaches into urban areas through its monitoring and regulatory function over the operation of all rail lines as well as the licensing (and route control) over air carriers operating in Canada. This control over key transportation links connecting different centres can have a serious impact upon a community's economic vitality.

For example, as a number of railway branch lines have been severed, various communities have undergone severe economic strain as they have had to re-adjust to the loss of their rail link to the larger markets.44 Through the NTA's Market Entry Program (control over licensing and rail certification), its Subsidies Program (to support transportation services that may be deemed uneconomical yet desirable to continue), or its Rail Network Rationalization Program (regarding the abandonment of rail lines),45 it is in a strong position to influence the continuing servicing of these rail links among different communities and in some cases, their economic survival.
Canadian Radio-Television and Telecommunications Commission

Through the Canadian Radio-Television and Telecommunications Commission (CRTC) the federal government extends its control over communications into the municipal and urban domain. Federal jurisdiction over inter-provincial communications "can have serious local consequences in the form of the location of telephone lines." ⁴⁶

CRTC regulatory control extends over broadcasting, cable T.V., and telecommunications. In the area of broadcasting it has primary responsibility for the licensing and regulation of broadcasting stations (including both radio and television). Regulations over the telecommunications industry include the telegraph and telephone companies. While its primary focus is on rates and the licensing of cable companies (which are tied to the quality of the system and can be associated with the quality of urban life issues) it is also responsible for establishing regulations and control over "the placing of physical facilities" ⁴⁷ in urban areas.

Conclusion

Chapter Five examined the functional and administrative relationships that exist between the federal and municipal governments. This examination demonstrated that the federal government has become a major actor in municipal and urban affairs through its departments, Crown Corporations, and its regulatory activities, in addition to its financial and constitutional ties as well. The principal impact of these
departments, corporations, and agencies has been on developing, maintaining, and enhancing the economic vitality and survival of Canada's municipalities. The Departments of Transportation, Public Works, Crown corporations such as CN Rail, Via and the various Port Corporations, as well as the National Transportation Agency hold extensive control over the transportation health of a community's infrastructure; in effect its economic lifelines in today's global economy and just-in-time production systems. The Departments of National Defense, and Industry, Science and Technology, through either their procurement policies, or investments strategies, have influenced the economic health and well being of many municipalities. Employment and Immigration Canada, through its retraining of the work force and duties of introducing immigrants to Canada also affects both the economic health as well as the quality of living in the local community. The Department of Northern Development and Native Affairs, and the Canada Mortgage and Housing Corporation also have an impact on the quality and style of living in the local setting. The CMHC, as one of the first corporations to enter the municipal domain, has had extensive influence over both the direction and the type of community that will exist in a given area. In addition both Canada post and the CRTC occupy central positions affecting the field of modern communications, influencing both the economic function as well as the quality of living in a municipality.
It is through these functional and administrative dimensions of the federal government that it is able to influence the direction of municipal growth and health. Given the extensive nature of these commitments in urban areas across Canada, the reach of the federal government goes both far and deep across the country. These relationships comprise not only the bulk of federal activities affecting municipal and urban affairs, but also an important dimension of the federal government's contribution to the tri-lateral relationship.
1. In light of the recent reorganization of federal departments after the Charlottetown Accord, the federal departments, Crown corporations, and regulatory bodies identified will be those in existence prior to the recent federal re-organization.


3. A number of pressures have been associated with influencing federal interest in developing an urban policy. In addition to those forces identified in the industrialization and urbanization section in Chapter Two above, additional factors include the urban riots in the United States during the 1960's, the appearance of a crisis in housing, rising inflation, additional factors and included the costs of suburban housing, such as land, servicing, building materials costs, and wages, had also moved rapidly upwards, opposition in some inner city areas to the bulldozing tactics of developers, all "converged to spur vigorous government reaction on the urban policy front." T. Price, The Rise and Demise of the Ministry of State for Urban Affairs, 3-4.


6. Ibid.


8. Ibid., 248-249; for additional details surrounding MSUA interaction with other federal departments and the provinces refer T. Price, The Rise and Demise of the Ministry of State for Urban Affairs, 11 - 25.


17. E. Finn, Defense Base closure devastates New Brunswick Community, in *In the Public Interest* (October 1994), 4.


28. Ibid., 200.


30. Ibid., 172-175.

31. Ibid., 175.

32. Ibid., 175 - 176.

33. As a public entity a federal Crown corporation is defined under the Financial Administration Act as "a corporation that is ultimately accountable, through a Minister, to Parliament for the conduct of its affairs." (Ibid. Paragraph 45,005). Of the three different classifications contained in the act (departmental, agency, or proprietary) it is the Agency Corporation which has had the greatest affect on the municipalities of Canada. Agency corporations are defined as having responsibility "for the management of trading or service operations on a semi-commercial basis or for the management or procurement, construction or disposal activities on behalf of Her majesty in right of Canada. Canada, Federal-Provincial Programs and Activities: A Descriptive Inventory 1992-1993, 4-1.


35. Ibid.


38. Ibid., 275.

39. Ibid.

40. Ibid., 108.


44. Ibid., 239.

45. Ibid.


CHAPTER SIX
THE FALSE PROMISES OF THE
CHARLOTTETOWN ACCORD
AND
CONCLUDING COMMENTS

Chapter Six will first trace the constitutional discussions since 1980 and will then evaluate their potential to alter the presence of the federal government in municipal and urban affairs; and secondly it will review the extensive nature of the trilateral relationship as developed and examined throughout this study. Although the Constitutional Round of 1982 and the Meech Lake Accord focused on a number of federal-provincial concerns, only the Charlottetown Accord directly addressed the area of municipal and urban affairs. The Chapter will review the provisions contained within Chapter Three of that Accord and evaluate the potential for the proposals to achieve "exclusive provincial jurisdiction" and a federal withdrawal from municipal and urban affairs.

The Constitutional Revisions of 1982, and the Meech Lake Accord

Although the constitutional amendments contained in the revisions of 1982 affected a number of areas in Canadian society, the changes did not deal directly with municipal and urban affairs. The Charter of Rights and Freedoms has, however, had an influence on the municipality through its impact on many municipal operations. This impact has affected all police forces across Canada and their enforcement of the laws; for example, the Charter's section 8 prohibits
unreasonable search and seizure, section 9 forbids unlawful detention or imprisonment and section 10 ensures the right to counsel; these are only several of the Charters provisions that have affected the police forces across the country. Municipal governments have also had to undertake the extensive process of reviewing their by-laws and statutes "with a view to bringing (their) provisions into line with Charter requirements. This process has focused on section 15, the equity section, which came into force on April 17, 1985." Most notably, this section has affected municipal hiring practices as the municipality must ensure that their hiring practices are free from any bias or discrimination.

While the initial goal of the Meech Lake Accord of 1987 was to gain Quebec's support for the constitution, its provision regarding the federal spending power could have had an indirect impact on the federal government's involvement in municipal and urban affairs. The Accord gave the provinces the right to opt out of any future shared cost programme(s) in an area of provincial jurisdiction provided that they developed programs that met federal objectives, and this could have curtailed direct federal expenditures at the municipal level. However, in comparison to the Charlottetown Accord's provisions focusing on the federal spending power, however, the provisions contained in Meech placed a modest "limit on the federal power to spend in areas of exclusive provincial jurisdiction."
The Charlottetown Accord

The Charlottetown Accord was the first constitutional round to specifically identify municipal and urban affairs as an area of "exclusive provincial jurisdiction" requiring federal withdrawal. However, the Accord's provision, contained in section 35, which recognized exclusive provincial jurisdiction over "municipal and urban affairs", would unlikely have had more than a limited effect on the de facto establishment of exclusive provincial jurisdiction over municipal and urban affairs.

Viewed in its entirety, the Charlottetown Accord contained a number of elements identified by Black in his Compact Theory (refer to Chapter One above). The importance of enhancing provincial fiscal strength and autonomy free from the federal government was primarily located in the Accord's provisions dealing with the federal spending power (section 25 in Chapter Three of the Accord). Provincial independence within their constitutional spheres, free from federal activity was evident in a number of sections throughout Chapter Three of the Charlottetown Accord (refer below). As emphasized in Black's Compact Theory, the Accord also dealt with the right of each province to be consulted on matters concerning the constitution - including the provincial veto - and this was contained in the Accord's Chapter Five, outlining a proposed amending formula. The issue of provincial representation in federal institutions - including the House
of Commons, the Senate and the Judiciary was addressed in Chapter II dealing with the composition and nature of federal institutions.

The Division of Powers and the Charlottetown Accord

The issue of constitutional powers was essentially agreed upon at the Multilateral Ministerial Conference on the Constitution in Montreal. At this conference, and within "one day, a huge list of powers had been tallied up." This list ultimately became the core of jurisdictions as listed in Chapter III of the Charlottetown Accord. The Chapter, entitled Roles and Responsibilities, recommended that changes be made to sections 55 to 57 (repealing federal powers of disallowance and reservation and restricting the federal declaratory power), 91 and 92 (specifying a number of new provincial headings as well as clarifying the relationship between the federal and provincial governments with respect to a number of powers already contained in section 91 and 92), and section 106 (affecting the federal spending power) of the Constitutional Act, 1867. The Accord called for changes to be made in the Federal spending power, immigration, labour market development and training, tourism, recreation, mining, forestry, housing, municipal and urban affairs, regional development and telecommunications, as well as two sections outlining a constitutional protection mechanism for future agreements regarding the division of powers and aboriginal rights and agreements.
While on the surface the Accord's dealing with the division of powers appears substantial, in reality its provisions would most likely only result in a modest adjustment and re-balancing of the federal and provincial government's duties and responsibilities. Indeed, the nature of the Accord's proposals appears to be indicative of both the federal government's response to the demand for more powers emanating from a number of provincial governments, including Quebec, Ontario, Alberta, and British Columbia; as well as a willingness in Ottawa to withdraw from a number of areas in which provinces are particularly sensitive to any federal presence.

Section 35 of the Accord proposed not only recognized 'exclusive provincial jurisdiction' over municipal and urban affairs, but it also called for the withdrawal of the federal government, at the request of the provincial government and that the transfer of any related federal funds be made to the provincial government(s). This section represented the Accord's most direct challenge to the tri-lateral relationship, and the role of the federal government. In addition to section 35, the Accord contained a number of other provisions that would affect the trilateral relationship. These sections included the provisions dealing with the federal spending power, immigration, labour market development and training, housing, regional development and finally telecommunications.
The Accord's section 25 proposed attaching a number of conditions to the Federal spending power. It stipulated that the federal government "must provide reasonable compensation" to a province that opts out of a program providing it "carries on a program or initiative that is compatible with the national objectives." Furthermore, it stated that if federal spending initiatives occur within the provincial domain, they should "(a) contribute to the pursuit of national objectives; (b) reduce overlap and duplication; (c) not distort and should respect provincial priorities; and dominance within the treatment of the provinces, while recognizing their different needs and circumstances." An amendment to section 106A(3) was to be included to ensure that these conditions did not limit any federal commitments as outlined in Section 36 of the Constitution Act, 1982, dealing with federal equalization payments to the provinces.

Section 27 related to immigration and indicated the commitment of the federal government to negotiate agreements with the provinces concerning immigration. "Such agreements would define the way in which responsibilities would be shared between the federal government and the agreeing province in this area of concurrent jurisdiction."8

Section 28 dealt with the important area of Labour Market Development and Training. In this section the federal government was to retain jurisdiction over unemployment insurance and related services including financial support for
job creation programs. However, labour market development and training were to be considered provincial jurisdictions and the provinces would have had the authority to restrain federal spending in these areas. Unique to this section was the recognition of the ongoing federal role in establishing national policy objectives, and its presence to ensure that the national aspects of labour market development would be achieved and maintained.

Section 33 covering housing and section 35 covering municipal and urban affairs were two areas that could have had a direct impact on federal participation at the municipal level. These two areas were recognized as areas of 'exclusive provincial jurisdiction' and the Accord sought to clarify this through an explicit constitutional amendment. The provincial governments were to "have the authority to constrain regional issueng that is directly related" to each area. These agreements were to be set in "justiciable intergovernmental agreements" as set out in section 26 of the Accord.

Section 37 involved the issue of Telecommunications and included committing the federal government to negotiate agreements to "coordinate and harmonize the procedures of their respective regulatory agencies in this field".

Evaluating the Potential Impact of Chapter Three on the Federal-Municipal Relationship

Compared to the other four chapters of the Accord, Chapter Three was the weakest of all the Accord's sections for
it did not produce a significant change in federal-provincial relations; rather this section was essentially an explicit recognition of federal-provincial realities. In all of the areas, either the federal government had already decreased its direct presence, in which case this chapter was merely either an acknowledgement of this occurrence or a recognition of areas that had already been generally established as areas of provincial domain.

Implicit in many of the sections contained within the Accord was the recognition of the fact that not all provinces object to, and resist, an active federal government. As was evident above, in the examination of provincial resistance to federal activities, not all provinces have sought to prevent federal activity in their domain. Indeed, the proposals attempted to strike a balance between those provinces that wished to maintain a federal presence within the province, and those that would have preferred the federal government to withdraw so that they could fully assume the lead role in the province.9

The Potential Impact of Section 35 - Municipal and Urban Affairs on the Trilateral Relationship

The Accord's recognition of exclusive provincial jurisdiction over municipal and urban affairs would have had a minimal effect in altering the existing relationships within the tri-lateral relationship. Indeed, "Canada's constitution makes clear that the provinces have 'exclusive' responsibility
for 'municipal institutions' (Section 92(8), Constitution Act, 1867). Municipal governments are the creatures of provincial governments\textsuperscript{10} and have no direct link with the federal government. In addition, the provinces also have, "independently of section 92(8), extensive jurisdiction over most matters with which local government is likely to concern itself."\textsuperscript{11} These controls affect not only municipal operations but also extend into all the primary dimensions of urban affairs (refer to Chapters Three and Four above).

Furthermore, while this provision would have recognized provincial jurisdiction, it would only take effect in specific instances if a provincial government requested the federal government to withdraw. However, the nature of federal involvement in municipal and urban affairs does not arise from the goal of directly influencing and controlling municipal operations, but rather it arises from the spillover effect of its actions as a national government. The focus of federal activity(s) is first directed at achieving broader national objectives, and not at affecting or directing municipal operations and particular urban issues and affairs (refer to Chapters Three, Four and Five above). The potential impact of section 35 was therefore minimized because i) it was merely a recognition of a province's direct operational control over municipal and urban affairs, and ii) it failed to modify federal government interventions in activities at the municipal and urban level.
Potential Impact of other Sections of Chapter III upon Federal Activity in Municipal and Urban Affairs

In addition to Section 35, a number of the Accord's provisions would have affected federal withdrawal from municipal and urban affairs. These areas included the Accord's provisions covering the federal spending power (section 25), Immigration (section 27), Labour Market Development and Training (section 28), Housing (section 33) and Telecommunications (section 37). While these sections added to the intent of section 35, their combined impact would still have been limited.

Section 25 (federal spending power) would have served to restrain federal spending initiatives in areas of provincial jurisdiction. This section could have affected a number of federal conditional grants designed for specific projects within a municipality. Indeed, this section would have allowed the provinces to force the federal government to constrain the exercise of any spending that is 'directly related' to these fields of exclusive provincial jurisdiction. Such fields would have included labour-market development and training, forestry, mining, tourism, housing, and recreation, as well as municipal and urban affairs.12

These conditional grants range from funds directed towards trunk sewers and water supply projects to urban renewal programs. However, prior to the federal infrastructure program, these funds were limited in amount and scopedominance withinsize of federal conditional spending represented the smallest levels of expenditures by the federal
government (refer to Chapter Four above). Indeed, for the infrastructure program to work under the section 25 proposals, the federal government would have had to work with the provinces and, providing a compatible program was offered, transfer the funds to those provinces that so desired. However, the restrictions that this section would have placed are somewhat limited in scope, "since in all other fields of exclusive provincial jurisdiction any restriction to the exercise of the federal spending power would only have been subject to a 'political framework'"\(^\text{13}\), a framework that was to be defined at a later date, and would allow the federal government room to mitigate the limitations.

Section 27 affecting Immigration (a concurrent jurisdiction) agreements was designed to clarify "which responsibilities would be shared between the federal government and the agreeing province."\(^\text{14}\) This change would have transferred immigration duties to those provinces that desired the responsibility of overseeing immigration. As suggested in Chapters Three and Five above, this could have decreased the effect of the federal influence on municipalities by limiting its role in immigration. However, the federal government could still play a role in national immigration and citizenship policy by its ability to determine entry qualifications and the effects of this section would therefore be somewhat limited.

Section 28 dealing with labour market development and
training could also have restrained federal activity through restrictions on its financial support in the "exercise of federal spending programs."\textsuperscript{15} regional issue\textsuperscript{e} the impact of affecting Canada Manpower centres and their attendant retraining programs. Although this could have curtailed the federal government in direct implementation of manpower training, (indirectly affecting the economic well-being of a municipality) the section still recognized "that there would be 'an ongoing federal role in the establishment of national policy objectives for the national aspects of labour market development."\textsuperscript{16} The federal government would therefore still retain a degree of indirect influence, albeit perhaps a lessened one.

Section 33 recognizing housing as a provincial jurisdiction could have had an effect on the Crown corporation CMHC. Although it is jointly involved with the provincial authorities, it presently answers to the federal government. Clear provincial jurisdiction over housing could have had an impact upon the CMHC and its considerable holdings, financial activities, and national research projects and services. This could ultimately, if requested by a province, lead to the provincial dismantling of the CMHC with some provinces taking responsibility while others might not.

Section 37 covering Telecommunications, could have streamlined and minimized federal decisions and regulations over the placement of any physical equipment related to
telecommunications. This would include items such as telephone poles, transmissions lines and related equipment within municipalities.

Conclusion

While the Charlottetown Accord sought to concede exclusive provincial jurisdiction over municipal and urban affairs (if requested by a province), in all likelihood it could not have overcome the constitutional and extra-constitutional realities of federal involvement in municipal and urban affairs. Although it could have forced a restructuring and redistribution of the CMHC to those provinces that desired it, limited the use of the federal spending power, limited federal influence over some aspects of immigration and manpower training, and streamlined federal regulations over telecommunications, it failed.

The extent and orientation of these federal intergovernmental ties and services prevented section 35 of the Charlottetown Accord from achieving its objective of establishing exclusive provincial jurisdiction over municipal and urban affairs. In order to achieve a constitutional arrangement that would satisfy the intent of the Accord, the removal of federal authority over numerous additional jurisdictions would be required. However, the degree of these changes would fundamentally alter the federal state as presently constituted and shift Canada into an extremely decentralized state.
CONCLUDING COMMENTS

The purpose of this thesis was to examine the tri-lateral relationship in light of the effects of the 20th century modernization of Canadian society and its effect on a federal withdrawal from its ties in municipal and urban affairs. Indeed, arising from a number of new pressures, including a federal government that is fiscally driven, Ottawa appears to be heading towards the undesirable, though practical and likely prospect on withdrawing from a number of its ties in the tri-lateral realtionship.

The progression of federal-provincial relationships, was illustrated through Mallory's federal-provincial model, and as supplemented by Black and Milne, the bi-lateral relationship has had an overshadowing influence on the tri-lateral relationship. When the federal government moved to exert its authority over the provinces, as in coordinate or classical, emergency and co-operative federalism, its actions were in turn mirrored in the tri-lateral relationship as Ottawa tended to be more active in developing its federal to municipal ties. During the dominance of co-operative federalism, the tri-lateral relationship underwent its most extensive period of growth, thrusting the federal, provincial and municipal governments into a number of interdependent programs and policies.

However, when the provinces resisted Ottawa's actions, as illustrated in the dualist or double-image and compact models
of federalism the federal government tended to retreat from its various commitments to the federal-municipal relationship. During double-image federalism, a number of provinces were able to challenge Ottawa's federal to municipal ties and began to modify the nature of the tri-lateral relationship by either forcing Ottawa to retreat from its direct programs or to include the provincial governments.

The general nature of provincial resistance towards federal-municipal relations appears to have centred around federal attempts to directly influence municipal operations, and in particular, when these attempts appear to bypass the provincial governments, they have met the greatest degree of resistance from the provinces. The nature of this provincial resistance has, and will likely continue to emanate from the stronger, larger provinces generally including British Columbia, Alberta, Ontario and Quebec as the remaining provinces remain generally less critical of federal actions.

However, unlike before, the federal government now appears willing to move away from its commitment to the tri-lateral relationship in a number of key areas, especially in terms of any financial commitments. Indeed, even though previous federal government retreats have never been total and over time the federal government has managed to maintain and establish itself at the municipal level, even as double-image and compact federalism held dominance within federal-provincial relations, it is currently changing away from this
past.

In addition to the influential role of federal-provincial relations, a number of social and political forces actively worked to drive the federal, provincial, and municipal governments into establishing and shaping the tri-lateral relationship. The most dominant of these forces centred around the rapid urbanization and industrialization of Canada in the 20th Century and represented a significant influence on all three levels of government. The ensuing modernization, associated with urbanization and industrialization, has in turn affected a number of social and political forces. These include the political search for electoral support and legitimacy as Canada's governments embraced Keynesianism and the rise of the positive state, and moving the municipalities to form their own special interest group, the CFMM, and later the FCM, in an attempt to direct municipal demands towards the federal government. Of rising importance is the influence of corporate capitalism and its ability to drive the federal government into its fiscally fixated policies, an important factor that appears to explain Ottawa's willingness to withdraw.

The relationship itself was comprised of an intricate number of financial and functional interdependencies. The federal government's control over interprovincial and international trade and communications, currency and international treaties, for example, has made it an integral
partner in the tri-lateral relationship. Evident throughout this study is the necessity that all three governments have been required to meet and work together, with each level of government providing a specific dimension to the relationship. The federal government provides both the funding as well as the control over national jurisdictions including transportation and communication networks; the provinces retain the constitutional control over a number of regional issues that involve municipal government and urban affairs; and the municipalities are crucial to the delivery of public goods and services.

The development of the tri-lateral relationship was revealed through the historical review of the tri-lateral relationship which illustrated the growing inter-activity and interdependence of all three levels of government, particularly evident during the post-World War II period. During this period all three levels of government entered into a number of agreements that came to form the basis of the tri-lateral relationship. These ties included a number of fiscal agreements, in particular those involving national programs that involve all three levels of government to implement, the federal government's functional responsibilities for a number of activities ranging from transportation and communication to national defense and native affairs as well as Ottawa's constitutional obligations over a number of issues such as the criminal code. These areas coalesced, creating the
interdependent ties of the tri-lateral relationship and the central role of the federal government.

The extensive nature of the tri-lateral relationship was challenged in a number of provisions contained within the Charlottetown Accord. While the Accord itself represented a distinct change to the governing of Canada, and was the only constitutional document proposing federal withdrawal from municipal and urban affairs, it was ultimately rejected, and in any event, would have had only a modest impact on the federal government's presence in municipal and urban affairs.

The Tri-Lateral Relationship and the Future - What's Next?

The future direction and shape of the tri-lateral relationship will continue to be largely influenced by a number of changes occurring within Canadian federalism and the federal-provincial relationship, as well as changes in social and political forces. Indeed, it is plausible to suggest that a federal withdrawal could be both a practical and likely, though undesirable, event and the tri-lateral relationship may undergo a number of modifications.

As the tri-lateral relationship has in the past, it will continue to reflect the ebb and flow of federal-provincial relations; and given that compact federalism is likely to continue as the dominant trend in federal-provincial relations, the dominance of the federal government as seen during co-operative federalism is unlikely to return. Rather, as a number of the provinces, particularly British Columbia,
Alberta, Ontario and Quebec continue to resist direct federal-municipal ties and pursue their attempts to increase their influence over federal decisions, the tri-lateral relationship is likely to undergo a number of modifications. Indeed, the relationship is likely to witness a decrease in direct federal-municipal ties; and of those direct ties remaining it is likely that these federal activities may either include provincial activity, or at a minimum, may have provincial approval before they are implemented.

In addition to this shift towards provincial strength in the federal-provincial relationship, a number of political forces (the search for electoral support and the orientation of the federal political parties) will modify the federal government's role in the tri-lateral relationship.

An important part of this shift towards the modification of Ottawa's role is the federal Liberal's successful search for electoral support by adopting and adhering to, a policy of fiscal restraint; one that is driving it to withdraw from the tri-lateral relationship. This commitment has included an active decrease in its financial support for a series of federal-municipal and federal-provincial programs. Ottawa's fiscal restraint is likely to continue and is likely to result in the continuation of the financial decreases in the amounts Ottawa transfers to either the provincial (for example the Canada Health and Social Transfer - CHST) or municipal governments. Federal decreases to the provincial governments
have generally precipitated a similar decrease in provincial to municipal transfers.

This weakening of the financial component of the tri-lateral relationship has served to modify the leadership role of the federal government. Unlike Ottawa's aggressive use of its spending power to initiate a number of national programs following the Second World War, it appears to be presently withdrawing from its leadership role, as based on its spending power. Indeed, as it is decreasing its financial support for a number of national programs, it is allowing the provinces a greater degree of autonomy in the use of federal transfers (see Chapter Four, Canada Health and Social Transfer above). This trend is likely to continue as the federal government focuses on its fiscal policy. A further indication of federal willingness to modify its role in the tri-lateral relationship arises from the orientation of the federal Liberal party's orientation towards a more decentralized federal structure, and an enhancement of provincial powers.

Indeed, this fiscal orientation is also affecting the functional dimensions of the federal government's departments, Crown corporations, and agencies as Ottawa is moving to downsize as well as sell off a number of its Crown corporations.

Of the three governments, the provincial position in the tri-lateral relationship is the one that is likely to be enhanced, while the position of the federal government will be
modified as its leadership role in the relationship is altered in favour of a greater degree of provincial input. However, it is the municipality, as the lowest and most junior government, that is likely to suffer. Indeed, it will not only lose an ally in the federal government, it will also suffer the loss of funding (either direct or indirect), and yet it will come under the increased political pressure to maintain a number of its programs.

In a country as wide and as diverse as Canada, and in a global economy, the loss of the federal government from the tri-lateral relationship would severely impede the economic and social development of Canada. Indeed, the changes that appear to be on the horizon could fundamentally alter the once extensive and established tri-lateral relationship and could well lead to a fundamental change to Canadian federalism and the Canada we currently know, and indeed, while it may be undesirable, it also appears to be both practical and likely.


4. All references to sections and contents contained within the Charlottetown Accord will be in reference to the Final Text of the Consensus Report On the Constitution: Charlottetown, August 28, 1992.

5. E. Black, Divided Loyalties: Canadian Concepts of Federalism, 149-170.

6. S. Delacourt, United We Fall: The Crisis of Democracy in Canada, 150.


13. Ibid.


15. Ibid., 90-91.
16. Ibid.
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John C. Cunningham was born in Toronto in 1961. After graduating from Queen's University in 1984 he pursued a career with the civil service for the City of Toronto, Department of Planning and Development, Commissioner's Office. His interests eventually turned to the fields of marketing and advertising and he entered the field working for a sports promotion organization. However, an opportunity arose in the area of his choice, as Riding Director for the Foxhunter Equestrian Centre. Following a career with the horses, he moved on to work at a thoroughbred stable as a successful stud handler, breeding and foaling. Through his riding career, he developed a love for teaching, and returned to university to attain a degree in teaching.

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