

**Canadian Federalism Uncovered: The Assumed, the Forgotten
and the Unexamined in Collaborative Federalism**

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Abstract

Canadian federalism has experienced pressure for change in recent years. By the end of the twentieth century, collaboration became the catch word and federations throughout the world, including Canada, witnessed an emergent movement toward collaborative governance, collaborative public service delivery, collaborative management and collaborative approaches to addressing social and economic issues. But even if the number of collaborative arrangements has grown since the 1990s, the understanding of the design, management and performance of collaborative arrangements in the Canadian federation remains weak. Accordingly, this dissertation argues that, in order to understand and open the black box of intergovernmental collaboration, it is necessary to put collaboration in a historical context and explore the roles of elites and political institutions in shaping intergovernmental collaborative practices. The role of the former provides the necessary complement of agency, while that of the latter represents a perspective that gives theoretical importance to political institutions. The integration of the two theoretical schools, elite theory and historical institutionalism, into one approach constitutes an attractive solution and offers the tools necessary to explore the complex processes of intergovernmental collaboration. The theoretical framework constructed in this dissertation is then applied to analyze whether the Agreement on Internal Trade, the Social Union Framework Agreement and the Council of the Federation can be considered in reality as examples of collaborative federalism.

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Introduction

Canadian federalism has undergone several changes in recent years. At the end of the twentieth century, collaboration became the catchword, and federations throughout the world have witnessed an emergent movement toward collaborative governance, collaborative public service delivery, collaborative management and collaborative approaches to addressing social and economic issues. Canada, like other federal states, has experimented with the collaborative menu. There have been calls for collaborative approaches to federalism that is characterized more by the principle of two orders of government working together in developing and implementing national policies than by either the Ottawa-led cooperative federalism of the post-Second World War period or the more competitive federalism of later periods (Cameron & Simeon, 2002). Collaborative federalism encompasses two main elements: (i) collaboration among federal, provincial and territorial governments, and (ii) collaboration between provincial and territorial governments. This dissertation will consider these two dimensions.

As collaborative practices gained popularity, it was assumed that collaboration within and across governments in the Canadian federation is of significant importance because the federal, provincial and territorial governments possess “strong fiscal and jurisdictional tools and that as a result of this interdependence, effective policy depends on coordination among them” (Cameron & Simeon, 2002, p.55). The significance of collaboration among provincial and territorial governments has also been based on the idea that national policies and standards in the areas of provincial jurisdictions such as health, welfare, and education are matters for provinces to decide together (Saunders, 2002). In addition, the importance of the collaborative model has been reinforced by the need for an alternative to constitutional change. In the wake of the failure of Meech Lake and Charlottetown, many intergovernmental issues such as the spending power and the jurisdictional responsibilities of the two orders of government were left unresolved. Recently, these issues “have been expressed as intergovernmental ‘Accords,’ ‘Declarations,’ and ‘Framework Agreements,’ rather than being enforced by the courts or represented in the constitution” (Cameron & Simeon, 2002, p.55).

A lively debate on the suitability and applicability of collaborative approaches to the Canadian federation has developed both in academia and among practitioners as this

phenomenon has lacked a conceptual framework and thorough understanding. The wide range of theoretical perspectives on the subject spans such diverse fields as political theory, political economy, public choice and economic theory, comparative federalism, and collective action where empirical and prescriptive analyses are entwined. The previous findings generally suggest that the collaborative approach is a remedy for destructive competition and the provincial race to the bottom (Harrison, 2006). This approach, it is held, advances the public good, increases trust and leads to better decisions (Bingham and O’Leary, 2008). Making collaboration a *modus operandi* between governments is therefore a forward-looking and savvy strategy that could herald a new phase of federalism (Gravelle, 2008). On the other hand, it has been argued that the fact that two or more governments reach agreement on a particular issue does not necessarily mean that the underlying social or economic issues have been effectively resolved (Bakvis & Skogstad, 2008). In collaborative federalism, federal and provincial governments manage the federation to serve their own interests (Katz & Mair, 1995), resulting in “the federal and provincial governments no longer being accountable to the public they are meant to serve” (Brown, 1983, p.630).

The motivation for this dissertation stems from the fact that even if the number of collaborative activities has grown since the 1990s, the understanding of the design, management and performance of collaborative arrangements in the federation remains weak. Yet despite the growing scholarship on collaboration as a whole, collaborative federalism has attracted little attention. What has been forgotten is that no theoretical framework can, by itself, explain the notion of collaborative federalism. The absence of a robust theoretical foundation for the analysis of collaborative federalism has resulted in the normative and ideological assessment of how this notion has been used and understood; it mostly has positive connotations. These prescriptive, preliminary and impressionistic analyses have led to intuitive and speculative conclusions. Researchers have rarely recognized the limitations of their theoretical models and assumptions or the need to carefully delineate causal mechanisms in order to open the black box of intergovernmental collaboration. In other words, the analysis of collaborative federalism has tended to be descriptive, declaratory, and prescriptive, rather than taking a more rigorous approach that requires posing questions, testing hypotheses and solving puzzles.

Thus, what has been unexamined is the role of political institutions and elites in the creation of collaborative practices. Previous research has not paid sufficient attention to the inherently asymmetrical power relations between the federal and provincial governments — relations that stand at the very centre of collaborative federalism. As a result, a significant knowledge gap persists regarding the exploration of the processes¹ and results of collaborative federalism. This gap is especially troublesome because governments at all levels are making substantial and increasing investments in collaborative arrangements without the knowledge to measure and understand the effectiveness of these efforts (Koontz & Thomas, 2006). Thus, much systematic research is needed to address these significant normative disagreements and to shed light on the notion of collaborative federalism. Approaches that focus on the behaviour of federal and provincial elites and on structural constraints and incentives in intergovernmental relations have considerable explanatory power. Accordingly, this dissertation attempts to address two key questions:

- 1) How has collaboration in Canadian federalism been defined and understood by academia and among practitioners?
- 2) How have the processes of collaborative federalism been shaped?

Specifically, this dissertation attempts to address four questions:

- 1) What is the role of the political elite in creating and guiding collaborative approaches to federalism?
- 2) What is the role of political institutions in shaping collaborative practices?
- 3) How have the power arrangements between federal and provincial governments played out in collaborative federalism?
- 4) Can the 1994 Agreement on Internal Trade (AIT), the 1999 Social Union Framework Agreement (SUFA) and the Council of the Federation established in 2003 (COF) be considered as examples of collaborative federalism?

With regard to the last question, the AIT, the SUFA and the COF were chosen as case studies because they are consistently portrayed in the literature as examples of collaborative

¹By processes is meant the ways in which federal systems come to orchestrate the financing and implementation of programs and policies involving two orders of government.

federalism. Thus, in the case of the AIT, it is held that the federal government, despite its constitutional responsibility for interprovincial and international trade, “has neither the power nor the legitimacy to define and enforce the Canadian economic union on its own. An alternative approach — to define the rules in the Constitution and make them judicially enforceable — was also impossible. Hence, negotiated intergovernmental collaboration became the only way to make progress on the issue of internal trade” (Cameron & Simeon, 2002, p. 56). Similarly, the SUFA is also portrayed as an example of collaborative federalism and put forward to demonstrate that Canadian governments can work together in a productive and civil fashion and that intergovernmental friction need not impair social programs designed to meet citizens' needs and aspirations (Cameron & Simeon, 2002; Dion, 1999). And it was in order to create “a new institution for a new era in collaborative intergovernmental relations” (Council of the Federation, 2004, p.1) that the provincial premiers, after intense debate on the nature and structure of the federal arrangement, agreed to establish a purely interprovincial Council of the Federation in December 2003. This particular initiative, it has been argued, holds some significant promise as a “renewed basis for more extensive collaboration among governments in Canada” (Rae, 2003, p.1), and these types of initiative are thought to have established a new direction: “The achievements of collaborative federalism — the AIT and the Social Union Framework Agreement chief among them — make it more likely that the procedure will be followed in the future” (Cameron & Simeon, 2002, p.68).

Collaborative federalism is generally agreed to be a complex process as it involves numerous socio-economic and political factors; accordingly, no single research project can adequately address all these factors. Rather, this dissertation attempts to examine the processes and results of collaborative federalism by four related approaches: (i) analyzing the historical events that led to the emergence of a collaborative approach to Canadian federalism; (ii) analyzing the role of the elite's struggle for power in shaping the collaborative approach to federalism; iii) examining the role of the institutional variables such as state structures, division of power, constitution/legal provisions and party systems; and (iv) reviewing three case studies of collaborative federalism in Canada.

The rest of the dissertation is as follows. Chapter one summarizes the available literature on the background of federalism in Canada and its evolution, challenges, changing

goals and priorities. This review of the literature also explores the emergence of a collaborative approach to federalism and the mechanisms and roles of the federal and provincial governments in this process. Chapter two outlines the theoretical framework for examining and explaining how collaborative federalism has been shaped in Canada. By incorporating the elite analysis and historical institutionalism, which is a brand of the new institutionalism framework, the resulting theoretical framework allows us to establish causal mechanisms and to explore the processes and results of collaborative federalism. A close consideration of the roles of both institutions and elites in shaping collaborative federalism is essential because the full understanding of collaborative federalism arises from the analysis of their interaction. The analysis begins with the consideration of elites and is followed by the analysis of institutions since it is through the actions of actors that institutions have an effect on the political collaborative results. This chapter also outlines the methodology that integrates the literature review and the theoretical framework and describes how three case studies on collaborative federalism will be explored. Chapter three analyzes and explains how the roles of the federal government and its provincial counterparts have transformed in the federation since the 1960s. In particular, this chapter sheds light on elites' divergent conceptions of the Canadian political community and of the elements that comprise its identity. This analysis illuminates the particular forces and courses of action behind this transformation that are essential to understanding the processes and results of collaborative federalism. Chapter four, five and six analyze the 1994 Agreement on Internal Trade, the 1999 Social Union Framework Agreement and the Council of the Federation respectively as case studies. The purpose is to analyze and consider whether these three cases can be regarded as real examples of collaborative federalism with respect to four factors of collaboration: authority and power; resources; activities and provision of services; and information sharing. Chapter seven concludes and lays out avenues for future research. It reassesses the notion of collaborative federalism and the ways in which the term 'collaboration' has been defined and used within academic circles and among practitioners. It also discusses the practical implications of collaborative federalism and postulates an alternative approach, through the application of elite analysis and historical institutionalism, for developing the collaborative arrangements in the Canadian federation.

1. Literature Review

This section reviews four streams of the literature on collaborative federalism. The first stream provides the information on the background and evolution of Canadian federalism necessary to understanding the emergence of collaborative federalism. The second stream contrasts the definition of the term ‘collaboration’ used in the literature on federalism with the definitions applied in the multidisciplinary literature on collaboration. The third stream provides an overview of the mechanisms and institutions of collaborative federalism that are crucial to understanding the implementation of collaborative practices. The fourth stream reviews the state of knowledge on collaborative federalism and identifies the knowledge gaps in the literature.

1.1. The Emergence of Collaborative Federalism

The Canadian federal system has changed dramatically since Confederation in 1867, and it continues to evolve in important ways. Federalism was adopted in order to manage Canada’s inherent cultural and regional diversity. It implies a form of governance or institutional arrangements and a set of enduring principles that form these arrangements. More precisely, Canada’s system encompasses all the elements essential to being a federation: a constitutionally established, two orders of government with genuine autonomy, the division of powers between the two levels, specified and independent revenue sources for each level of government, mechanism for intergovernmental relations; and representations of regions in central political institutions (Rocher & Smith, 2003).

Canadian federalism is embedded in a broader social, economic, institutional and political context. In other words, the institutions and processes of federalism can be seen as both responding to and being shaped by: (i) structural cleavages in the Canadian society (ethno-linguistic and territorial identities and material/economic base); (ii) the interests and ideas of provincial and national political leaders; (iii) the Constitution and the parliamentary system; and (iv) external factors such as globalization (Stevenson, 2004). In addition, federalism is based on the principles of autonomy, non-subordination, participation, heterogeneity, solidarity and interdependence between the two orders of government (Rocher, 2006).

In the two decades after the end of the Second World War, the intergovernmental agenda focused on the construction of the Canadian welfare state, in which the federal institutions played a major role (Rothstein & Steinmo, 2002). Even though many matters fell under provincial jurisdiction, the vision, policy design and funding for this project came mainly from the federal government (Banting, 1987). The federal government exercised this project by means of its main policy instrument — federal spending power² — and by shared-cost programs and conditional grants (Smiley, 1987; Van Loon, 1978).

During the 1960s, the country moved into a different phase characterized by a cooperative intergovernmental dynamic. Quebec's Quiet Revolution challenged traditional assumptions about Canadian federalism and gave rise to a strong nationalist movement within the province (Simeon & Robinson, 1990). These changes profoundly altered the intergovernmental agenda, placing the Constitution at its heart. In addition, the growth of the public sector at both the federal and provincial levels meant that governments were increasingly likely to “bump into one another in the execution of their mandates and in the pursuit of their political ambitions” (Simeon & Cameron, 2002, p. 51).

By the 1970s, a growing regionalism, particularly in the West, added to the pressure, and all provinces became less willing to commit to the federal leadership (Hale, 2001; Gibbins, 1994). The cooperative federalism of the 1950s was being gradually replaced by a more competitive dynamic. Federal-provincial conflict sharpened in the early 1980s as the federal government led by Pierre Trudeau challenged both Quebec nationalism and Western regionalism on the Constitution and energy policy (McRoberts, 1997). This conflict generated public debates over the appropriate vision for Canadian federalism based on the asymmetry, equality of the provinces, or nationalizing concepts. These debates divided the country regionally and posed difficult questions about the character of Canada's political communities and the role of governments in defining and shaping them (Simeon & Cameron, 2002).

In the mid-eighties, the Progressive Conservative Party of Brian Mulroney came to power and brought changes to intergovernmental agenda by promising a new era of federal-

²Spending power is “the power that allows the Parliament of Canada to make payments to individual Canadians, institutions or provincial governments for purposes outside its constitutional jurisdiction” (Bakvis & Skogstad, 2008, p.8).

provincial harmony and collaboration. The National Energy Program, for example, was dismantled, and provinces were closely consulted in the government's major policy initiative, the negotiation of a free trade agreement with the United States (Doern & Tomlin, 1991). Mulroney's major achievement was to secure the agreement of all Canadian governments to the 1987 Meech Lake Constitutional Accord and recognizing Quebec's distinct status within Canada (Cameron & Simeon, 2002).

The negotiations of the Meech Lake Accord were conducted in secret, among heads of government, with the public deliberately excluded. Even if the Accord was greatly supported by almost the entire political elite in Canada, it was defeated in 1990 as the result of public opposition (Watts, 1991). Two years after its defeat, another intergovernmental agreement, the Charlottetown Constitutional Accord, was also defeated in a national referendum. The upshot of these two events was the realization that fundamental constitutional change was not a feasible option. Political leaders and citizens turned away from such inherently divisive exercises to focus on finding solutions through nonconstitutional means (Vipond, 1993).

By the 1990s, changes in governments along with fiscal pressures also contributed to the shift in the model of intergovernmental relations. All governments began to address these fiscal concerns with a mix in varying proportions of cost cutting, revenue generation, privatization and efficiency measures (Greenspon & Wilson, 1998). Central to Ottawa's deficit-reduction strategy was what might be called the exercise of federal spending power in reverse (McIntosh, 2004). The federal government in 1995 substantially reduced its transfers to the provinces for social programs (a reduction from \$18 billion to a floor of \$11 billion, later adjusted to \$12.5 billion, in federal support for health care, social assistance and higher education). Federal transfers under these programs were rolled into the new Canada Health and Social Transfer (CHST). The effects of these cuts reverberated throughout the Canadian society because the provinces had to reduce the transfers to their health, social and educational agencies (Laurent & Vaillancourt, 2004). This reduction, in turn, pushed the provinces to re-evaluate their autonomy, their responsibility and their right to judge within their spheres of jurisdiction what was required to be done in terms of national and provincial interests (Madore & Blanchette, 1997). These were major developments, and they set the stage for the development of a complex notion of collaborative federalism. The next section will consider the various definitions of the term collaboration.

1.2. Defining Collaboration in Collaborative Federalism

It is essential to begin by providing a rigorous definition of collaboration. The subject has a substantial literature and is highly nuanced since collaboration is not a single concept but an “amorphous term that applies to a whole series of heterogeneous arrangements” (Gravelle, 2008, p.5). Despite the strong emphasis on collaboration for the past fifteen years, there is a lack of consensus as to its proper meaning, and the variety of definitions reflects the variety of theoretical perspectives.

In the literature on collaborative federalism, and also from the perspective of the federal government, collaboration is usually defined in terms of either two orders of government ‘working together’ or ‘acting collectively’, with no implication of a hierarchical dominance of one government over the other, or in terms of the ability of the two orders of government to conclude a collective agreement, in which ‘collective’ is seen more in terms of the particular group of signatories to the agreement as opposed to any results or whether all provinces have signed the agreement. For example, collaboration is defined as “the process by which national goals are achieved, not by the federal government acting alone or by the federal government shaping provincial behaviour through the exercise of its spending power, but by some or all of the 11 governments and the territories acting collectively” (Cameron & Simeon, 2002, p.54). In this context, the Agreement on Internal Trade and the Social Union Framework Agreement are considered as the major achievements of collaborative federalism.

Lazar (2006, p.29) defines collaboration as the process in which “the different orders of government are working together with little or no hierarchy in the relationship among governments.” This approach to federalism further advocates a collaborative type of interaction, one with each level of government acting as an equal partner in relation to the other. Accordingly, no level of government, be it federal or provincial, is to be considered “more important” or “superior” to any other in the development and implementation of policies and programs. Painter (1998, p.23) also points out that collaborative federalism involves “cooperation and collective action on the part of the governments to address common problems.”

The Auditor General of Canada (1999, p.10) also underscores collaborative federalism by pointing out a significant increase in the various forms of “collaborative arrangements” initiated by the federal government. The classification of arrangements as “collaborative” encompasses multilateral and bilateral regional agreements and is mainly based on whether the government “has delegated to a non-federal party significant management discretion in the delivery of federal public objectives” (The Auditor General of Canada, 1999, p.11). In this context, collaboration is equivalent to “cooperation between governments,” as Intergovernmental Affairs Minister Dion suggests (Dion 1999, p.60). He explains that “the Canadian federation is evolving towards greater cooperation and consensus-building, while still respecting the constitutional jurisdictions of each order of government, rather than towards extensive centralization in favour of federal government or extensive decentralization in favour of the provincial governments” (Dion 1999, p.60).

In addition, Noel (2000, p.7) outlines that “to collaborate and to cooperate mean roughly the same thing, namely to work together.” In Noel’s view, working together on a non-hierarchical basis implies that decisions are not determined through a chain of command. Even if all stakeholders may not have the same influence on the outcome, agreements are produced through mutual negotiations and adjustments rather than through hierarchy. When the collective outcome is automatically obtained and does not require mutual adjustments or negotiations, there is no need to collaborate. “In other words, cooperation, or collaboration, presupposes conflict. It is the ability to overcome conflict, to work together despite differences in interests or in perceptions, that is the true test of a collaborative approach to Canadian federalism” (Noel, 2000, p.8).

The literature on collaborative federalism can, therefore, be seen to define intergovernmental collaboration in terms of the ability of the federal and provincial/territorial governments to: i) co-chair meetings and work together on various policy issues without hierarchy, and ii) reach and sign an agreement. In addition, the definitions found in the literature on collaborative federalism do not identify the particular object on which the two orders of government should collaborate (Saunders, 2002). A non-hierarchical approach to collaboration stems out from the notion that “the equality between the provinces and Ottawa is underlined by the fact that most councils and meetings are co-chaired by a federal and a provincial minister” (Cameron & Simeon, 2000, p.83). However, Noel (2000, p.10)

highlights that the various collaborative arrangements proposed by the federal governments are non-hierarchical in the sense that they replace the “traditional logic of public administration by that of alternative delivery systems”. In this perspective, the absence of hierarchy only refers to the absence of a conventional chain of command. It does not mean that all partners are equal or have an equal say.

Thus, a note of caution is necessary regarding the looseness of the vocabulary and the broad definition of collaboration in the literature on collaborative federalism. In the case of the broad definition, it cannot explain the collaborative processes because it fails to identify the underlying factors and the mechanisms through which these factors shape collaborative results. In addition, the definition of collaboration in terms of the ability of governments to conclude agreements or co-chair meetings cannot alone explain the collaborative processes. Thus, in order to understand, explain and open the black box of intergovernmental collaboration, it is necessary to consider how the term ‘collaboration’ is defined and understood in the multidisciplinary literature on collaboration.

Gray (1989, p.5), for instance, applies the negotiated order theory to study the notion of collaboration. He believes that collaboration is “a process through which parties who see different aspect of a problem can constructively explore their differences and search for solutions that go beyond their own limited vision of what is possible.” In his view, collaboration is an emerging process that “restructures the socially accepted rules for dealing with problems and may restructure the rules governing how stakeholders will interact with respect to the problem in the future” (Gray, 1989, p.14).

Roberts and Bradley (1991, p.212) define collaboration in the terms of political theory as “an interactive process that is sustained, reflexive interaction among the participants.” It is regarded as the result of mutual interdependence necessitating “joint decision making and an agreed-upon set of norms and rules to determine action.” Collaboration has a trans-mutational purpose, defined as “a shared, goal-directed activity among the participants to fashion a set of raw materials (object, ideas, or social relations) into a developed product” (Roberts & Bradley, 1991, p.212).

Huxham (1996, p.8) argues from a collaboration theory perspective that the meaning of collaboration varies along three dimensions, “as an organizational form, as a particular structure, and as a ranging of ideological and instrumental purposes in order to pursue a

moral ideal or achieve some practical goals.” Cropper (1996, p.82) holds that collaboration implies “a positive, purposive relationship between organizations that retain autonomy, integrity and distinct identity.” Kukulska-Hulme (2004, p. 264) defines collaboration as a “philosophy of interaction in which there is an underlying premise of consensus building.”

Lincoln and Guba (1985) argue that an underlying assumption about collaboration is that the meaning and knowledge are co-constructed. Bryson et al. (2006, p.44) define collaboration as “the linking or sharing of information, resources, activities, and capabilities by organizations in two or more sectors to achieve jointly an outcome that could not be achieved by organizations in one sector separately.” Montiel-Overall (2005, p.40) similarly states that collaboration is regarded as a “way of a trusting relationship between two or more equal participants involved in shared thinking and shared creation of integrated instruction.” Through a shared vision and shared objectives, learning opportunities for the participants are created that integrate subject content and information literacy by co-planning, co-implementing, and co-evaluating partners’ progress (Koechlin & Zwaan, 2004).

Ostrom (1990), writing from the perspective of new institutionalism, does not use the term collaboration but speaks of self-organized collective action that can enhance the understanding of collaboration. For collective action to happen, it is required to solve three inter-related problems: the problem of “supplying new institutions” for collective actions, the problem of “credible commitment” and the problem of “mutual monitoring” (Ostrom, 1990, p.42). From an organizational behaviour perspective, Robbins (1997, p.174) highlights that collaboration means “satisfying fully the concerns of all parties in search for a mutually beneficial outcome. In collaboration, the behaviour is aimed at solving the problem and at clarifying the differences rather than accommodating various points of view.” Whetten and Cameron (1991, p.402) also believe that collaboration implies “an attempt to find solutions to the cause of the conflict that are satisfactory to both parties rather than to find fault or assign blame. Collaboration focuses on expanding the pie by avoiding fixed incompatible solutions rather than on strategies that divide up the fixed pie.”

The preceding review and comparison of definitions demonstrate that collaboration is a dynamic process and one that often is understood from a particular theoretical perspective. Despite the difference in the applied theoretical viewpoints, the definitions of the term given in the multidisciplinary literature demonstrate that collaboration entails much more than just

‘working together’ in the absence of a conventional chain of command to achieve a policy outcome, as it is commonly used in studies on collaborative federalism. In fact, the usage of the multidisciplinary literature suggests a need to go beyond the mere ‘working together’ as the meaning of collaboration. The comparison of definitions highlights the need to establish the definition and conceptualize the notion of collaboration in collaborative federalism. In particular, the multidisciplinary literature on collaboration allows us to discern four important underlying factors of collaboration: i) shared authority and power, ii) shared resources, iii) implementation of joint activities and provision of services to achieve collaborative results, and iv) information sharing. These factors will be used to construct a theoretical framework in the following chapter.

It is also surprising that in the literature on federalism, the terms ‘collaboration’ and ‘cooperation’ are often used interchangeably and that governments, because they work together, are thought in fact to collaborate and, therefore, to be able to achieve collaborative results. However, Himmelman (1996, p.19) draws sharp distinctions among cooperation, coordination and collaboration. Cooperation is “the absence of conflict; it is less formal, involves sharing information, may be short in term and present little risk.” Coordination is “the orchestration of people toward a particular goal. It involves a more formal and longer-term interaction, increased risk and shared rewards” (Himmelman, 1996, p.19). Collaboration, however, suggests a closer relationship, and the term co-labour can be used to signal the difference. On this view, collaboration entails a “new structure, shared resources, power, defined relationships, and communications. Collaboration involves creating, enhancing, and building on social and organizational capital in pursuit of shared purposes” (Himmelman, 1996, p.19).

In other words, the multidisciplinary literature points out the importance of distinguishing between cooperation, coordination and collaboration. Thus, there is a need to develop a theoretical model to shed light on the processes of intergovernmental collaboration through the incorporation of: i) four factors of collaboration: authority and power, resources, activities and information-sharing, and ii) the practical justifications and consideration of collaborative practices along the ‘cooperation, coordination and collaboration’ typology of intergovernmental relations. The introduction and application of this typology to the theoretical framework and case studies on collaborative federalism would make it possible to

develop a multidisciplinary approach to examining collaborative federalism and to draw valuable connections among public administration, political science, sociology and other disciplines. The next section considers the mechanisms through which collaboration is implemented in the Canadian federation.

1.3. The Mechanisms of Collaborative Federalism

Traditionally, intergovernmental relations in Canada are carried out in a wide array of institutions. These institutions and processes are, first, the constitutional division of powers between the two orders of government; second, the institutions of intrastate federalism that provide for the representation of constituent units within the central government and the management of conflicts between the two orders of government; and, third, the institutions and processes of interstate federalism through which the two orders relate directly to one another (Bakvis & Skogstad, 2008). Therefore, the federal balance is mainly a function of both the pattern of intergovernmental relations (interstate federalism) and the representation of constituent units in the central government (intrastate federalism). Intrastate federalism is weak in Canada because Canada lacks an effective second chamber of Parliament. One of the consequences is that the task of securing the federal balance falls mainly to interstate federalism, since most intergovernmental activity takes place between governments rather than within an intrastate body such as a senate (Simmons, 2008). In view of the purpose of this dissertation, the discussion will focus on the constitutional divisions of power and the institutions of interstate federalism.

1.3.1. The Institutions of Interstate Federalism

The increasingly important elements of intergovernmental relations are: (i) the forums of intergovernmental consultations and co-ordination such as First Ministers' meetings (FMMs) of Premiers and the Prime Minister, (ii) ministerial meetings, and (iii) interprovincial meetings of the provinces and the territories, in which the federal government does not take part. These forums often provide opportunities for intergovernmental collaboration, allowing politicians to circumvent constitutional rigidities and to respond more directly to societal demands and problems (Simmons, 2008). However, when the stakes are higher, political elites may not be so willing to compromise, and these forums can become

venues for intergovernmental competition. This dysfunctional feature of collaborative federalism has been promoted by the centralization³ of intergovernmental relations within the first ministers' offices and specialized agencies (Noel, 1999).

Perhaps the most obvious example of these institutions can be found in the role and position of the Annual Premiers Conference (APC). Initiated at Quebec's behest in the 1960s, the APC has evolved into a significant intergovernmental institution. Held every year under a rotating chairmanship, this association of provinces has become a full-fledged intergovernmental institution, professionally supported by provincial civil servants (Prince, 2000). The APC organizes premiers' meetings, receives position papers, issues communiqués and launches projects to be undertaken by the relevant ministers. It was at one of these meetings that the social union initiative was undertaken. The most important recent institutional innovation in intergovernmental relations is the transformation of the APC into the consensus-oriented Council of the Federation in 2003, which is considered in detail as a case study in this dissertation.

The ministerial councils, sometimes federal-provincial, sometimes purely provincial, also play an important role in intergovernmental relations. Such councils have existed for many years. Meeting on a regular or ad hoc basis, the number of these councils have increased, become more institutionalized and started to play a more formal role in the intergovernmental relations (Bakvis & Skogstad, 2008). "They have become the workhorses of the system, assuming a central role in the policy process, including, in some cases, developing close relationships with related interest groups" (Cameron & Simeon, 2000, p.82). Councils now exist in many policy areas, including social policy renewal, forestry, transportation, education and the environment. The Provincial/Territorial Council on Social Policy Renewal has been particularly active. Acting under the instructions of the premiers, sectoral ministers and officials develop position papers and fashion strategies for the

³The defining feature of Canadian federalism is executive federalism. The predominant role of governmental executives (ministers and their officials) in intergovernmental relations is a uniquely Canadian phenomenon that originated in the combination of Canada's jurisdictional federalism and the Westminster parliamentary system (Simeon & Robinson, 1990). Responsible government, a foundational principle of Canadian parliamentary democracy, is at the heart of this tension. It implies that each government is responsible to its own legislature for legislation, regulation and the raising and spending of revenue (Turgeon, 2006). In a federal system, however, many policy responsibilities are shared. As a consequence, another level of accountability arises: that of the responsibility of governments to each other for the shared management of the federal system.

consideration of the premiers and in the preparation for federal-provincial discussions (Bakvis, 2009). This council was instrumental in developing the Social Union Framework Agreement (SUFA), and it played an important role in helping to make it work.

As Saunders (2002, p.230) observes, “many mechanisms used for collaborative purposes are ordinary tools for governance.” They often include legislation and coordination through informal consultation and agreement. The other key element in the mechanisms of collaborative federalism is intergovernmental agreements and their legal and political status. The 1990s witnessed several new intergovernmental agreements, under which a variety of partnerships and collaborations proliferated in most policy areas. There are estimated to be 1,000–1,500 intergovernmental agreements in Canada (Poirier, 2004). Given the allocation of goods, services and finances between the two orders of government, it is not surprising that intergovernmental agreements play an important role in many policy areas. The agreements have long existed in “constitutionally shared policy areas like agriculture and immigration, but they are also now common in areas of exclusive provincial jurisdiction such as health, education, and natural resources” (Johns et al., 2006, p.632). Many of these agreements, although not legally binding or enforceable, have been used to harmonize policy, reduce overlap and duplication, achieve greater efficiency and cost-savings, solve problems that require joint initiative and integrate service delivery (Zussman 2002; Kernaghan et al., 2000). Consistent with the doctrine of New Public Management, agreements emphasize the need to share best practices, as can be seen most clearly in the text of the SUFA (Inwood, 2000). The major agreements of collaborative federalism encompass but are not limited to the following: (i) the Agreement on Internal Trade signed in 1994, (ii) the Social Union Framework Agreement signed in 1999, (iii) the Accord on Environmental Harmonization signed in 1998, and (iv) the Agreement on Health Care signed in 2004. The AIT and SUFA are considered in detail as case studies in this dissertation.

Complex, elaborate and pervasive, the institutions and practices of intergovernmental relations in collaborative federalism remain weakly institutionalized. They are awkwardly added on to our parliamentary system, rather than integrated with it. Two factors seem to account for this situation (Simeon & Nugent, 2008). The first is the principle of parliamentary government, which overrides any inclination to establish intergovernmental mechanisms that would make decisions binding. The second is the great variation among

provinces and the resulting diversity of interests and priorities, which strongly affects the provinces' capacity for collective decision making.

1.3.2. The Constitutional Division of Powers

Intergovernmental relations of collaborative federalism are shaped by the documents and conventional practices that together make up the Canadian Constitution. The allocation of expenditure and revenue functions is among the more important constitutional features. These are: (i) the constitutional division of legislative, taxation and expenditure powers; (ii) the evolved pattern of tax allocation, sharing and harmonization; (iii) the system of intergovernmental transfers to bridge the gap between revenue and expenditure responsibilities; and (iv) the process through which federal arrangements are made by the federal and provincial governments (Brown, 2008).

The constitutional allocation of powers affects fiscal relations in the Canadian federation in three ways (Stevenson, 2004). First, the Canadian Constitution emphasizes exclusive⁴ fields of jurisdiction. Second, with the two levels of government having full access to the most important and most broadly based sources of taxation, both levels can levy not only income taxes (personal and corporate) but also general sales and consumption taxes, as well as payroll taxes for specific purposes such as unemployment insurance, health care and pensions. Third, by its spending power, the federal government can promote a national approach to social programs, including direct payments to individuals and to organizations for redistributive purposes (Bakvis & Skogstad, 2008). The 1999 Social Union Framework Agreement established some general principles for the use of the federal spending power where provincial jurisdiction is concerned (Noel, 2000).

While some fiscal arrangements in the federation are typically set down in the Constitution, many are not. As a result, there is usually more flexibility around fiscal arrangements than there is around the basic division of powers and the administrative roles of the two orders of government (Poirier, 2004). This flexibility means that fiscal arrangements are often at the centre of political and policy debates on how a federation actually works. The major debates around fiscal arrangements typically have to do with the

⁴Exclusivity means that the central government has relatively little opportunity to legislate specific conditions and funding formulas for programs to be delivered by the provinces. Also, the *Constitution Act* of 1867 gave the federal government significant powers with respect to the major areas of public policy.

efficiency of raising revenues, fairness in sharing revenues, the cost and benefits of fiscal decentralization, the effective management of the economy, and the political use of fiscal levers to influence or control policy results.

Fiscal arrangements have a role to play in the performance of the federation, policy effectiveness and political legitimacy. Noel (2006) argues that since flexibility is essential to the federation's ability to adapt over time, the federation's performance depends on the nature of any strings attached to federal transfers. The equalization program is key to maintaining autonomy and equality for all provinces under the Constitution. Effectiveness of federalism refers explicitly to policy results: the public policies and programs made within and resulting from the web of intergovernmental interactions.

In short, collaborative federalism is facing the expansion of the welfare state, together with the increasing political, bureaucratic and fiscal weight of the provinces (Banting, 2005). Now the provinces are unwilling to accept the federal leadership in policy making, and provincial policy making, on the other hand, is dependent on federal fiscal decisions. Thus, the provinces continue to object to federal intrusions and to the fact that intergovernmental transfers remain subject to the vagaries of federal policy and therefore lack permanence and predictability (Brown, 2004). Hence, various significant pressures — to limit spending power, to oppose federal intrusions into provincial jurisdiction and to ensure that federal transfers come with minimal conditions attached — are at the centre of fiscal debate.

Finally, it has been argued that decisions about fiscal arrangements, particularly the final amounts to be transferred to the provinces, are rarely made jointly. Ottawa's allocation of the money is a political act, and considerations other than the interests of the provinces can have a strong influence, particularly when the money is to be directed to social programs (Brown, 2004). Hence, the challenge in this decade is to find a new equilibrium between the competing pressures of equity and efficiency, and between decentralization and local initiative on one hand and national (federal) objectives and control on the other (Banting, 2005). The allocation of funds is usually perceived in terms of 'winners and losers', especially since there is no consensus among provinces and territories on how best to reform fiscal arrangements. Some provinces benefit more than others from the allocation of financial resources. The richer provinces have achieved a significant gain, while the equity scope of fiscal federalism has been narrowed (Bakvis & Skogstad, 2008). Finally, issues of

accountability, transparency and decision making are all of concern to Canadian citizens and their government. The next section will assess the state of knowledge and identify theoretical gaps in the literature on collaborative federalism.

1.4. The State of Knowledge on Collaborative Federalism

The literature on collaborative federalism is vast, multidisciplinary, lacking cohesion and fertilization across disciplines. The range of theoretical perspectives on the subject is wide, spanning such diverse fields as political theory, political economy, public choice and economic theory, comparative federalism, and collective action where empirical and prescriptive analyses are entwined.

Political theorists ask normative questions about the consequences of federalism for democracy, social justice, equality, national unity and community (Gagnon & Tully, 2001). In their research, political culture was put at the centre of the distinctive characteristics of Canadian federalism and was considered as a source of prescription for its amelioration. Scholars have focused on national, provincial and Quebec identity as the key element of the culture (Fafard & Rocher, 2008). And the ideas, values, assumptions and beliefs were considered as the key to understanding Canadian politics and explaining regionalism. With the work of these scholars, regionalism can be discussed within the wider context of understanding Canadian diversity and intergovernmental relations within the larger framework of Canadian democracy. Mintz and Simeon (1982) argue that cultural convergence does not necessarily imply reduced conflict because where cultures are similar, groups share similar goals and aspirations, and competition for these scarce values may well increase.

Political economists, on the other hand, tend to focus on the conflict between the federal and provincial governments. They stress the material basis of conflict and the extent to which both regional and ethnic conflicts are primarily about the distribution and location of economic benefits. Recently, these scholars have been preoccupied with the analysis of federalism in terms of globalization. They focus, for example, on whether in an era of globalization the development of national economies should be designed to strengthen the national government as the only entity that could regulate them. They also consider the

question of whether the federal government should be required to exercise greater control over provincial government taxing, spending and borrowing (Robinson, 1995).

Courchene (1995), for instance, argues that globalization means a fundamental weakening of central governments and the policy instruments they deployed, as they have lost power both upwards and onwards in this process. This result would have profound political consequences, such as an erosion of central authority, a strengthening of the provinces and declining economic linkages among Canadian provinces. Consequently, there would be increasing inequality and competition among provinces, a declining commitment to equalization and sharing, and a growing inability to agree on national standards in national policy. In the face of declining federal fiscal and political power, the Canadian social union could be secured only by a movement toward a more confederal Canada, in which national policies and standards would emerge less from federal influence and more from interprovincial agreement.

A relatively limited number of studies consider federalism from the perspective of public choice. Sproule-Jones (1993, p.123) argues that Canadian federalism can be considered as a “grand metagame” between the club of federal and provincial governments playing under the flexible rules of executive, parliamentary federalism. Kennett (1992) applies the analysis of transaction costs — signalling, administration, coordination — developed by the economists Breton and Scott (1978) to address the question of how authority should be allocated in Canadian water resource policy. The analysis of intergovernmental relations and policy making in Canadian federalism has also focused on the game theory that offers the solution of the classic Prisoner’s Dilemma game⁵ (Brander, 1985; Stein, 1989).

The analysis of many economists on fiscal federalism includes equalization, Canada Social Transfer, Canada Health Transfer, federal spending power and fiscal imbalance. Rocher and Fafard (2008, p.16) state that “the issues that are the subject of research are less pan-Canadian and much more regional or provincial, focusing on the intergovernmental conflict that is required to obtain more (or offer less) of the country’s financial resources.”

⁵ The game illustrates a conflict between personal and group rationality on the example of two players – prisoners –who face a dilemma of confessing or remain silent about the crime they committed. The dilemma is in that their individual decisions to confess make them both better off but the outcome obtained when both confess is worse for each of the prisoners

The analysis of fiscal federalism typically focuses on the matters of the efficiency of raising revenues, fairness in sharing revenues, the cost and benefits of fiscal decentralization, effective management of the economy, and the political use of fiscal levers to influence or control policy results (Poirier, 2005).

As many countries in the world, such as Spain, Belgium, Russia, South Africa, Nigeria, Mexico and Brazil, moved toward federalism and the World Bank embraced decentralization as a key to democratic governance in developing countries, many Canadian scholars started to apply a comparative approach to study the notion of federalism in Canada. They argue that Canada is a member of the broader category of multi-national, multi-ethnic societies and, hence, federalism is one means of achieving accommodation in such societies (Watts, 1999). Therefore, policy making in Canada should be put into a broader comparative framework, one that sees governance in contemporary societies as inherently multi-level and as embracing complex interactions at local, state-provincial, national and international levels.

The proponents of a collaborative approach to federalism argue that the earlier approaches based on federal leadership and its use of spending power are no longer as feasible as they once were (Turgeon, 2006). Indeed, Ottawa, recognizing that the game has changed, has made commitments sharply limiting its freedom to act in the old ways (Peters & Savoie, 2000).

“The achievements of collaborative federalism — the AIT and the SUFA — make it more likely that the procedure will be followed in the future. Federal and provincial officials report that the SUFA is increasingly being factored into the calculations of public administrators and interest groups” (Cameron & Simeon, 2002, p.68). The provinces and territories have learned that they can make significant progress by setting their own agenda and working among themselves. If neither order of government had the fiscal, political, or constitutional resources to make major policy on its own, then we must look to a more collaborative partnership among equals to assure policy development that meets the needs of Canadians (Cameron & Simeon, 2002). In addition, the inter-provincial dynamic is a counterpoint to the federal-provincial relationship that classically defined intergovernmentalism in Canada. “The institutionalization of the Annual Premiers Conference and ministerial councils adds administrative strength to this development” (Cameron & Simeon, 2002, p.68). Thus,

making collaboration a *modus operandi* of government is a forward-looking and savvy management strategy (Gravelle, 2008).

In addition, the collaborative approach to federalism is a response to policy interdependence because the overlap and duplication is inevitable between two orders of government. Thus, finding an effective solution to a policy dilemma, even one that lies entirely within the jurisdiction of a single order of government, invariably requires collaboration with the other order. At the very least, the government with the authority to make a decision must take into account its implications for other governments. Koontz and Thomas (2006, p.186) argue that “collaboration advances the public good because it is a healthy response to policy gridlock and litigation battles grounded in interest group pluralism.” The collaborative approach is a remedy from destructive competition and the provincial race to the bottom. Prospects for provincial collaboration are great in Canada, given the feasibility of bringing the territorial and provincial leaders together face to face to negotiate harmonized standards (Harrison, 2006). Governments realize that they can address policy challenges through collaboration outside the constitutional arena.

Moreover, Canadians consider collaboration among their governments as an important objective, and collaborative federalism in Canada emerged in part in response to that demand (Cutler & Mendelsohn, 2005). Quite simply, “actors are affecting public policy from beyond the reach of government, and if government wants to maintain its ability to arbitrate between competing agendas and public goods, it has to employ greater and more effective collaborative arrangements” (Gravelle, 2008, p.13). Collaboration, therefore, becomes a way of rebuilding the value and capacity of the federal government (Bingham and O’Leary, 2008; Wondolleck and Yaffee, 2000; Lubell, 2005; Leach et al., 2005).

Finally, collaboration is a response to issues that often “span across jurisdictional and political boundaries” (Gravelle, 2008, p.12). These complex policy issues also cut across departmental boundaries both vertically and horizontally, encompassing a combination of economic, social and environmental implications. In this case, collaboration becomes a useful model for federal engagement.

Critics of the collaborative approach point out that, until recently, this new brand of collaborative federalism was more “an outcome than an objective, more the unplanned and mixed result of various pragmatic arrangements than the product of a clear design for the

federation” (Noel, 2000, p.44). “Collaboration occurs, but it is the collaboration of rowing agents who follow the indications of a steering principal whose behaviour is difficult to understand, let alone predict” (Beland and Lecours, 2008, p.85). Negotiations do take place, but they do not involve more or less equal partners seeking to reduce uncertainty. Instead, negotiations are led by a most powerful actor who is able to set and change the rules of the game and make others to abide by these rules. This so-called ‘collaboration’ often takes place without Quebec.

In addition, Bakvis (2001) argues that often overall agreements were signed along with separately negotiated bilateral deals in the area of labour market development. This “checkerboard federalism or asymmetry for everyone” undermines the legitimacy of the system and leads to the awkward alignment of responsibilities and a less coherent development of policies and programs in this area in the federation (Bakvis, 2001, p.216). In collaborative federalism, federal and provincial governments try to serve their own interests. In this view, “the danger is that some of the primary virtues of a federal system — innovation, experimentation, variety, and competition — will be lost in an over-zealous search for harmonization, consistency, and agreement” (Cameron & Simeon, 2002, p.67). Savoie (2008) also highlights that Canadian federalism should be understood as hegemonic cooperation, driven by the logic of a court government. In this government power is concentrated not only in Ottawa but also at the top, in the Prime Minister’s “court” (Noel, 2000, p.11).

Finally, “the processes of collaborative federalism developed in the name of responsiveness have resulted in the federal and provincial governments no longer being accountable to the public they are meant to serve” (Brown, 1983, p.630). In other words, the loss of accountability is the price to be paid for the benefits of collaboration. Collaboration between the two orders of government does not solve all of the problems that governments are trying to tackle. The fact that two or more governments reach agreement on a particular issue does not necessarily mean that the underlying social or economic issues have been effectively resolved (Bakvis & Skogstad, 2008). Collaborative processes relying on consensus do not ensure better decisions (Coglianese, 1999), and collaboration might reinforce existing power disparities rather than promote diverse stakeholder inclusion (Bidwell & Ryan, 2006). “The joint decision trap emerges when autonomous, interdependent

actors committed to consensus decision making seek to make decisions. The time and cost of collaboration can escalate, and the political and institutional concerns of the actors such as status, recognition, and credit can dominate the substantive issues themselves” (Cameron & Simeon, 2000, p.87). None of these dilemmas is resolved easily.

In short, the literature review demonstrates that collaborative federalism is still a challenging area and that outcomes may differ, depending on the approach and determinants used for the analysis and evaluation of this concept. One must also understand that, if the researchers had not conducted their studies in the abstract or on the basis of a small number of examples with generalization of issue around them, the significance of their results may have been strengthened or weakened.

The absence of a robust theoretical foundation in earlier studies has contributed to the fragmentation of the comprehensive research on collaborative federalism, often resulting in studies that examine the same or a similar issue from diverse disciplinary perspectives while ignoring others. In fact, no theoretical framework can alone explain the notion of collaborative federalism. In order to explain conflict or collaboration by placing, for example, culture at the centre, other non-cultural variables should be added because cultural identities need to be energized and mobilized. Game theory is also not a suitable model for analyzing collaborative federalism because governments are not perfect representatives of their citizens’ interests and because intergovernmental relations have non-zero-sum characteristics (Doern & MacDonald, 1999). These factors allow ‘for the mixed motivations of the players” (Morrow, 1994, p.76). With respect to the political economy approach, it is argued that institutions change in response to economic forces as they are dependent variables. Yet, the independent effect of institutions and the autonomy of governments and elites can be hardly denied. As Richards and Pratt (1979, p.35) argue, “in the final analysis it has been the ideas of politicians and the actions of governments that mattered most of all.”

In addition, the absence of a robust theoretical base for the analysis of collaborative federalism has resulted in the normative and ideological assessment of how this notion has been used and understood; it mostly has positive connotations. These prescriptive, preliminary and impressionistic analyses have led to intuitive and speculative conclusions.

Researchers have rarely been self-conscious or explicit about their theoretical models and assumptions or about carefully delineating causal mechanisms that can explain the black box of intergovernmental collaboration. In other words, the analysis of collaborative federalism has tended to be descriptive, declaratory and prescriptive rather than posing questions, testing hypotheses and solving puzzles.

In particular, insufficient attention has been paid to the variables of historical institutionalism — such as institutions, historical events, federal-provincial relations, political party in power — as well as to the regulations that shaped collaborative federalism. Previous studies underestimate the role of power and do not sufficiently examine the role of political elites in shaping collaborative processes in the Canadian federation.

A limited number of studies tried to systematically identify and model collaboration in a well-defined context. There has been little systematic analysis of the federalism or intergovernmental dimensions of the social union — small ‘s’ and small ‘u’ — as it exists today (Lazar, 2006). Previous research paid insufficient attention to the asymmetry of the power relations between the federal and provincial governments. Yet power relations are at the centre of collaborative federalism. Accordingly, we need more information on elites and institutions and on how their interactions have shaped a complex pattern of collaborative federalism. Approaches that focus on the behaviour of federal and provincial elites and on the constraints and incentives that the institutional structure provides have considerable explanatory power.

Finally, the causal mechanisms of collaborative relations and the underlying distinction between cooperation, coordination and collaboration have been insufficiently explored in studies on collaborative federalism. An important piece of the collaboration puzzle in federalism is lost by failing to explore the multidisciplinary literature on collaboration. Thus, much systematic research is still needed to address these significant normative disagreements and to shed light on the notion of collaborative federalism. The next section introduces a theoretical framework necessary for understanding and analyzing the processes and results of collaborative federalism.

2. Building a Theoretical Framework: Elite Analysis and Historical Institutionalism

This chapter constructs a theoretical framework to analyze and explain collaborative federalism. This framework integrates the elite analysis and historical institutionalism. The application of the historical institutionalism approach helps illuminate the processes of collaborative federalism by analyzing the role of institutions that have played a significant part in shaping collaborative federalism. It also places the concept of collaboration in context and helps develop an understanding of collaboration in the light of institutions, past decisions and historical patterns.

At the same time, there is a need to complement the historical institutionalism with the elite analysis since institutional patterns by themselves are unable to fully explain the specific content of key political decisions that shape policy results. This limitation is due to the fact that historical institutionalism does not come down to a particular theory of society that is structured by social relations such as class (Graefe, 2007). Therefore, it is essential to consider the roles of both institutions and elites, who operate in a larger socio-economic environment, in shaping collaborative federalism because the full understanding of collaborative federalism arises from the analysis of their interaction. This dissertation gives equal importance to these two theoretical perspectives in terms of their explanatory power. However, this chapter begins with the consideration of elites and is followed by the analysis of institutions because, after all, it is through the actions of actors that institutions have an effect on the collaborative results. In addition, this chapter constructs the typology of intergovernmental relations and outlines the underlying factors of collaboration. It then explains how the elites analysis and historical institutionalism theory can be applied to open the black box of intergovernmental collaboration.

2.1. Elites Analysis: Power and Interests

The emergence of elite theory dates back to the work of the European theorists, Vilfredo Pareto (1935), Gaetano Mosca (1939) and Roberto Michels (1962) in the beginning of the twentieth century. These classical elite theorists and their contemporary followers (Lasswell & Lerner, 1952; Mills, 1956; Porter, 1965; Field & Highley, 1980) offer strong

theoretical, ontological and epistemological statements. The elite theory has been applied to study power structures, society and politics. In this regard, elite theory is a useful tool for understanding and explaining how the complex processes of collaborative federalism were shaped.

At the centre of this theory is the idea that all societies are characterized by a system of stratification between elite and non-elite. Elite theorists hold that “government is always government by the few whether in the name of the few, the one, or the many” (Lasswell & Lerner, 1952, p.7). Elite theory is mainly concerned with power⁶ or, in other words, it focuses on inequalities based on power or the lack thereof (Etzioni-Halevy, 1993). The ruling group, or elite, monopolizes power and the non-elite, or the masses, have no choice but to comply with this arrangement. In other words, the main feature of the elite/non-elite distinction is the implication that power concentration and elites are “a necessary or unavoidable feature of society” (Highley et al., 1979, p.1).

Gaetano Mosca (1939, p.39), for instance, argues that in all societies there exists two classes of people, “a class that rules” or a political class and “the class that is ruled,” and that the character and structure of the ruling class is important in determining a society’s political structure. The class that rules “performs all of the political functions, monopolizes power, and enjoys the benefits that power brings” (Cohen and Fermon, 1996, p.512). Those who rule represent a small minority in any society. The political class, Mosca’s term for political elites, usually has a certain material, intellectual or even moral superiority over those who are governed. The class that is ruled responds to the attitudes and behaviour of elites. In Mosca’s view, the determinants of power for political elites — such as military strength, religious legitimacy, wealth and knowledge — have varied from society to society over history. Despite the changing nature of the power determinants, the existence of political elites is assured through mechanisms of legitimation and coercion and, most importantly, through the circulation of elites (Albertoni, 1987). The circulation of elites or, in other words, upward mobility, implies that even though the elites usually come from society’s upper classes, the individuals from lower classes are not prevented from rising to the top.

⁶Bachrach (1971, p.4) argues that power is especially important when “it is utilized by an elite in conjunction with authority.” In Bachrach’s view, while power is an important instrument in the creation, retention or expansion of an elite position, the source of elite status is mainly authority rather than power.

However, this movement should rather be in the form of slow assimilation then revolutionary change in order to protect the nature and stability of elites' system (Mosca, 1939).

Pareto (1935) begins with the proposition that people are unequal in their personal endowments. He considers elites more broadly as opposed to Mosca and argues that, in a society with truly unrestricted social mobility, elites consist of the most talented and deserving individuals who demonstrate superiority in their field of activity (Higley, 2010). These individuals usually achieve their goals by means of force and persuasion. Inherited wealth and family connections constitute "important advantages" for these people (Higley & Barton, 2006, p.5). Pareto also focuses on the differences between the governing elite and the non-governing elite. The governing elite's ability to maintain its power and influence significantly depends on its willingness to allow for circulation through the cooptation of prominent members of the masses (Etzioni-Halevy, 1993). As long as membership among the elites is open, society is in a state of equilibrium. But when elites are unable to accommodate members from the masses, social equilibrium is distorted and a violent change in the system of elites may happen (i.e. revolutions).

While Pareto and Mosca structure their analysis around power in society at large, Michels (1962) is mainly concerned with power in political parties and trade unions. Analyzing the German Social Democratic Party as a case study, he finds that oligarchy is inevitable and that even an organization that represents the masses and espouses democratic principles can come to be organized in an oligarchic manner. "He who says organization, says oligarchy" (Michels, 1968, p. 365) and the more developed the organization, the stronger the oligarchy. In Michels's view oligarchy is a necessary consequence of any organization, regardless of its forms, because of the inherent need for representatives and the disinterest and incompetence of the masses in public affairs. This proposition is also known as 'the iron law of oligarchy'. Oligarchs try to concentrate power in their hands and gain control over various aspects of organizational functioning such as funds, information flows and promotions (Higley & Burton, 2006; Prewitt & Stone, 1973).

The theoretical statements of classical elite theorists have been considered at odds with democracy mainly because Pareto and Mosca were extremely critical of socialism, suspicious of the masses, expressed reservations about democracy and representative government, and had an unclear relationship with fascism (Putnam, 1976). That being said,

elite theory is not necessarily in opposition to democracy, as it depends on how democracy is defined. The main tension comes from the idea that democracy is government by the people and, from the elite theory perspective, government is always the rule of the few. Even in a democracy, “a few exercise a relatively great weight of power, and the many exercise comparatively little” (Lasswell & Kaplan, 1950, p.219). However, the circulation of elites described by the classical theorists suggests an equality of opportunity that allows for a certain compatibility between elite theory and the idea of substantive democracy (Best & Higley, 2010). The procedural definition of democracy that emphasizes the electoral process and the competition between political elites is perfectly compatible with elite theory (Bottomore, 1964). In fact, the idea that political competition is the key component of any democratic regime draws from this tradition, and theorists of democracy use this idea in the democratic elitist model⁷ (Schumpeter, 1962).

The question of definition represents a challenging area for elite theory as there is no single definition of the concept of the elite. For example, classical elite theorists such as Mosca and Michels refer to the same phenomenon as political class, ruling class, aristocracy and oligarchy. The conceptual vagueness of these definitions prompted contemporary elite theorists to search for a more precise definition of elites⁸ (Mills 1956; Porter, 1965;

⁷Schumpeter (1962) believes that democracy is rule not by the people but by the elected elites. The essence of democracy for Schumpeter lies in the leader's attainment of power through competition for the people's votes to make political, administrative and legislative decisions. Thus, democracy does not lead to the widespread participation of the public in the decision-making process. Since the power of elected politicians is only minimally controlled by the electorate, it has to be limited through independent agencies, or elites (e.g. the judiciary, the highest levels of state bureaucracy, the president of the central bank and academic elites). In this manner, he draws together the idea of the separation of powers within the state with the notion of the independence of elites outside the state as well, in what has come to be known as democratic elite theory (Etzioni-Halévy, 1997). Weber (1947, 1958, 1968) also recognizes the inevitability of elites in democratic regimes. In his view, the people cannot make a sound judgment on the essence of the political issues, and representative democratic institutions provide for little control of the elected by their electors. He emphasizes the importance of the democratic process as a competitive struggle of leaders for public support. Bachrach (1971, p.87) challenged democratic elitism by stating that democratic elitism moves citizen engagement to the sidelines, in both its empirical analyses and as a normative ideal of democracy and, accordingly, “puts trust in the wisdom and energy of an active, responsible elite.” However, to be effective as mobilizing forces, elites should employ methodologies that “must be relevant to the circumstances of non-elite populations” (Higley, 2010, p.79). In this respect, non-elites limit the ideological preferences and actions of elites.

⁸ After the Second World War, elite theory was at the forefront of the debates in academia and among practitioners. It opposed the liberal pluralist view of the non-hierarchical organization of society (Mills 1956; Porter, 1965, Putnam, 1976) while also taking exception to two Marxist positions: the definition of “the ruling class” strictly in economic terms and the possibility of a “classless” society (Olsen, 1970, p.160). Mills, a radical elite theorist, considers privileged elites in business, the state and the military, and Porter analyzes judicial, academic and mass media elites. These theorists assert that there exists a narrowness in the social base

Domhoff, 1983). While the definitions proposed by these scholars vary greatly, they do share the ideas of power, leadership and the ability to shape and influence decisions that affect national outcomes.

From a sociological standpoint, elites' influence is defined in terms of the common social position of those who hold power (Burton, 1984). From an occupational standpoint, elites are defined as those actors who control various institutions, including political elites, military elites, religious elites, economic and financial elites and labour elites (Domhoff, 1983). One of the advantages of the occupational definition is in that it brings more precision to the definition of elites. Elites exercise power and control wealth, education, prestige, status, skills of leadership, information, knowledge of political processes and the abilities to communicate and organize (Dye & Zeigler, 2008). These categories are not mutually exclusive and used for their heuristic value (Putnam, 1976).

The application of the elite analysis in examining the notion of collaborative federalism calls for the consideration of those elites who occupy key decision-making positions in both political and bureaucratic institutions at the federal and provincial/territorial levels. In other words, this dissertation focuses on the key decision makers who consist of both political elites — such as the prime minister, premiers, members of the cabinet, key political advisors and leaders of political parties — and bureaucratic elites, such as Deputy Ministers and Assistant Deputy Ministers. Depending on the context, political elites may play more prominent roles in shaping collaborative results than bureaucratic elites, and vice versa. During the negotiations of the Agreement on Internal Trade and the Social Union Framework Agreement, Ministers, Deputy Ministers and Assistant Deputy Ministers often led the negotiations and, hence, are referred in the text as the negotiators.

of recruitment to elite positions and, as a result, there exists a narrowness of ideological interests and a close mutuality of interest among elites that is different from the public interest. By reference to the class and educational background, political and business elite are united by social background and ideological agreement, which makes public policy an instrument of the business elite who have the resources to shape public opinion and public policy preferences (Ornstein & Stevenson, 1999). The difference with the Marxist position is in that the source of power lies in institutional, organizational leadership position rather than in class position related to the mode of production (Mills, 1956). Porter (1965, p.522) argues that there exists “a confraternity of power in which the various institutional leaders share attitudes and values. Because elites enjoy power, they value highly the institutions which give them power.”

Political elites are simply persons who, by virtue of their strategic positions of influence and power, are able to shape national policy making and discourse. The top bureaucratic elite is considered part of the elite because it determines organizational goals and leads organizations in accordance with the broader macro-level elite interests, missions and goals. “The centrality of key organizations and their position holders is emphasized as a necessary institutional mechanism through which elites act and exercise power” (Farazmand, 1999, p.109). In fact, organizations do operate in a socio-political and economic environment of which they are part, but it is the political and bureaucratic elites who determine the directions and processes of most organizations. The consideration of key decision makers in the analysis of collaborative federalism allows us not only to focus particularly on political elites but also to pay attention to elites in other realms. Indeed, these realms are interconnected, and the struggle of different types of elites along with the allocation, distribution and exercise of power is at the heart of collaborative federalism.

The classical elite theorists assert that there is a very high degree of consensus among elites. They assume that elites are characterized by group consciousness, cohesion and conspiracy or cooperation (Michels, 1958). These theorists suggest that elites’ power can be explained by their internal cohesiveness which is crucial to the very existence of elites. The power of elites is almost unlimited, and their actions are virtually unchecked (Field & Highly, 1980). The internal organization and coherence of elites is one of the main factors that distinguishes elites from non-elites. By making these assumptions, classical elite theorists do not take into account that elites do not operate in vacuum. In particular, they fail to recognize that institutions provide the context for the elite behaviour and that the socio-economic structures determine the long-term conditions in which this behaviour takes place (Lecours, 2000).

Contemporary elite theorists⁹ address these issues by questioning the assumption that elites represent a cohesive group. They conceptualize elites as multiple, heterogeneous and divided by rivalries (Busino, 1992). They “both compete and cooperate with one another:

⁹Researchers from various countries (Wasserman, 1993; Mougél, 1990; Highley, 1979) started to apply elite theory to analyze politics and various issues such as development and globalization (Higley, 2010; Rothkopf, 2008) and immigrant communities (Martiniello, 1992). Globalization changes the capacities of political elites to control their national economies, national politics and culture. In particular, it makes political elites more autonomous and powerful, such as transnational elites that are not much constrained by domestic electorates (Rothkopf, 2008). But, on the other hand, there is growing incapacity of political elites to control non-elites.

they compete to share in the making of decisions of major importance for the society and they cooperate because together they keep the society working as a going concern” (Porter, 1965, p.27). Porter re-conceptualizes the elite as a fluid group characterized by patterns of conflict as well as by cooperation. Elites share a general consensus about the fundamental norms of the social system, and they agree on the importance of preserving the social system: they agree on “the rules of the game” (Ornstein & Stevenson, 1999, p.281). Elite consensus, however, does not prevent elite members from disagreeing or competing with each other for pre-eminence. But this competition takes place within a narrow range of issues, and disagreement usually takes place over means rather than ends (Higley & Burton, 2006).

Contemporary elite theorists also address the consequences of social and political change for elites. Field and Highley (1980) reconsider and restate the elitist paradigm. They highlight that elites are kept in check by non-elites and that socio-economic conditions affect non-elites’ perspectives and, as a result, elites’ behaviour. While the role of political institutions is still underdeveloped in elite theory, the adjustments made by contemporary elite theorists make it possible to shed light on the complex pattern of interactions between elites and non-elites, including the need for elites to gain support from the non-elites. These theorists also stress the larger socio-economic environment that specifies the long-term conditions shaping elites’ behaviour.¹⁰

Elite theorists assert that public policy does not reflect the demands of the masses but rather reflects the interests and beliefs of elites (Ornstein & Stevenson, 1999; Anderson, 2010). Changes and innovation in public policy come about when elites redefine their own values and beliefs, and the general efforts and desire of elites to preserve the system mean that changes in public policy will be incremental rather than revolutionary, leading public policies to be modified rather than replaced (Dye & Zeigler 1984). Elites design and initiate reforms to preserve the system and secure the support of masses. From their perspective, the masses are passive and ill-informed, and therefore communication between the elites and the

¹⁰For instance, Dogan and Higley (1998, p.3) argue that political elites are “never wholly independent actors, but neither are they simply the puppets of larger, economic, ethnic or religious forces.” In their view, all three elite theorists — Mosca, Pareto, and Michels — neglect the role of crisis, which is a chain of events that produces changes in elites and regime. These changes result because crises usually challenge existing regimes and the political elite. The nature of the next regime is a product of the choices that leaders and elites make during the crises in terms of the changed composition and functioning of elites. This argument is based on the assumption that crises should be profound enough to ensure that there is no way back to the status quo.

masses flows downward. Accordingly, mass sentiments are manipulated by elites more often than elite values are influenced by the sentiments of the masses. Masses seldom make decisions about governmental policies through elections or through evaluation of the political parties' policy alternatives. These democratic institutions, elections¹¹ and parties have only symbolic value, as they are designed to help tie the masses to the political system by giving them a role to play on elections day. The masses have, at best, only indirect influence over the decision making of elites.

In short, elite theory holds a valuable theoretical insight and is useful for the understanding and explanation of the collaborative approach to Canadian federalism. First, from the ontological and epistemological standpoint, elite theory allows us to analyze the processes inherent in collaborative federalism. It holds that an understanding of politics and society requires a focus on elites because elites play an active role in laying the foundations and establishing the framework for collaborative federalism. Collaborative federalism cannot exist unless the claims of state elites are supported by a substantial number of non-elites. The theory, therefore, connects elites to the construction, transformation and politicization of collective identities and to the definition of group interests. Elites institutionalize social construction and mobilize meaning. From this perspective, collaboration in the federation can be defined as a cardinal virtue, because it can be seen as being at the core of the Canadian identity or at the core of being Canadian (Mackey, 2002). And being Canadian is about equality, fairness, social cohesion, solidarity, compassion and shared interests as well as the principle of shared destiny. Canadians believe in “the sense of compassion in Canadian society, the so-called security nets — pensions, Medicare, equalization payments in the provinces, protections that provide Canadians with a chance to express themselves and talk to each other across the broad expanse of the nation” (Mathews, 1988, p.4). In this case, the application of the elite theory enables the demonstration of how federal and provincial

¹¹Dye and Zeigler (1978) assert that elections are a very imperfect instrument of holding government elite accountable to the public. The elites would not be able to give the public what it wants because policy mandates emanating from elections often cannot be clearly interpreted, since voters base their electoral choices on “personalities rather than on issues and misinterpret the candidate’s policy preferences” (Etzioni-Halevy, 1985, p.24). Accordingly, with no reliable knowledge on public preferences, elites cannot shape policies to shape those preferences.

elites construct and mobilize national identity, Quebec identity and Western identity to shape the processes of collaboration and then transform this identity and use it to frame and pursue their agenda in their own interests. Elite theory would also enable the demonstration of how provincial elites mobilize the meaning of collaboration and define their place in the political community.

Second, the elite theorists provide an explanation for the causal connections between elite behaviour and political and social outcomes. They hold that cooperation and competition between elites as well as elites' struggle for power are the main sources of social and political outcomes. As collaborative federalism is mainly a political phenomenon and a form of politics, it implies that it is primarily about power. From this perspective the elite theory could be helpful in trying to explain the processes and results of intergovernmental collaboration.

Third, the importance of elite analysis in terms of its attention to symbols makes it attractive to study collaborative federalism. The focus on the symbolic dimension of politics finds particular relevance to collaborative federalism because it allows the examination of how elites build legitimacy for their power through symbolic manipulation. For example, Mosca applies a political formula that represents "a type of myth or universal moral principle upon which the actual exercise of power is justified" (Bill and Hardgrave, pp.148–149). Thus, the application of the symbolic dimension has a particular relevance for the study of collaborative federalism because collaborative federalism is the realm of symbols, myths and ideas. Key decision-making elites structure, transform and politicize collaboration by giving it subjective meaning through symbolic manipulation, myth making and a selective reading of history. "In other words, the politics of symbols and images are a way for elites to gain legitimacy for their interests, goals, and aspirations, and constitute a weapon in their struggle with the other elites" (Lecours, 2000, p.119). These actions are part of an effort to create conditions conducive to the articulation of their claims.

2.2. Historical Institutionalism: Structuring Collaborative Federalism

Institutions are "the product of political conflict and choice," but at the same time they provide the context in which elite actors define their strategies, preferences, goals and ideas that animate political action (Thelen & Steinmo, 1992, p. 28). Institutions impose constraints

on and create incentives for elite actors' behaviour and structure power relations among them, privileging some and putting others at a disadvantage (Hall, 1986). By shaping not just elite actors' strategies but also their goals, and by mediating their relations of collaboration and conflict, institutions structure political situations and influence political outcomes (Steinmo et al., 1992).

In the beginning of the 1980s, new institutionalism gained popularity among social scientists. New institutionalism incorporates three schools of thoughts: rational choice institutionalism, sociological institutionalism and historical institutionalism. While these three schools of thought developed quite independently of each other, there has recently been an attempt to integrate their insights. Even though these scholars try to clarify the role of institutions in the determination of social and political outcomes, they encompass different analytical strengths and weaknesses, ideas and approaches.

Rational choice institutionalism developed when scholars turned to the rules of the United States Congress to explain the voting behaviour of legislators (Hall & Taylor, 1996). This school of thought views actors as self-interested maximizers who engage in highly sophisticated strategic calculus, with institutions being the product of this rational thinking (Lecours, 2000). Institutions shape strategies, choices and political behaviour because the expectations that rational actors have regarding the behaviour of other actors are conditioned by the institutional environment (Thelen, 1999). Rational choice institutionalists explain the origination and existence of institutions in terms of the benefits those institutions have for the actors affected by the institutions. The process of institutional creation usually revolves around voluntary agreement by the relevant actors. In the process of competitive selection, those institutional forms will survive that provide more benefits to the actors (Pierson, 2000).

Sociological institutionalism does not take identities and preferences as givens but views them as the product of the institutional forms, images and signs provided by social life (Koelble, 1995). It holds that institutions embody the cultural practices and symbolic content of a particular context and produce symbolic codes, cognitive scripts, models and categories that have a great influence on political behaviour (Hansen, 1998). The role of myths or symbols presented in the wider institutional environment plays an important role in shaping organizational structures and cultures (Meyer & Rowan, 1991). "These myths are drawn from a range of sources and combine to form institutional templates to which organizations

adapt” (Skelcher & Sullivan, 2008, p.759). Organizations embrace specific institutional forms not because they advance the efficiency of the organization or its participants but rather because they enhance the social legitimacy of the organization and its partners (Peters, 2001). Central to this approach is the identification of legitimacy or social appropriateness.

Historical institutionalism emerged in social policy studies in response to the group theories of politics and structural-functionalism during the 1960s and 1970s. The central analytical point is that institutions provide strategic contexts, in which political actors can make their policy choices. Historical institutionalists define institutions as “the formal or informal procedures, routines, norms and conventions embedded in the organizational structure of the polity or political economy” (Hall & Taylor, 1996, p.938). Institutional contexts frame actors’ choices and, therefore, can shape public policies (Steinmo & Tolbert, 1998).

Institutionalist scholars seek procedures that provide for meaningful political participation. These could be political arenas that allow for goal-setting discussions to take place or judicial procedures that allow citizens to press for justice (Immergut, 1998). Historical institutionalism attempts to clarify the role of institutions in the determination of social and political outcome by addressing how institutions affect political behaviour and how they emerge and change.

Hall and Taylor (1996, p.937) argue that, from group theory, historical institutionalism accepted the idea that “conflict among rival groups for scarce resources lies at the heart of politics.” From structural-functionalism, historical institutionalists seized the idea that institutional organization of the polity or political economy can be considered as the principal factor structuring collective behaviour and generating distinctive outcome. The authors pinpoint that structuralism can be seen as the main feature in institutions rather than functionalism. The main differences between structuralism and functionalism are that structuralism asserts that societies are complex systems that embody a variety of social structures, and that many important features of societies can be explained as “the causal consequences of the particular details of these structures” (Little, 1991, p.92). Functionalism explains institution or practice in terms of “its beneficial consequences for the social system as a whole or for some important subsystems” and understands it to depend essentially on the

availability of a causal explanation establishing the postulated functional relationship (Little, 1991, p.94).

Historical institutionalists consider the effect of institutions on the behaviour of individuals by applying two approaches that can be termed the calculus approach and the cultural approach. The calculus approach assumes that “individuals behave strategically while maximizing the attainment of a set of goals given by a specific preference function” (Hall & Taylor, 1996, p.939). In turn, institutions affect behaviour primarily by “providing actors with greater or lesser degrees of certainty about the present and future behaviour of other actors” (Hall & Taylor, 1996, p.939). The cultural approach assumes that the behaviour of individuals is not strategic and is bounded by an individual’s perception. This approach tends to see individuals as satisfiers rather than utility maximizers. From this perspective, institutions provide moral or cognitive templates for interpretation and action and affect the very identities, self-images and preferences of the actors (Weingast, 1995).

The other notable feature of historical institutionalism is the prominent roles it gives to both interests and asymmetrical relations of power. Indeed, it embraces the idea that power is at the center of politics. It holds, however, that power relationships are structured by institutions. A central preoccupation of historical institutionalism has been to show how institutional designs favour some groups at the expense of the others. “This preoccupation with the institutional patterns of power distribution has translated into a focus on policy process” (Lecours, 2000, p.514).

It is argued that institutions give some groups a disproportionate access to the decision-making process, and tend to stress how some groups lose while others win (Thelen, 1999). The historical and institutional contexts “define the allocation and exercise of political power and shape policy making, especially by constraining political behaviour through the operation of rules, norms, and organizational settings” (Lieberman, 2002, p.709). At the same time, institutions create strategic opportunities for resourceful political actors to further their interests, and, hence, they shape political opportunities for the mobilization of social interests (Hammond, 1996). In addition, historical institutionalism stresses the interactions between actors and institutions, focusing not only on the many ways in which institutions¹²

¹²Engelstad (2010, p.73) argues that without legal and political institutions of the governing system, “viable elite compromises are virtually impossible.” In particular, relevant institutions include: “a legal system” that contributes to conflict regulation among elites, “a set of constitutive rules” that establishes an order of

shape the behaviour of political actors, but also on how institutions are shaped and reshaped by these actors as agents of history (Streeck & Thelen, 2005).

Historical institutionalism is also closely associated with a distinctive perspective on historical development. In keeping with this perspective, Hira and Hira (2000) argue that many historical institutionalists divide the flow of historical events and identify moments from which historical development moves onto a new path as a result of substantial institutional change. Greener (2005, p.62) also points out that “the most distinctive feature of historical institutionalism is an image of social causation that is based on the notion of path dependence — the means by which the ‘historical’ gets into historical institutionalism.” The idea of path dependence can be used to explain institutional inertia and incremental change and the way in which relationships of power become embedded in institutions (Torfing, 2001).

Historical institutionalists study history because they believe that history matters. First, political events happen within a historical context, which has direct consequences for the decisions. The second reason is that actors can learn from past experience and improve their performance and refine their political objectives. Finally, expectations are also determined by the past. Therefore, for historical institutionalists, history is not regarded merely as a chain of independent events (Steinmo, 2007). Additionally, historical institutionalists perceive that the other factors such as socio-economic development and the diffusion of ideas might also play an important role in political life. Immergut (2006) highlights that institutional rules and procedures have a large impact on both the politics of policy making and the implementation of policy designs. The impact of institutions depends upon their social and political context. In turn, institutional analysis offers a basis for critique and prescription even though research on the impact of rules and procedures on politics and policies is still at a relatively early stage (Hammond & Butler, 2003).

Historical institutionalism also draws attention to the importance of institutional factors in creating a normative environment for collaboration. However, the extent to which these become embedded depends upon the extent to which other local factors reinforce, dilute or resist their impact (Clegg, 1990). Among these factors are the logics of appropriate

importance among different institutional arenas and “stable rules for changing procedures” such as the rules for amending a constitution.

behaviour that determine how things are done in particular environments (March & Olsen, 1989). These give rise to rules and norms that are routinized, giving organizations stability but also enabling them to adapt to changes in a larger environment. Logics of appropriateness that change over time can help explain the persistence of particular ways of doing things and sometimes the old and new ways of doing things coexist (Lowndes, 1997). They can, therefore, be useful in helping to understand why collaborative practice may be supported or resisted by the federal and provincial governments.

In short, an historical institutionalist approach to collaborative federalism brings to the field theoretical and conceptual tools that can be used to shed light on the processes of collaboration, interest definition, power relations, transformation and politicization. In the Canadian context, federalism has undergone a number of significant changes since the 1980s. The organization and character of political institutions have played a crucial role in shaping collaborative federalism and determining its results. The organization and character of the institutions involved also have reflected competing elites that struggle to embed their interests and priorities in these institutions. This happens because ideas and plans must be structured and mediated through institutions in order to be translated into public policy.

In particular, historical institutionalism provides a valuable theoretical insight into the analysis of processes of collaborative federalism by incorporating history and causal factors into the analysis. Its openness toward different causal factors allows the theorists to avoid determinism (Lecours, 2000). One of the main features of historical institutionalism is that it allows the researchers to consider the interactions between actors and institutions in shaping collaborative processes. In other words, political institutions are key determinant of political results and they shape the behaviour and strategies of political and bureaucratic elites. But at the same time institutions are shaped and reshaped by these actors. In other words, historical institutionalism allows the analysis of the relationship between political elites as objects and as agents of history (Steinmo et al., 1992).

Second, the historical institutionalist patterns of causality imply that political outcomes are path-dependent. These outcomes are shaped by contextual factors, many of which are

institutional (Hall & Taylor, 1996). Institutional path-dependency implies a process that emerges as a result of a contingent event. Once a critical decision is made the future actions of actors will depend on the decision made in the past and it becomes very difficult for future actors to reverse or cancel the decisions made in the past. Path dependency draws attention to schemes of territorial distributions of power (federalism, status of autonomy), party systems and structures, electoral rules and procedures, constitutional provisions and political practices as independent variables. The concept of path dependency is particularly useful in understanding the role of institutions in the formation and transformation of the processes of collaborative federalism.

Third, historical institutionalism focuses on the patterns of interaction between actors and institutions. Elites operate within an institutional setting and use institutions for strategic purposes. Institution, in turn, structure relations of collaboration and conflict between decision-making elites by, for example, effecting behaviour of elites and providing them with opportunities for action. As a structural force, institutions structure political situations and shape the definition of preferences, interests, ideas and identities of elites (Steinmo et al., 1992). From this perspective, the patterns of interaction between elites and institutions are of importance for collaborative federalism. They suggest that political institutions such as party systems and the territorial distribution of power arrangements create conditions that may or may not favour the construction of collaborative processes. As a result, a historical institutionalism framework offers a valuable theoretical insight and a solid approach that can be used to examine and explain the processes of collaborative federalism.

2.3. The Types of Federal-Provincial Relations

Collaboration is not a neutral term. Thus, it is essential to consider collaboration by placing it in context and understanding the processes of collaborative approaches to federalism in the light of institutions, power relations, historical patterns and past decisions. This dissertation considers collaboration in terms of the following four factors: authority and power, resources, activities, and information. Anchored within the state institutional framework, political institutions shape and provide the context for the activities, information, the structure and distribution of power, and resources available to elites.

Table 2.1 introduces a typology of intergovernmental relations. It demonstrates how federal and provincial elites can work on public policy issues by developing a typology of relations between them. These types of relations — both between the federal and provincial decision-making elites and among the provincial decision-making elites — differ in several ways: purpose, the policy issue being addressed, the structure of decision making and the types and frequency of communication. It should be noted that not all structured interactions and relations deserve to be called ‘collaboration’. In this table, ‘coexistence’ implies that the political and bureaucratic elites of the federal and provincial governments hardly relate to each other, dealing with policy issues that extend beyond their capabilities.

In the middle of the table, there are elites involved in ‘communication’, ‘cooperation’ and coordination’. The communication process involves the exchange of information for mutual benefits. When elites are involved in communication, no joint activities or provision of services take place. There is also no need for shared and jointly created rules, norms, structures and dispute resolution mechanisms.

In the case of cooperation, elites exchange information among themselves through the networks and structures of routine information exchange and discussion. While elites alter activities and the provision of services, they maintain separate goals, resources and decision-making structures. The projects are more complex, and participants often require some form of joint planning or agreed joint program or a medium-term work program, depending on the previous history of working relations (Keast et al., 2004).

In the case of coordination, federal and provincial political and bureaucratic decision-making elites are involved in frequent communication, joint discussion and information sharing. Key decision makers are also involved in the establishment of joint programs and activities, and alter the provision of services for mutual benefits and to achieve a public purpose. They share resources, risks and rewards. Usually, coordination is task-focused and short-term, with decision-making elites maintaining their organizational identities and not forced to merge their independent goals and objectives (Agranoff & McGuire, 2003). There is usually some shared decision-making mechanism but no equality among elites.

The table also includes key decision makers involved in the process of collaboration who can address public policy problems through shared authority and power (Huxham & Vangen, 2005). With respect to shared rule norms and structures, the decision-making elites

must expressly agree on the rules and norms that will govern their interactive process. Collaborative structures are evolving and can be temporary or permanent in their duration. Collaboration occurs over time as federal and provincial elites or provincial decision-making elites “interact formally and informally through repetitive sequences of negotiation, development of commitments, and execution of those commitments” (Thompson, 2001, p.72). They maintain their collaborative relationship based on trust, sharing responsibilities and accountabilities, resources, power and rewards, all of which go beyond other ways of just working together.

Collaboration is rooted in two competing political traditions: classic liberalism and civic republicanism. Classic liberalism, with its emphasis on private interest, views collaboration as “a process that aggregates private preferences into collective choices through self-interested bargaining” (Perry & Thomson, 2006, p.20). Elites enter into collaborative agreements to achieve their own goals, negotiating among competing interests and brokering coalitions among competing value systems, expectations and self-interested motivations. Civic republicanism, on the other hand, with its emphasis on a commitment to something larger than the individual, views collaboration as “an integrative process that treats differences as the basis for deliberation in order to arrive at mutual understanding, a collective will, trust and sympathy and the implementation of shared preferences” (Perry & Thomson, 2006, p.20).

Authority and power, resources, activities and information are crucial determinants that lie at the core of the intergovernmental collaborative practices in Canadian federalism and alter the structures, processes and results of the collaborative arrangements. Elites and historical institutionalism allows us to focus on how these processes are linked and to demonstrate the particular relationships and interactions between them in a way that reflects the true complexity of real political situations.

Authority and Power

The relations between the federal and provincial governments arise from paradox of federalism. Federal systems were designed to divide power, but detailed arrangements among governments blur jurisdictional responsibility and combine the power of governments (Brown, 2008). This paradox arises from inherent tensions within federal institutions. In this

dissertation, the term power implies sharing in decisions, although the degree of sharing can, of course, vary considerably.

The federal and provincial decision makers who seek to collaborate must understand how to jointly make decisions on the rules that will govern their behaviour and relationships. They also need to create structures for reaching agreement on collaborative activities and goals through shared power arrangements. “Power-sharing implies not only the right of criticism and the legitimacy of opposition, but also multilateral participation in making governmental decisions” (Flanagan, 2010, p.34). Power sharing also means that the two orders of government must respect the jurisdictions of one another and avoid intrusions into each other’s jurisdiction.

The sustainability of collaborative arrangements is affected by power imbalances and by competing constitutional logic within the collaboration (Huxham & Vangen, 2005). Power imbalances become most problematic when elites have difficulty agreeing on a shared purpose and, most importantly, possess unequal power in collaborative decision making. In addition, over time, collaboration is likely to experience both exogenous and endogenous shocks. Therefore, collaborations are more likely to succeed when they provide resources and tactics for dealing with power imbalances and shocks (Bryson & Crosby, 2006).

Elites represent and enact competing institutional logics, namely, “macro-level historical patterns, both symbolic and material, that establish the formal and informal rules of the game and provide interpretations of action” (Bryson, 2006, p.7). For example, the logic of the bureaucratic state concerns the regulation of human activity and includes legal and bureaucratic hierarchies, rules and standard operating procedures. Logics focus the attention of the elites on issues, outcomes and sources of power. Logics often compete because actions, processes, norms and structures that appear to be legitimate from the perspective of one institutional logic may be seen as illegitimate from the perspective of another logic (Friedland & Alford, 1991). In short, competing institutional logics within intergovernmental collaborations may significantly influence the extent to which the elites can agree on essential elements of process, structure and desired results.

Reaching agreements that are compatible with all interests does not mean agreeing on the best possible solution. Instead, it means that decision-making elites have to be willing to support a decision once it is made (Thomson & Perry, 2006). The key to success rests in the

elites' willingness and ability to monitor the progress and impose credible sanctions on non-compliant partners. If elites are unable or unwilling to monitor their own adherence to the agreed-upon rules, joint decision making is unlikely (Bardach, 1997). Thus, to arrive at this kind of equilibrium, elites need to understand the shared authority and responsibility when they engage in collaboration.

The problem, however, is in that the elites in reality share a dual identity. This reality creates an intrinsic tension between self-interest — maintaining an identity that is distinct from the collaborative partnership — and a collective interest — achieving collaborative goals and maintaining accountability to the collaborative partners (Bardach, 1998). When collaborative goals conflict with the autonomous goals of elites, identities are at stake. Unless the particular problem is of sufficient urgency to all elites, individual missions are likely to trump collaborative intentions (Huxham, 1996).

Resources

The collaborative dynamic in the federation is greatly affected by the range and diversity of the interests represented, their skills and knowledge, and the resources they can mobilize. Decision makers who collaborate must experience mutually beneficial interdependencies based either on differing interests — what Powell (1990 p.303) calls “complementarities” — or on shared interests, which are usually based on homogeneity or an appreciation and passion for issues that go beyond an individual organization's mission (Thomson et al., 2009). Complementarity occurs when one party has unique scarce resources, such as skills, expertise, wealth or goods, that another party needs or could benefit from, and vice versa. It provides a foundation for forging common views out of differences.

Institutions play a crucial role in the allocation of resources that, in turn, affects the decision-making power of elites. The uneven distribution of resources implies that elites are not independent from their environment in the sense that they rarely have all the resources they need to guarantee their own survival or reach their goals (Berardo, 2010). In collaborative arrangements, elites will be driven by the desire to gain access and secure whatever resources are most scarce from their perspective. Resource scarcity prompts elites that do not possess scarce resources to attempt to exert power, influence or control over elites that possess scarce resources (Bingam & O'Leary, 2008). However, elites seeking to acquire

the resources necessary to survive must build legitimacy through making use of structures, processes and strategies that are deemed appropriate within the institutional environment (Suchman, 1995).

Taking into consideration the purpose of this dissertation, three major types of resources will be considered: electoral support, financial resources and technical expertise. While it is true that the financial resources of elites are always of significant importance, it is still essential to consider other types of resources, such as electoral support and technical expertise, in collaborative arrangements. The consideration of all three types of resources will make it possible to consider the bigger picture and to take into account the motivations of various elites in trying to secure these resources. For instance, Quebec political elites try to secure financial resources but they are not always motivated by financial considerations as they also try to secure provincial autonomy. And of course, electoral support is of significant importance in this province. Thus, it should be noted that depending on the context, a particular type of resources may play a more prominent role in elites' struggle for power.

a) Electoral support

Canada has a single-member plurality or first-past-the-post electoral system that allows a political party to form a majority government with a minority of the popular vote and to wield largely unrestricted power as long as it respects the boundaries set by institutions such as constitution, the courts and the convention of federalism (Hale, 2001). Citizens may attach symbolic value to a federal or provincial authority over a particular policy, even if the provision of this policy through a collaborative effort would, in fact, make them better off economically (Downs, 1996). Likewise, citizens may be unwilling to accept compromise solutions with a neighbouring jurisdiction. "Officials who pursue collaborative solutions that are contrary to their constituents' preferences risk being punished at the polls" (Gerber & Gibson, 2005, p.312). In addition, collaboration may serve as means for elites to promote their political career, and elites may engage into intergovernmental collaboration as a way to promote themselves to a larger constituency or to gain legitimacy for their system (Feiock, 2004).

b) Financial resources

The division of power over various forms of taxation and public spending, and the ways in which governments institutionalize collaboration and manage conflict are at the core of the relationship between federal and provincial governments (Hale, 2001). The *Constitution Act* of 1867 has resulted in shared federal-provincial jurisdiction over 90 percent of federal revenue sources and almost three quarters of provincial revenue sources in recent years (Treff & Perry, 2003). In addition, the Constitution assigns to the provinces the primary responsibility for such major areas of public spending as education, social services, health care and transportation.

However, provinces in Canada have a different potential to generate revenues or, in other words, fiscal capacity, mainly because of variations in the size of population, personal incomes, industrial structure and natural resource wealth. This potential is a key determinant of a province's fiscal capacity to provide programs and services to its constituents and establish the level of taxation needed to provide a given range of programs. Despite the fiscal disparities, all provincial governments must have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation (Hale, 2001). Even if the meaning of comparability is still a matter of debate, there is a system in place of federal-provincial revenue-sharing arrangements, including federal transfers for health, education, social services and equalization payments. At the centre of the federal-provincial transfers is the federal spending power, which is considered more closely in this dissertation.

c) Technical expertise

The other important resource is the technical expertise or the public services of the provinces and the federal government. These public services are critical to the operation of governments and the provision of public goods to the constituents. They include government departments and agencies; health, education and social services; and government enterprises, such as Crown corporations. "Expertise has generally been considered the foundation of bureaucratic power" (Bendor et al., 1985, p.1041). It gives the bureaucratic elites strategic opportunities. This type of resources might be of particular importance for the elites from smaller provinces that have an incentive to engage in collaboration to try to minimize costs

or provide a higher quality of goods and services. The size of a public service sector depends on a number of factors, including population, financial capacity and government ideology. For example, governing elites that prefer a limited role for the state in society tend to have proportionately smaller public services than those favouring greater state intervention.

Activities

Federal and provincial elites are involved in the provision of allocational, developmental and redistributive programs and policies (Musgrave, 1959; Rosen et al., 2008). Allocational policies produce and distribute public goods and services to taxpayers. These policies encompass the provision of a broad range of services, such as education, health, water and utilities, and emergency dispatching to name a few. Developmental policies are those that directly enhance the economic well-being of the state or community. They include attracting industry, regional infrastructure projects and revolving loan funds. Redistributive policies are directed to benefit certain segments of the population and revolve around satisfying equity concerns. Examples of these policies include health care for the poor, unemployment compensation, low-income housing and progressive taxation.

The provision of these policies in the collaborative arrangement is constrained by institutional factors. Institutions shape the way elites interact, the powers they hold, the actions or inactions they take and the way their preferences are reflected in policy outcomes (Gerber & Gibson, 2005). In other words, institutions can alter the balance of power and interests in the formation of public policy. They structure the decision-making process and provide elites with veto opportunities over policy proposals. In addition, federal or provincial decision-making elites' long-term strategic considerations and the ideology of political parties' leaders in power may prevent or foster collaboration.

In collaborative arrangements, elites are also involved not only in altering and improving service provisions but also in the creation of shared meaning, increasing interactions, new institutions, new norms and social heuristics for addressing public problems and new modes of discourse (Wood & Gray, 2000). These results typically occur where elites become more closely linked and connected in order to be able to create new roles and functions that are specific to collaboration. There is a genuine interdependence, and there is a genuine sharing of power, risk and reward (Huxham & Vangen, 2005).

Closely related to interconnectedness is the facet of norms — trust — which can be defined as a common belief among a group of individuals that another group will make (i) “good-faith efforts to behave in accordance with any commitments both explicit and implicit,” (ii) will “be honest in whatever negotiations preceded such commitments,” and (iii) will “not take excessive advantage of another even when the opportunity is available” (Cummings & Bromiley, 1996, p. 303).

Table 2.1. The types of relations between the federal and provincial governments and among the provincial governments.

Factors	The types of intergovernmental relations				
	Coexistence	Communication	Cooperation	Coordination	Collaboration
Constitutional authority and division of powers	- no joint decision-making process - no equality of decision makers - no planning and division of roles	- all decisions are made independently - no equality of decision makers - no planning and division of roles	- all decisions are made independently - no equality of decision makers - some planning and division of roles	- some shared decision-making processes - no equality of decision makers - some planning and division of roles	- all decision makers have power and equal say in joint decision making - equality of decision makers - absence of intrusion into one's jurisdiction
Resources	- no shared resources - no resource interdependency - in charge of own resources	- no shared resources - no resource interdependency - in charge of own resources	- no shared resources - no resource interdependency - in charge of own resources	- shared resources	- interdependency in the use of resources
Activities and provision of services	- no joint activities or provision of services - no shared and jointly created rules, norms and structures - possible duplication and overlap in the provision of services	- no joint activities or provision of services - no shared and jointly created rules, norms and structures - separate goals and structures	- somewhat-defined roles - alter the provision of services and activities - short-term need for a central coordinating function - separate goals and structure	- defined roles - alter the provision of services - joint planning - more complex projects - establishment of joint programs and activities	- shared and jointly created new rules, norms and structures and standard operating procedures - shared results - voluntary joint action
Information sharing	- no information sharing and frequent communication - no need for a dispute resolution mechanism - no need to create new joint institutions	- loosely defined roles - provide information to each other - no need for a dispute resolution mechanism - no need to create new joint institutions	- provide information to each other through the networks and structures of routine information exchange and discussion - no need for a dispute resolution mechanism	- information sharing - frequent communication - joint discussion - no need for a dispute resolution mechanism	- frequent communication and information sharing - interdependent relationship - changes in existing institutions or creation of new collaborative institutions - capacity for dispute resolution

Information

Elites collaborate because they intend to achieve a particular purpose. In order to achieve the purpose that brought the elites to the table in the first place, an administrative structure should be in place that moves from decision to action (Thompson & Perry, 2006).

Information about the issue and knowledge about the political process provide access to decisions. Anchored within the state institutional framework, political institutions “shape the information available and the structure of incentives” faced by elites (Feiock, 2008, p.201). Information on the preferences of elites on possible outcomes and on their resources should be common knowledge. Information asymmetry may prevent or at least make it difficult for elites to achieve collaborative results.

The implementation of collaboration is complex because traditional mechanisms, such as hierarchy, are less feasible in collaborative arrangements, and communication and information sharing among partners is based more on interdependent relationships than on contractual agreements (Conley & Moote, 2003). The potential to withdraw from the relationship may be particularly high if collaborations are unable to achieve short-term success as a result of collaborative inertia. Decentralized administrative structures still require a central position for communicating, deliberating, organizing and disseminating information, and keeping partners alert to the jointly determined rules that govern their relationships (Huxham & MacDonald, 1992). The institutions of collaboration — ministerial councils, officials' committees and joint administrative bodies — are executive bodies, and the lines of authority and accountability are based on consultation, clearance and agreement by ministers (Painter, 1998). To achieve this, highly formalized structures and procedures should be set out in the intergovernmental agreements.

In summary, this dissertation attempts to open the black box of intergovernmental collaboration by: i) identifying the interrelated underlying factors of a complex notion of collaboration and ii) analyzing and explaining how these factors cause collaborative results. In order to identify the underlying factor of collaboration, this dissertation looked at the various definition of collaboration provided in the multidisciplinary literature in the previous chapter. This exercise made it possible to identify and extract four shared core elements of

collaboration: authority and power, resources, activities and provision of services, and information sharing. These factors are outlined in the Table 2.1, which constructs a typology of intergovernmental relations and distinguishes among coexistence, communication, cooperation, coordination and collaboration. Analyzing collaboration in this way would: (i) reflect the theoretical framework (historical institutionalism and elite analysis) that is used for the analysis of collaborative federalism in this dissertation; (ii) reflect this dissertation's focus on different policy domains; (iii) emphasize that power sharing, rules, structures and norms are key in the collaborative process; and (iv) incorporate the process framework into this analysis.

Power sharing and the equality of elites are the key elements of any collaborative arrangement whose goal is for elites to jointly act or decide on a particular policy issue through an interactive process using formal or informal means and shared power, together with rules, norms and structures. In addition, the 'joint activities and provision of services' factor of collaboration considers not only whether all provincial decision-making elites were able to conclude an agreement among themselves or with federal decision-making elites but also whether these agreements are able to achieve the intended results. In other words, this dimension considers what happens after the signature of the agreement. For collaboration, agreements should bring results, serve their purpose and serve as point of reference after its signature.

In order to explain and analyze how these four factors produce collaborative results, this dissertation places collaboration in context and applies elite analysis and historical institutionalism theory. For example, the Agreement on Internal Trade is deconstructed and analyzed in terms of these four factors by applying the elites and historical institutionalism theories to demonstrate how elites who operate in a larger historical and institutional environment mobilize and use these factors to achieve collaborative results. Institutions kept elites in power and provided them with means to influence collaborative results. The combination of the analysis of elites and institutions provides a very robust theoretical foundation that would allow analysis of the notion of collaborative federalism through the interaction of these two theories. Historical institutionalism, as an approach that gives political institutions theoretical importance, addresses the impact of institutions on the processes that create and shape collaborative federalism. One of the limitations of historical

institutionalism, however, is that this approach considers the meso-level political institutions that shape the direction of policy development.

Pierson and Skocpol (2002) argue that one of historical institutionalism's main strengths is to look at the context, and thus to probe uneasy balances of power and resources, and see institutions as the developing products of struggle among unequal actors. "Even if historical institutionalism may look at institutions as products of struggle, it generally cannot theorize that struggle since it does not come down to a particular theory of society be it a pluralist one or one structured by social relations such as gender or class. It seeks to ground explanations and determination in a limited range of political institutions, and thus consciously sidelines considerations of the deeper economic and social structures. Although the considerable ingenuity and analytical refinement of historical institutionalism cannot be denied, its failure to engage with structure limits its ability to embed policy within context" (Graefe, 2007, p.33). Thus, while the institutionalist perspective is critical to the formulation of theories with increased explanatory power, it needs to be complemented by a theory of agency that is capable of illuminating the role of actors in triggering and guiding the processes of collaborative federalism. The elite analysis perspective lays a foundation for such a theory. An approach to collaborative federalism that borrows from elite analysis allows the theorists to fully take into account the symbolic dimension of the phenomenon and, indeed, to give it superior theoretical importance.

In addition, the complementarity of the elite analysis and historical institutionalism approach allows us to address the often neglected issue of dynamism in historical analysis. Elite and institutional structures intersect to produce particular policy outcomes. Institutions are created and changed in struggles for political power, and elites shape the constraints in which they interact through institutional choice and design (Steinmo et al., 1992). The change in institutions may occur as a result of the political battles among actors or their ongoing manoeuvring through institutional constraints (Steinmo, 1993). Manoeuvring by political elites, collaboration and conflict among them within institutional constraints can influence the institutional parameters within which their interaction occurs.

The integration of the two theoretical schools, the elite theory and historical institutionalism, into one approach thus constitutes an attractive solution and offers the tools necessary to explore the complex processes of collaborative federalism. This result does not

imply, however, that the other factors such as socio-economic environment are irrelevant. The author acknowledges that institutions and elites do not operate in vacuum: the social and economic environment provides a larger context for the behaviour of elites and the role of political institutions, and it establishes the long-term general conditions for the emergence and development of collaborative federalism. However, elites and institutions remain the key driving forces that are responsible for shaping the collaborative approach to Canadian federalism.

2.4. Methodology

Research methodology helps to establish the link between the theory and practice. This dissertation compares three case studies: the Agreement on Internal trade, the Social Union Framework Agreement and the Council of the Federation. In each case, the goal is to discover circumstances in the history of the event that are causally relevant — that is, those circumstances that had a direct effect on the development of collaborative federalism. Methodologically, the attainment of this goal depends on identifying definite causal links among historical events and circumstances.

In particular, this dissertation directly connects political institutions and elites' behaviour to collaborative federalism in a given context¹³. More specifically, it focuses on patterns of elites' interaction, such as conflict, cooperation, collaboration, influence and the role of ideas; the weights of political institutions and their structural consequences of political institutions; and the relationship between the former and the latter. Political institutions such as state structures, party systems and arrangements of the territorial distribution of power shape elite relationships and are shaped by them. This study looks at federal and provincial institutions and at the interactions between elites within these institutions. The use of historical institutionalism analysis and elite analysis for an understanding of collaborative federalism has clear methodological advantages: it permits to explain how elites and institutions shape collaborative practices and also how power relations are played out in collaborative processes.

¹³ Mechanism alone cannot cause outcomes because “causation resides in the interaction between the mechanism and the context within which it operates” (Falleti & Lynch, 2009, p.1145).

The number of case studies chosen is better able to refine the theoretical questions and claims put forward in this dissertation than would any single case study. Accordingly, working with three case studies helps improve internal validity (refining the problem) by studying the problem as it manifests itself in more cases.¹⁴

The comparative method chosen for this study is a common and powerful technique that social scientists regularly use to identify social causes.¹⁵ A great strength of comparative analysis is in that it attempts to explain rather than only to describe. The idea behind this is that choosing a number of cases that share many characteristics enhances the possibility of establishing clear causal processes that lead to similar or different outcomes in these cases. A comparative analysis is carried out in this dissertation for three main reasons: (i) to explore a theoretically hypothesized relationship; (ii) to examine whether the relationship or conditions explored in one study holds in another one; and (iii) to apply its inherent ability to integrate approaches such as historical institutionalism and elites theories in the analysis of collaborative federalism.

Comparative analysis requires that the phenomena being compared be “commensurable but not necessarily identical” (Pickvance, 2001, p.17). Being commensurable means that the phenomena can be categorized or classified on some common

¹⁴This dissertation acknowledges that the number of case studies chosen does not lead to more powerful generalization. Case studies cannot be generalized to the problem itself because they are chosen by the researcher, and because they are statistically too few to represent a population. Thus one cannot get to any solid claim of external validity (that one has shown that the way one has modeled the problem is an accurate reflection of the situation in the real world) from researcher-chosen cases, not even a hundred of them. To large extent, it is an inductive problem, and that external validity requires that one start from a deductive form of logic, then follow the evidential logic of randomness and an adequate number of cases for inference to the population. Three good solid and pertinent cases are however more useful, particularly if one finds meaningful differences between the cases in the way the mechanics operate internally on logical grounds.

¹⁵Freeman (2006) argues that comparative analysis serves as source of explanation or as a means of evaluation in a sense that it allows to assess policy and identify its weaknesses and strengths. Moreover, the comparison can be placed at the core of learning process. Aspalter (2006) points out that comparative method in social welfare analysis is the main tool of policy measurement as it is based on the case study approach. The importance of the comparison of the different components over time or across countries is that it helps to understand why some social programs and policies perform better than the others, to identify failure and best practices and to provide grounds for policy improvements. Similarly, Beland examines the impact of federalism and formal policy institutions on social learning process and pension reform in the United States and Canada in the 1990s. The comparative analysis from a historical institutionalism perspective permits the author to better address the similarities and differences of policymaking in both countries and to draw the potential implications and lessons learned. Comparative method has also been successfully used by Mossberg and Wolman (2003), who assess the cross-national policy transfer as one form of potential policy evaluation. They compared 17 cases to a set of rational criteria for evaluating alternatives in order to identify and address common difficulties in the application of policy transfer.

grounds for comparison. In the cases of the Agreement on Internal Trade, the Social Union Framework Agreement and the Council of the Federation, these three cases share some key features that make them comparable.

The main common feature is that these three cases are portrayed as the examples of collaborative federalism. For instance, it is argued that the Agreement on Internal Trade reflects some important dimensions of collaborative federalism. When Charlottetown Accord of 1992 was defeated, Ottawa's hoped to clarify and extend its powers with respect to the economic union. The federal government, therefore, initiated multilateral negotiations with the provincial governments designed to reduce internal barriers to the mobility of goods, capital, people and services in Canada. "Despite its constitutional responsibility for interprovincial and international trade, Ottawa has neither the power nor the legitimacy to define and enforce the Canadian economic union on its own. An alternative approach — to define the rules in the Constitution and make them judicially enforceable — was also impossible. Hence, negotiated intergovernmental collaboration became the only way to make progress on the issue of internal trade" (Cameron & Simeon, 2002, p. 56).

The social union, like the economic union, is predicated on the idea that a defining characteristic of a unified country is a shared and common set of aspirations, standards and norms with respect to the basic elements of social citizenship (O'Hara, 1998, p.15). As with the economic union, two issues were on the agenda: (i) how common national standards would be balanced against the variations that federalism encourages, and (ii) who was going to define and enforce the standards. In the case of the social union, a third issue was also prominent: how the federal spending power would be exercised and how it would be controlled. Thus, "as they came to terms with the new fiscal and policy realities, the provinces and the federal government began to work 'collaboratively' to fashion common social policy approaches and undertake joint initiatives" (Cameron & Simeon, 2000, p.79).

In the case of the Council of the Federation, the collaborative approach to federalism is evident not only in the preamble of the Council's founding document but also in the Council's organization and formal objectives. In the preamble of the document (Council of the Federation, 2004, p.1), the provincial and territorial governments state the need to "institute a new era of intergovernmental collaboration by promoting a constructive dialogue between the partners of the federation." The Council is structured to act as a forum through

which the provinces and territories can identify common needs and interests and work together across jurisdictions to accomplish these shared goals. Moreover, each member should be respected as an equal partner, in the sense that policies and initiatives must be adopted through a process of consensus decision making. Finally, the Council is supposed to promote an equal relationship between and among the different levels of government (Rae, 2003; Courchene, 2004).

In short, this dissertation intends to provide a new theoretical insight on collaborative federalism by applying a different approach. A qualitative analysis based on historical institutionalism and elite theory is the most suitable method to study the complex notion of collaborative federalism, since numbers cannot adequately represent the realities of historical contingencies and the ideas and meaning of the processes of collaborative federalism.

A comparative analysis applied in this dissertation brings a considerable advantage to the analysis of the processes of collaborative federalism. Three case studies are based on a textual analysis of data and various documents, including official government documents, credible academic sources and official political party documents in both English and French. It should be noted that the case study on the Council of the Federation relies heavily on the media sources. This happens because research on the Council of the Federation is very limited, especially five years after it was established. The next chapter considers the evolution of the roles of the federal and provincial governments since the 1960s.

3. The Changing Roles of the Federal and Provincial Governments in the Canadian Federation

As historical institutionalism asserts that history matters, this chapter attempts to look into history and analyse and explain how the roles of the federal government and its provincial counterparts have evolved in the federation since the 1960s. In particular, this chapter considers three different periods of federalism that are easily labelled as ‘cooperative’, ‘competitive’ and ‘collaborative’ in the literature. This chapter sheds light on elites’ divergent conceptions of the Canadian political community — asymmetrical, nationalizing, and the equality of the provinces — and of the elements that comprise its identity. The construction and transformation of political identity is influenced by the actions, discourse and symbols offered by elites who act in the institutional environment. The application of the historical institutionalism and elites analysis can be used to illuminate the processes and forces behind this transformation. A clear view of these processes and forces is essential to a proper understanding of the processes and results of collaborative federalism because the ideas, interactions and negotiating strategies of decision-making elites pertinent to the Agreement on Internal trade, the Social Union Framework Agreement and the Council of the Federation are based on the events and decisions made at that time.

The Canadian territory-based political identity has undergone significant changes since the 1960s. The notion of political identity encompasses not only the simple scope of legitimacy but also “the acceptance of the norms and rules of behaviour applicable to all, as well as the parameters by which individuals recognize themselves within the political whole and in the institutions to which they belong” (Rocher & Smith, 2008, p.22).

Two processes¹⁶ were at the centre of these changes. The first was Quebec’s Quiet Revolution and, with it, the rise to power in Quebec of new liberal political elites who

¹⁶This dissertation acknowledges that the translation by the Trudeau Liberals of the conception of the Canadian identity into an Aboriginal policy is also an important process that is relevant to this transformation. Taking into consideration the purpose of this dissertation, this process will not be considered. It is worth mentioning, however, that the Canadian government strongly believed that it was as a result of their imperfect integration into Canadian society that native communities started to experience the socio-economic problems and cultural dislocations (Knopf, 2008). This suggestion triggered strong political resistance on the part of Aboriginal leaders, who put their communities historical identities at the core of their claims (Verney, 1986). The resulting new activism led to the political association of many status Indian bands into a single organization and the emergence of a different form of native identity embodied by the concept of First Nations (McNab & Lischke, 2005; Knopf, 2008).

intended to modernize both state and society with a particular focus on improving the socio-economic conditions of francophones (Cook, 1966; Lecours, 2001). The patterns of social and political competition and the accompanying process of state-driven modernization resulted in the articulation by Quebec's political elite of a new Quebec identity conceptually different from the earlier French-Canadian identity (McRoberts, 1993; Lecours, 2001). As significant attempts were made to undermine the influence of the Catholic Church in Quebec society, this new identity was primarily defined by language rather than religion (Jones, 1997). The unintended outcome of the modernization efforts of the new elites was the development of a nationalist movement.¹⁷

The second process was the acceleration of the nation-building project under Pierre Trudeau's Liberal Party leadership in the 1970s and early 1980s. This version of nationalizing federalism arose as the Trudeau Liberals responded to the rise of Quebec nationalism and the Parti Quebecois (PQ) in 1976 and also to the forces of regionalism that were particularly strong during the province building in the 1970s (McRoberts, 1997). This nationalizing vision for federalism was strongly opposed to any kind of status of asymmetrical federalism and sought to deny other sources of political identity, particularly based on region or province or on Quebec or Aboriginal nationalism (Rocher & Smith, 2003). Trudeau defined the Canadian nation as an indivisible political community composed of equal individuals and provinces (McRoberts, 1997). This definition, however, was not acceptable to Quebec's political elite.

The regional identities created, transformed and stimulated by these two processes were further strengthened by the politics of recent constitutional negotiations. The claims of Quebec political elites for a formal constitutional recognition of identity provoked by the Quiet Revolution bolstered the loyalty of French-speaking Quebecers to the political provincial community and triggered a spillover effect in the western provinces.¹⁸

¹⁷In Quebec, as an elitist society, the nationalist elite began with lawyers, journalists and politicians as opposed to the Canadian clergy. Morton (1972, p.119) argues that initially the nationalist elite based its claims on language and culture and, accordingly, could only operate to "divide English Canadians from French" and to "destroy the Canadian political nationality." As it developed, however, the elite found expression for its cultural nationalism in political nationalism by campaigning for the secession of Quebec from Canada.

¹⁸The western provinces are Manitoba, Saskatchewan, Alberta and British Columbia.

3.1. The Changing Status of Quebec in the Federation: The Quiet Revolution

At the core of Quebec's Quiet Revolution are the processes of social, political and economic modernization and the rise to power of new political decision-making elites (McRoberts, 1997). Jean Lesage, the leader of the Quebec Liberal Party, and his government played a key role in the transition from the French-Canadian to the Quebec identity (Lecours, 2001). The first major difference between the Quebec identity that developed in the context of the Quiet Revolution and the French-Canadian identity was in the emphasis on language. The French-Canadian identity was defined primarily by religion and associated with the Catholic Church (Mathews, 1988). However, Lesage intended to undermine the influence of clerical elites upon Quebec society. As a result, health, education and social affairs, which were formerly administered by the Church, became controlled by the government, and no place was left for religion in the new identity that was defined by language (Jones, 1997). René Lévesque (1968, p.19) stated: "Nous sommes des Québécois. Au cœur de cette personnalité, se trouve le fait que nous parlons français. Tout le reste est accroché à cet élément essentiel, en découle ou nous y ramène infailliblement."

The second change, which is at the centre of the territorial dimension of the new Quebec identity, relates to the Quebec Liberal Party leader's suggestion that the successful modernization of Quebec entailed transfers of power¹⁹ from the federal to the provincial government (Jones, 1967, p.97). This asymmetrical vision of federalism promoted the new identity and triggered a new pattern of federal-provincial relations characterized mainly by competition as Quebec's political decision-making elites asked for increased decentralization (McRoberts, 1997).

The new Quebec identity was projected and diffused by the discourse and policies of Quebec's political decision-making elites (Lecours, 2001). The party structure system developed in the late 1960s and early 1970s also played an important role in these processes. The Quebec identity was bolstered by the Quebec Liberal Party that was gradually transformed into a nationalist party trying to increase Quebec's autonomy within Canada

¹⁹In particular, the demand focused on: i) the withdrawal of central power from areas of constitutional jurisdiction that appeared to be reserved for the provinces, based on Quebec's interpretation; ii) the increase of these areas of jurisdiction so that the provinces could have a voice in all affairs of concern to them; and iii) the increase of fiscal autonomy to better meet current and future fiscal needs.

(McRoberts, 1997). This, in turn, undermined the significance of the Union Nationale (UN), a conservative traditional party that had dominated the provincial political scene for the previous thirty years (Jones, 1967). A group of liberal reformers, led by René Lévesque, benefited from the decline of UN. These reformers were dissatisfied with the progress of the Quiet Revolution and claimed that a further significant change was needed for the political independence of the province (Lecours, 2001). In 1968, Lévesque formed the Parti Québécois (PQ).

The competition between these two parties and the replacement of the UN by the PQ in the Quebec party system was important for the new Quebec identity because these two parties promoted this identity. This also prompted the leader of the Quebec Liberal Party to make identity part of its politics (McRoberts, 1993). It should be noted, however, that despite their ideological differences, both Lesage and Lévesque articulated the idea of Quebec as the primary political community of French-speaking Quebecers (McRoberts, 1997). Trying to establish the importance and the primacy of the Quebec identity and its political community, these political leaders spoke of the Quebec state rather than simply of the Quebec government (Dion, 1978). On the basis of this identity, the Quebec Liberal Party was in favour of further decentralization of the Canadian Federation while the PQ was searching for independence (Balthazar, 1994). Quebecers' feelings of distinctiveness were further galvanized by linguistic policies enacted by the elites, such as the Quebec Liberal Party's Bill 22 making French the official language of the province and the PQ's Bill 101 setting linguistic standards for education (McRoberts, 1997; Lecours, 2001).

The government-driven reforms of the 1960s in Quebec found their meaning in the suggestions that the province of Quebec was the homeland of francophones and its government their primary representative. In this context, Quebec's elites began articulating claims for the constitutional recognition of the Quebec identity characterized primarily by the presence in the province of a French-speaking majority (Lecours, 2001).

The Liberal government of Lester B. Pearson and leaders of the other federal parties did not reject these claims and were inclined to integrate the emerging Quebec identity as part of a Canadian identity (McRoberts, 1997, pp.38–53). The period of Pearson's administration was described as cooperative federalism with four main features: i) the reliance on formal constitutional amendments and on judicial review was largely replaced by procedures of

continuous interaction, chiefly through federal-provincial conferences; ii) the federal government consulted the provinces prior to committing itself to policies affecting them; iii) all governments attempted to articulate policies in fiscal matters and to devise policies for economic stability and growth; and iv) the establishment of more institutionalized structures and processes of intergovernmental relations (Belanger, 2002; Simeon & Robinson, 1990).

3.2. Strengthening the Role of the Federal Government: The Canadian Nation-Building Project

The decades following the Second World War brought important changes to federal politics that, in turn, had a significant impact on Canada's regional identity landscape. At that time, Trudeau initiated the development of a political-legislative agenda designed to strengthen and increase the role of the federal government and its visibility in the daily lives of Canadians (McRoberts, 1997, p.140). This was mainly done by fostering a primary loyalty to the central government²⁰ and to reinforcing the Canadian identity, which was promoted by social, economic and cultural national policies. In Quebec, the Liberal Party leader, Robert Bourassa, intended to improve the socio-economic conditions of francophones and strengthen their association with the Quebec government (McRoberts, 1997). The struggle between federal and Quebec provincial political elites for powers that resulted from this political dynamic coincided with the articulation of identities that could legitimize each level of government's interventionist approach and secure the power basis of its elite (Lecours, 2001).

When Pierre Trudeau led the federal Liberals in the late 1960s, he drastically changed the way that Canadian identity was articulated. Trudeau rejected the conception of the Canadian nation as a "community of communities"²¹ in favour of a strongly individually based one (Simeon & Robinson, 1990, p.274). While his definition of the Canadian identity accepted references to linguistic duality, it did not associate, however, language groups with a specific territorial basis (Lecours, 2001). In his attempt to develop a Canadian identity that was undifferentiated by territorially based linguistic and cultural distinctiveness, Trudeau

²⁰For instance, federal elites concentrated their efforts on informing Canadians, through extensive advertising campaigns, about the many benefits it was providing for the public (McRoberts, 1997).

²¹'Community of communities' refers to giving special status to Quebec and recognizing the provinces' right to manage their own development in Canada.

mainly used two political and institutional changes (Simeon & Robinson, 1990). In particular, Trudeau enacted the 1969 official bilingualism policy the purpose of which was to transcend the provincial borders (Morton, 1972). Second, the 1982 patriation of the Canadian Constitution from the British Parliament was supposed to assign, through the constitutional addition of a charter of Rights and Freedoms, a new symbol to the Canadian identity based on the principle of liberal individualism (Kelly, 2005). In other words, Trudeau almost entirely shaped the Canadian identity and the national vision included a strong commitment to the equality of the two official language communities in Canada, in terms of official language minority educational rights and of access to federal government services in the official language of choice (McRoberts, 1997; Lecours, 2001).

In Quebec, as a result of the struggle for power and legitimacy between federal and provincial political elites, Trudeau's vision of the Canadian political community was challenged. Bourassa, the Quebec Liberal Party leader, for instance, argued that the Quebec identity was difficult to reconcile with Trudeau's vision of the Canadian nation (McRoberts, 1993) and Lévesque, the PQ leader, stated that the Canadian and Quebec identities were fundamentally incompatible (McRoberts, 1997). In addition, the bilingual dimension of the nationalizing vision entrenched in Section 23 of the Charter of Rights rendered parts of Quebec's Charter of the French Language (Bill 101) unconstitutional (Rocher & Smith, 2003). With this act, the nationalists asserted federal intervention in matters of language policy, which reflected their view that the federal government, as the government of all Canadians, could provide for and guarantee (through the Supreme Court) official language rights throughout Canada (Rocher & Smith, 2003). Thus, this Section of the Charter interfered with Quebec's ability to set its own course in language policy.

The 1980 and 1995 referendums on independence organized by the PQ further stimulated the Quebec identity. During these events, the PQ leaders, Lévesque and Jacques Parizeau, PQ leader and Premier of Quebec during the second referendum, insisted that the Quebec and Canadian identity were fundamentally incompatible, and presented a vote for independence as an expression of Quebec identity (McRoberts, 1997). Both PQ leaders made a particular effort to stress the connection between the Quebec and the French language (Young, 1998). As a result of these political dynamics, the Quebec identity has gradually overtaken the French-Canadian identity in terms of its primary attachment.

In the West, the political elite widely supported Trudeau's definition of the Canadian nation. However, the region's political elite was not in favour of Trudeau's intentions to increase the federal government's scope of action in order to promote the Canadian identity and strengthen citizens' identification with the Canadian community (Gobbings, 1994; Tupper, 1981). The premiers of the western provinces denounced various federal initiatives,²² including the 1980 National Energy Program. The main purpose of this program was to strengthen the position of the federal government with a focus on nation-building by introducing regulation on the price of oil in a period of a dramatic increase in the world price (Gibbins & Arrison, 1995, p.22). In addition, the western premiers believed that the lack of representation from their provinces in the historically dominant Liberal Party had led to a permanent situation of political weakness of the western provinces in the Canadian federation (Gibbins, 1982). Their struggle against some economic federal policies led to the denunciations of the federal treatment of the West, fostered a feeling of western alienation²³ and contributed to the development of a separate western regional identity (Lecours, 2001).

The period of Trudeau's administration was labelled as competitive federalism that was rooted in the conviction that "provincialism and decentralization had gone too far" and that "cooperative federalism was both inefficient and lacking in democratic legitimacy" (Simeon & Robinson, 2002, p.290). Competitive legitimization meant that each government instead looked to its own responsibilities to act where it could and, as a result, "unilateral action and recourse to the courts often displaced negotiation and compromise" (Simeon & Robinson, 2002, p.296).

3.3. Constitutional Negotiations and the Emergence of a New Era of Collaborative Federalism

In the 1980s and 1990s, the constitutional negotiations intended to further strengthen the Canadian political community. As a result, these negotiations also stimulated the Quebec and Western identities. The constitutional negotiations were structured around the three

²²The other initiatives include an "inequitable freight-rate structure, regionally "discriminatory tariffs, and an eastern-biased banking system" (Tupper, 1981, p.90).

²³Gibbins (1994, p.180) argues that western alienation "captures the frustration that comes from incomplete integration, from the belief that the region has failed to play a role in the nation's life commensurate with its resources, potential, and aspirations."

following stages: i) the 1982 patriation of the Canadian Constitution, ii) the development of the 1987 Meech Lake Accord, and iii) the development of the 1992 Charlottetown Accord.

The 1982 patriation of the Canadian Constitution was supposed to assign a new symbol to the Canadian identity. One of the unintended consequences was that it reinforced the Quebec identity. During the negotiations of the constitutional amendment of 1982, Trudeau threatened to proceed with constitutional change unilaterally, without the consent of the provincial decision makers (Kelly, 2005). In making this appeal, Trudeau attempted to stress the symbolic dimension of the federal government's role as the sole government of all Canadians, to undermine the provincial governments' role in the federation and to solidify citizens' loyalty to the federal level of government (Kelly, 2005). In particular, the Constitution was patriated and amended without the consent of Quebec. Trudeau believed that a separatist government of Quebec would never sign the 1982 *Constitution Act* and that the federal Liberal Party represented the interest of Quebec (Milne, 1982). Hence, the Trudeau Liberals argued that the 1982 constitutional change was legitimate even without the consent of Quebec. The leaders of both the PQ and the Quebec Liberal Party denounced Trudeau's unilateral action. The PQ leader, Lévesque, interpreted this event as evidence of the fundamental cultural and value differences between Quebec and the rest of the country (Laforest, 1995; Young, 1998).

When the federal Conservative Party, led by Brian Mulroney, came to power in 1984 it engaged in discussions with Quebec's Liberal government and other provincial governments in order to develop a constitutional agreement that could foster Quebec's attachment to Canada (McRoberts, 1997). However, Bourassa, the Quebec Liberal Party leader, stated that he would support the constitutional agreement only if it gave Quebec a formal distinct status (Young, 1998). Thus, symbolism and identity acquired a significant importance as a result of the 1980 referendum and the 1982 patriation of the Canadian Constitution.

As for the economic union, the federal government of Pierre Trudeau created, in 1977, a Task Force on Canadian Unity (the Pepin-Robarts Commission) led by Jean-Luc Pepin, previously a federal cabinet minister, and John Robarts, a former premier of Ontario. The Pepin-Robarts report (1978) recommended that the Constitution contain a provision that would maintain and enhance the economic union in Canada. In particular, the Pepin-Robarts committee recommendations 20–23 were directed at removing interprovincial trade barriers.

They stressed the need for Section 121 to be revised to more effectively guarantee free trade between the provinces, and recommended that it be extended to include services, labour and capital, as well as a clarification of government purchasing policies to ensure that market costs and not political goals would be the prime consideration (The Pepin-Robarts report, 1978, recommendations 20–23; Leeson, 2001).

Chapter 7 of the Pepin-Robarts report also proposed the creation of the Council of the Federation “composed of provincial delegations to whom provincial governments could issue instructions, each delegation being headed by a person of ministerial rank or on occasion by the premier” (The Pepin-Robarts report, 1978, chapter 7). The Council of the Federation, “envisioned as a second chamber of parliament,” was supposed to be an institution that could play a major part in “ensuring that the views of provincial governments are taken into account before any central action which might have an impact upon areas of legitimate provincial concern occurs, thus inducing more harmonious federal-provincial relations” (The Pepin-Robarts report, 1978, chapter 7).

A second document, *Securing the Canadian Economic Union in the Constitution* (1980), dealt more specifically with questions of internal trade. In it, the federal government proposed constitutional changes along three specific recommendations: i) entrenching mobility rights in the Charter, ii) revising Section 121 to strengthen it with regard to impediments to trade, and iii) broadening the power of the federal government under the trade and commerce section of Section 91. It was further proposed that all of these new sections would become enforceable by the courts. These proposals formed the basis for all subsequent negotiations on internal trade barriers.

The end result of the post-1982 constitutional negotiations was the Meech Lake Accord, which recognized Quebec as a distinct society. This accord was also a first attempt of the political elite of the provincial and territorial governments to constrain federal spending power through a constitutional amendment (Laforest, 1995). A brief Section 106a in the Meech Lake Accord stated: “the government of Canada shall provide reasonable compensation to the government of a province that chooses not to participate in a national shared-cost program that is established by the government of Canada after the coming into force of this section in an area of provincial jurisdiction, if the province carries on a program or initiative that is compatible with the national objectives” (Canada 1987, p. 16–17).

The accord, however, was never ratified due to the refusal of a Manitoban native parliamentarian to approve an accelerated procedure on the grounds that the accord did not address any of the concerns of Aboriginal communities (Gibbins et al., 1988). The Quebec sovereigntist Parizeau interpreted the failure of the Meech Lake Accord as a rejection of Quebec's identity and a demonstration of its fundamental incompatibility with the Canadian identity (Laforest, 1995).

The Meech Lake Accord failure also fuelled Western alienation. A new regional Reform Party, led by Preston Manning, claimed that the western provinces were marginalized in constitutional negotiations and that the notion of the Canadian nation composed of equal citizens and equal provinces was neglected (Gibbins et al., 1988). Therefore, the Reform Party leader claimed a better integration of the West within the Canadian political community through the creation of an elected Senate with equal representation of the provinces, and offered a vision of federalism based on the principle of the equality of the provinces.²⁴

In 1991, the Government of Canada's formal proposal for changes to the Canadian constitution, which triggered the discussion and negotiations that eventually led to the Charlottetown Accord, suggested the establishment of a federal-provincial Council of the Federation (Privy Council, 1991a; Privy Council, 1991b). The general idea behind the Council was to "improve intergovernmental relations by taking the existing processes of

²⁴This principle holds that Canada is first and foremost the creation of the provinces and that the very existence of the federal government can be attributed to them. On the political level, this notion of federalism refers to a relationship of equality between the two orders of government. Of primary importance is the latitude of each order of government to legislate in the jurisdictions granted by the Constitution. Where this is not the case, the provinces must give their explicit consent to all federal intrusions into provincial jurisdictions. The Constitution also cannot be altered without obtaining the consent of all the provinces. In other words, this conception of federalism implies that the provinces can count on a certain economic and financial independence, which means not only that the provinces must have a fiscal base sufficient to allow them to meet their obligations in their areas of jurisdiction, but also that the benefits of the federation must be shared between the affluent and less affluent provinces (Rocher & Smith, 2003). A more contemporary expression of this principle holds that the political institutions of the central government better represent the provinces (Gibbins & Arrison, 1995) and that the provincial and regional diversity that characterizes Canada is reflected in the composition of federal institutions as well as in the way in which they operate. According to this view, because the recognition of diversity is a cornerstone of federalism, all of the provinces by definition possess a distinct nature, which must not only be taken into account by the federal government, but also condition the way in which the central government's institutions operate. Hence, granting special status to one province would deny the fact that Canada is created out of its diversity.

executive federalism and institutionalizing them in a formal body, the existence of which the federal government was prepared to entrench in the Constitution” (Smith, 2005, p.147).

The Charlottetown Accord introduced asymmetrical structures that could increase the power of certain components of the Canadian federation, such as Quebec and Native communities (Gibbins, 1994). For this reason, the Accord was not acceptable to the Reform Party leader, Manning, and the PQ leader, Parizeau. Manning argued that the Accord’s asymmetry would marginalize the western provinces’ power and influence in Canadian politics. In addition, he believed that the distinct society provision and the right for Aboriginal self-government was contradictory to the definition of the liberal Canadian nation based on the idea of equality of individuals and the provinces (Gibbins, 1994). The PQ leader, Parizeau supported by the Bloc Quebecois leader (BQ), Lucien Bouchard, argued that stating the equality of the provinces marginalized the expression of Quebec’s identity and distinctiveness (Laforest, 1995). As a result of these two forces, the Charlottetown Accord was defeated in a national referendum.

The 1992 Charlottetown Accord was a second attempt of the provincial and territorial decision-making political elites to constrain federal spending power through a constitutional amendment. The wording of Section 106a of the Meech Lake Accord was replicated and subsequently supplemented on such issues as housing and labour market development and training. These issues committed the federal government to negotiate agreements with provinces either to withdraw from an area of provincial jurisdiction, while providing compensation to the provinces, or to maintain its expenditures, depending on the preferences of each province (Privy Council, 1992). The accord also proposed a mechanism to protect intergovernmental agreements from unilateral amendment through legislation (Privy Council, 1992).

In this accord, the federal, provincial and territorial decision-making elites committed to the principle of preserving and developing Canada’s social and economic unions. The social union described in this provision included: i) a comprehensive, universal, portable, publicly administered and accessible health care system across Canada; ii) adequate social services to ensure that all residents have a reasonable access to housing, food and other basic needs; and iii) high-quality primary, secondary and post-secondary education and the rights of workers to organize and bargain collectively (Privy Council, 1992; Canada, 1992).

To strengthen the economic union, the federal and provincial elites decided to include a new common-market clause that was supposed to address shortcomings²⁵ in Section 91 and Section 121 of the Constitution (Palda, 1994). This clause proposed to include: i) barriers related to persons, goods, services and capital; ii) both tariff and non-tariff barriers; iii) barriers created both by provinces and the federal government; and iv) barriers arising from legislation, regulations and administrative practices (Privy Council, 1991a; Plada, 1994).

The last important provision in the Charlottetown Accord was a constitutional framework developed to govern federal expenditures in areas of exclusive provincial jurisdiction. This framework would ensure that expenditures: i) contribute to the pursuit of national objectives and reduced overlap and duplication between governments; ii) respect and not distort provincial priorities; and iii) reflect equality in the treatment of the provinces while recognizing their different needs (Privy Council, 1992). It also committed the Prime Minister of Canada and the provincial and territorial Premiers to review progress in achieving these objectives annually at First Ministers' conferences. These ideas on constraining federal spending power, establishing common social policy objectives and principles of intergovernmental policy making, and intergovernmental review and reporting on social policy influenced the thinking of those decision makers who would be involved in negotiating the AIT and SUFA four years later.

This era of intergovernmental relations was labelled as collaborative federalism. At the outset of the Mulroney era, there was a need to find bases for greater harmony in intergovernmental relations by "reinstating collaborative federalism" in order to get away from the destructive conflict that had marked intergovernmental relations in the preceding period (Simeon & Robinson, 2002, p.328). This collaborative federalism manifested itself in a veritable explosion of intergovernmental meetings at all levels and in the involvement of the provinces as "trusted partners that are equally dedicated to its unity and prosperity in the business of managing the federation" (Simeon & Robinson, 2002, p.328).

²⁵The general interpretation of these Sections as only prohibiting the provinces from imposing tariffs on goods from another province led to the absence of clear authority to settle interprovincial trade disputes or forced the abolition of regulatory and administrative barriers to trade within the internal market (Palda, 1994).

This chapter analyzes and explains the transformation of the roles of the provincial and federal governments in the political community since 1960s. An understanding of this transformation is essential for the processes and results of collaborative federalism because the ideas, interactions and negotiating strategies of elite actors pertinent to the Agreement on Internal Trade, the Social Union Framework Agreement and the Council of the Federation are based on the events and decisions made at that time.

More specifically, this chapter highlights how political decision-making elites understood, transformed and shaped different conceptions of the political community in terms of asymmetry, nationalizing, and the equality of the provinces' visions of federalism. In the 1960s, identity formation was mainly driven by patterns of elite interaction, notably by the competition between federal and provincial decision-making elites. This dynamic was reinforced by a conflict between Quebec's new French-speaking elite, who articulated claims for increased provincial powers in the context of modernization, and the federal elite, who attempted to promote national unity and reshape the Canadian identity in order to reinforce its own power and strengthen the role of the federal government in the Canadian federation. The rise of a new nationalism in Quebec forced the federal political elites to search for ways to accommodate the nationalist demands for a new relationship and consider an asymmetrical view of Canadian federalism. The struggles among political elites from the western provinces and federal elites for increased provincial powers in the federation on one hand and central institutions on the other led to the articulation of the western identity, which was further stimulated by the example of Quebec nationalism.

The political activism that surrounded the constitutional negotiations of the 1980s and 1990s was not simply the expression of various regional identities or the consequence of different interpretations of the Canadian identity. The political-constitutional activism shaped the Canadian identity landscape by strengthening regional identities while at the same time providing alternate definitions of the Canadian nation.

In the western provinces, the potential consequences of this type of challenge for power distribution and relationships in Canadian politics led to a twofold response. On the one hand, western political elites, particularly the Reform Party leader, reaffirmed their attachment to the principle of equality of individuals and provinces that would avoid their

political marginalization at the expense of the more populous provinces (e.g. Quebec). On the other hand, the claims of the Reform Party for the greater participation and influence of the western provinces in federal politics led to the articulation of the idea of a western identity. This identity, in turn, provided legitimacy to the party's political claims and served as a foundation for its power.

In Quebec, the failure of constitutional negotiations stimulated the Quebec identity. This failure was interpreted by the PQ leader as a 'rejection' of Quebec. It also prompted the leader of the province's Liberal Party to reaffirm Quebec's distinctiveness. The dichotomization of the Canadian community in terms of Quebec and the rest of Canada became a permanent feature of the discourse of these political elites. Quebec's identity developed in the context of the Quiet Revolution, and the subsequent political-constitutional activism still coexists with the Canadian identity taken by the central state and its elites. The unequal distribution of power and the endless struggle of the federal elite, the Quebec and the western provinces' political elite are at the core of constructing and shaping the social and economic policies reflected in the Social Union Framework Agreement and the Agreement on Internal Trade. This happened because the intergovernmental agenda for the SUFA and AIT is mainly shaped by the regional and jurisdictional interests of the decision-making elites expressed in the various visions of the Canadian political community and by institutional factors that provide opportunities or set constraints on the actions of key decision makers.

It should be also noted that regional identities are prone to change. However, this change is constrained by the institutional environment, and a major institutional change may easily lead to the demise of an established or a developing identity. In practice, the institutional framework that sustains regional identities is only changed incrementally. Therefore, regional identities are very resilient and not easily reversible.

This chapter also demonstrates the tendency to use positive and negative connotations to label various periods of federalism in the literature. Thus, the 1960s were labelled as the era of cooperative federalism, the Trudeau era was described as the era of competitive federalism, and the Mulroney administration was mentioned as the emergence of the era of collaborative federalism. The easiness with which the various labels are applied to Canadian federalism suggests the lack of a common understanding of the applied terms and also

stresses the need to analyze and explain the notion of collaboration in Canadian federalism by considering collaborative practices through an application of the theoretical framework developed in the preceding chapter. The next chapter analyzes and explains whether the Agreement on Internal Trade signed in 1994 by key decision makers can be considered as an example of collaborative federalism.

4. The Agreement on Internal Trade

This chapter analyzes the Agreement on Internal Trade and examines whether it can be considered as an example of collaborative federalism. The analysis begins with the historical context, namely, with a review of the particular events that led to the conclusion of the Agreement by the provincial and federal decision-making elites, and is followed by a description of the content of the Agreement. The theoretical framework constructed in the preceding chapters of this dissertation is then applied to analyze the Agreement in terms of four factors of collaboration: authority and power, resources, activities and provision of services, and information sharing.

4.1. The Context: An Adjustment to the Era of Trade Liberalism

The economic union has played an important economic, political and symbolic role since Confederation. Defined as “a state of economic integration” (Brown, 2002, p.58), it involves the harmonization of economic policies between member governments and the removal of restrictions to the mobility of good, services, capital, and labour. According to economic theory, economic unions are created to capture four types of economic benefits: i) market integration, ii) increased bargaining power, iii) sharing of costs, and iv) sharing of risks (Brown, 2002, p. 53). The Canadian economic union is also part of “a social fabric which is comprised of a range of political sovereignties and allegiances associated with multiple jurisdictions in a federal state, the existence of strong regional cultural identities, diverse attitudes at the regional level towards the role of the Canadian state and social security, and conceptions of the role of Quebec in Canada” (Cohen, 1995, p.271).

Efforts to strengthen the economic union have been an important part of the public policy agenda since the 1980s. First, the need to strengthen the economic union came from the belief that existing constitutional provisions governing interprovincial trade were not effective and perpetuated restrictions to economic mobility (Swinton, 1995). “Given the deficiencies and uncertainties of our constitutional framework, it should come as a surprise to no one that there exist today numerous restrictions to economic mobility within Canada, originating in both the federal and provincial domains” (Canada, 1980, p.22).

Second, the need to secure the economic union came from the widespread belief that the costs of the barriers to interprovincial trade were significantly high since these barriers were obstacles to the free movement of goods, capital, labour and services across provinces and, hence, to greater efficiency in domestic trade, economic growth, international competitiveness and to any movements toward promoting economic and political integration in Canada (Knox, 1998). In 1985, the Royal Commission on the Economic Union and Development Prospects for Canada (the Macdonald Royal Commission²⁶) examined the interprovincial barriers to trade and concluded that they cost no more than 0.05% of the gross domestic product (GDP) (Canada 1985, p.133). Another study by the Canadian Manufacturers Association estimated that \$6.5 billion — or about 1 percent of national GDP at the time — could be gained by eliminating inter-provincial trade barriers (Darby et al., 2006, p.36). This study, however, consistently overlooked the economic benefits of government policies classified as barriers. Taking into account such benefits confirms that the net cost of these barriers is between 0.05% and 0.01% of GDP (Copeland, 1998, p.31; Lee, 2000, p.2). In addition, the Canadian Chamber of Commerce published several studies on barriers to interprovincial trade (Harmes, 2007, p.431) and the Fraser Institute advocated liberalization of the mobility of goods, capital and the labour force (Palda, 1994).

Third, the role of globalization and worldwide trends toward increased economic integration in the form of liberalized trade had an important impact on the development of the Agreement on Internal Trade (AIT). In the early 1990s, several events — the implementation of the Canada–U.S. Free Trade Agreement, the prospects for a North American Free Trade Agreement (NAFTA) and continuing liberalization of international trade under the General Agreement on Tariffs and Trade (GATT) — contributed to the perception that Canada enjoyed freer trade internationally than it did domestically (MacDonald, 2002). The result was a concerted effort to achieve some form of free trade federalism in Canada (Doern & MacDonald, 1999). The experiences learned in the global

²⁶The Commission argued for the international free trade agreement and a new trade policy for Canada in order to ensure an access to foreign markets and a growing economy in light of the growing mood of protectionism in the United States. In 1988, Canada and the United States signed the Free Trade Agreement. In 1994, the Canada-US free trade zone was extended to Mexico to form the North American Free Trade Agreement (NAFTA).

domain shaped the basic architecture and philosophy of the AIT (Schwartz, 1995; Boulanger, 1996).

Fourth, as a result of the failure of constitutional negotiations in the 1990s, the intent was to demonstrate that the two orders of government can work together. The Agreement, signed in 1994, was supposed to be symbolic, notably for the Quebec Liberal Party, in that it showed that Canadian federalism was flexible and could accommodate regional and cultural diversity within the federation (Cohen, 1995; Doern & MacDonald, 1999; Schwartz, 1995). In particular, the Agreement was negotiated with the hope that support for a separatist government might be reduced if the Liberal Quebec government could point to the direct economic benefits of a renewed economic federalism represented by the Internal Trade Agreement (Leeson, 2000).

In July 1994, the federal government, ten provinces and two territories signed the Agreement on Internal Trade, a political document, which came into effect in July 1995. The AIT is an elitist agreement in the sense that it was reached among political elites with a very limited attention from the Canadian public (Trebilcock & Schwanen, 1995). Despite its elitist nature, the Agreement was presented as an example of collaborative federalism. “The achievements of collaborative federalism — the AIT and the Social Union Framework Agreement chief among them — make it more likely that the procedure will be followed in the future” (Cameron & Simeon, 2002, p. 68).

4.2. The Content of the Agreement on Internal Trade

The objective of the Agreement on Internal Trade is:

“to reduce and eliminate, to the extent possible, barriers to the free movement of persons, goods, services, and investment within Canada and to establish an open, efficient, and stable domestic market” (Canada, 2011, *article 100*).

The Agreement focuses on the identification of trade barriers as obstacles to internal trade that cannot be justified by reference to legitimate objectives.²⁷ The basic components of

²⁷Legitimate objectives imply one of the following objectives: i) public security and safety, ii) public order, iii) protection of human, animal or plant life or health, iv) protection of the environment, v) consumer protection, vi) protection of the health, safety and well-being of workers, and vii) affirmative action programs for disadvantaged groups (Canada, 2011).

the Agreement include the reaffirmation of constitutional powers and responsibilities, dispute resolution procedures, its general and specific rules, and broad, mutually agreed operating principles²⁸ designed to prevent governments from establishing new barriers to competition and to reduce existing barriers.

The Agreement is applicable to the various sectors of the Canadian economy, including procurement (Chapter 5), investment (Chapter 6), labour mobility (Chapter 7), consumer-related measures and standards (Chapter 8), agriculture and food goods (Chapter 9), alcoholic beverages (Chapter 10), natural resources processing (Chapter 11), energy (Chapter 12), communications (Chapter 13), transportation (Chapter 14) and environmental protection (Chapter 15).

As a result of subsequent negotiations, the original 1994 Agreement on Internal Trade was amended 11 times. The 2011 consolidated version of the Agreement includes the last Protocol of Amendment signed on November 8, 2010. The purpose of this Protocol is to make changes to the provisions of Chapter 9 on agriculture and food goods of the original Agreement.

The structure of the Agreement is based on the establishment of the Committee on Internal Trade and the Internal Trade Secretariat, whose role is to provide with both agencies having the role of providing administrative and operational support to the functioning of the Agreement. In order to address the issue of domestic non-tariff barriers, provincial premiers met in Charlottetown, Prince Edward Island, on December 5, 2003, to set up the Council of the Federation, which is considered in detail as a case study in this dissertation.

Table 4.1 demonstrates that all provincial economies depend on trade, even if some rely more than others on foreign markets to absorb surplus goods and services. This dependence tends to explain why provinces tend to support trade liberalization and international regulatory governance (Skogstad, 2008). In 2007, Ontario had a surplus in the interprovincial trade and a deficit in the international trade. In Quebec, the deficit from the interprovincial trade was much less than the deficit from international trade. Alberta and

²⁸The mutually agreed principles include: i) the need for full disclosure of information, ii) the need for exceptions and transition periods, iii) the need for exceptions required to meet regional development objectives in Canada, iv) the need for supporting administrative, dispute settlement and compliance mechanisms, and v) the need to take into account the importance of environmental objectives, consumer protection and labour standards (Canada, 2011, article 101.4).

British Columbia gained more from international exports, which significantly exceeded their interprovincial exports.

Table 4.1. Interprovincial and international trade flows in 2007 in millions of dollars.

Province	Interprovincial exports	Interprovincial imports	International exports	International imports
British Columbia	\$31,321	\$40,563	\$45,943	\$46,558
Alberta	\$53,361	\$51,929	\$88,487	\$57,736
Saskatchewan	\$15,020	\$18,730	\$19,450	\$12,185
Manitoba	\$14,450	\$17,872	\$15,745	\$12,890
Ontario	\$108,843	\$81,710	\$213,757	\$219,034
Quebec	\$59,952	\$61,931	\$87,580	\$96,600
New Brunswick	\$9,070	\$13,092	\$11,852	\$11,862
Nova Scotia	\$7,612	\$11,534	\$7,152	\$9,704
Prince Edward Island	\$1,133	\$2,507	\$1,068	\$897
Newfoundland	\$8,755	\$6,930	\$12,059	\$6,702
Yukon	\$301	\$834	\$190	\$358
Northwest Territories	\$1,136	\$2,298	\$1,960	\$873
Nunavut	\$153	\$1,070	\$64	\$279
TOTAL	\$311,106	\$310,999	\$505,306	\$475,677

Source: Data extracted from Statistics Canada (2008).

4.3. The Agreement on Internal Trade: An Example of Collaborative Federalism?

For collaborative arrangements to work effectively, the federal and provincial elites should share authority and power, resources, activities and provision of services, and information. Collaboration is based on the will of elites “to act jointly, to establish and reach shared objectives and general agreement on policy issues, and to share their powers and resources” (Lincoln & Guba, 1985; Montiel-Overall, 2005, p.40). Collaboration arrangements should be marked by a climate of trust and should be translated into results.

4.3.1. Authority and Power: Negative and Positive Economic Integration

Economic union encompasses both normative and institutional dimensions. In normative terms, economic union is built on a concept of economic citizenship. Economic

citizenship²⁹ is a political and legal benefit of economic union, just as personal mobility, the right to work, and equality and fairness in employment (Howse, 1992). It is also a powerful political concept in that it reflects the tension and power struggle between national and provincial political communities over which political community rights and obligations of economic citizenship apply (Brown, 2002).

The notion of equal economic citizenship also reflects the core constitutional values of equality and autonomy (Howse, 1992). In the 1982 *Constitution Act*, the idea of equal economic citizenship is reflected in Section 36, which refers both levels of government to the equalization of opportunity, including economic opportunity across Canada. Section 6 of the 1982 Charter of Rights and Freedoms guarantees that every citizen has the right to move and take up residence in any province. This Section also guarantees the mobility rights of every citizen with exceptions for preferential employment policies in the areas of high unemployment and saving provincial residency requirements for social service entitlements (Boadway, 1992).

The notion of equal citizenship is also embedded in Section 15 of the 1982 Charter of Rights and Freedoms, the equality rights provision. Under the view of equal economic citizenship, “the aim of guarantees of mobility is not to entrench the free-market model in the Constitution but rather to give an equal opportunity for all Canadians to participate in the economy” (Howse, 1992, p.16). From the perspective of federal elites, the right of economic citizenship also enhances the sense of the Canadian identity in that it establishes a clear link between the economic union and the national identity. “It is quite remarkable to what extent the evolving and original architecture of the Canadian Constitution can be understood as a framework for a community of association, where living together is based on shared values, common goals and thickening or evolving economic and social intercourse between citizens” (Howse, 1998, p.317).

The institutional characteristics of the economic union include measures for negative and positive integration over a common economic “space mediated by common political institutions, including legislature, fiscal relations, the courts, and intergovernmental

²⁹Howse (1992) argues that from the perspective of economic citizenship, barriers to mobility are viewed as violations of equal economic citizenship with the focus on their discriminatory effect of these measures as opposed to the loss to economic efficiency. This implies that equal economic opportunity is consistent with and requires positive government policies that enhance opportunities for disadvantaged groups and regions.

arrangements” (Brown, 2003, p.58). A constitutionally protected distribution of powers between the two orders of government includes the allocation of key powers of economic regulation (i.e. positive integration). The distribution of powers between the federal and provincial governments has an important effect on the degree of economic autonomy provided to provincial governments to pursue diverse and decentralized paths to economic adjustment (Brown, 2008).

As federal states operate not only to promote unity but also to preserve and promote diversity, there is a constant tension between autonomy and integration and between unity and diversity in the federal systems (Trebilcock et al., 1983). In the Canadian case, the decade-long debate was launched over which level of government should have authority over which economic activities; which level of government was responsible for distortions in the Canadian common market; the magnitude and distribution of the welfare losses associated with trade barriers; about the most appropriate political response to the fragmentation of the Canadian marketplace (Cohen 1995, p.261).

Negative economic integration

As a federal state, the scope and scale of the Canadian economic union are defined by the political boundaries of Confederation, which were established without regard to the existing structure of markets in Canada (Cohen, 1995). At the time of Confederation, Section 121³⁰ of Canada’s 1867 Constitution, which guarantees the free movement of goods among provinces without tariffs, was significant in securing a custom union (Brown, 2002). However, this Section covers only goods and fails to incorporate a comprehensive prohibition on the erection of barriers to the free movement of services, persons and capital (OECD, 1987; Hogg, 1985). Section 121 was proposed to be modified several times to include goods and services by the Bar Association, the Task Force on Canadian Unity of 1979, the Macdonald Commission, and the federal government during the constitutional negotiations of the 1990s, but unsuccessfully.

Section 122 of Canada’s 1867 Constitution deprived the provinces of their custom and excise revenues, thus negatively affecting the finances of Maritime provinces, for which

³⁰The Section reads: “All articles of the growth, produce, or manufacture, of any one of the provinces shall from and after the union be admitted free into each of the other provinces.”

they had to be compensated (Hale, 2001). Sections 91(3) and 92(2) prohibit the provinces from levying indirect taxes. “The courts have interpreted these provisions narrowly to ban provincial customs and excise-type taxes but not to prevent general sales taxes levied on the consumer of goods and services” (Brown, 2003, p.75).

In the AIT agreement, the examples of negative integration can be found in the labour mobility chapter; the agricultural and food goods, alcoholic beverages chapter; and in the provisions of the communications chapter. According to Trebilcock and Behboodi (1995), the AIT produced negative economic integration³¹ in that it limits itself to the prohibition of the establishment of new barriers.

Positive economic integration: Federal economic powers

The federal economic jurisdiction is considered to be a highly powerful instrument in the attainment of economic union. While the Constitution does not explicitly assign economic policy as a subject matter to either level of government, broad federal powers for the purpose of positive economic integration are held to exist on the basis of the preamble to Section 91, which provides plenary power for peace, order and good government, and Section 91(2) on the regulation of trade and commerce (Zines, 1990).

The trade and commerce power of the federal government had been interpreted narrowly by the judicial committee of the Privy Council, essentially limiting its scope in practice to federal regulation of the flow of goods between provinces or internationally (Choudhry, 2002). The trade and commerce power gave the federal government jurisdiction over interprovincial trade in goods. However, “the extent of this jurisdiction over other issues such as services and capital, and the extent to which the power could be actually exercised had always been circumscribed by the legal uncertainties and political realities” (Doern & MacDonald, 1997, p.149).

³¹This approach distinguishes itself from the economic integration that characterizes the European Union, which, by the mechanism of harmonization, practices positive integration. However, negative integration is the one approach often favoured by the business circles (Canadian Chamber of Commerce, 1998; Knox, 2001; Schwanen, 1998).

In addition to the general powers, the federal government already has jurisdiction over many fields of economic regulation³² that, taken together, provide room for a federal action to achieve positive economic integration. In the AIT agreement, examples of positive integration can be found in Chapter 10, which promotes positive integration through the reconciliation and harmonization of labelling and packaging regulations, and in Chapters 11 and 15, which cover natural resources and the environment respectively.

Positive economic integration: provincial economic powers

The Canadian provinces retained control of “property and civil rights in province” (Section 92(13)) and thus over the law of contract and most private law (Vegh, 1997). The role of the provinces in economic development was secured by Section 109 of the Constitution, which assigns provincial proprietary rights over all lands, mines, minerals and royalties. Section 92(5) also assigns to the provinces legislative control over the management and sale of public lands (Howse, 1992). The provinces also have the power to incorporate companies with provincial objects (Section 92(11)) and retain power over local works and undertakings (Section 92(10)), with the important exception of works declared by the federal parliament to be in the national advantage (Knox, 1998). The provinces also have jurisdiction over all matters of a merely local or private nature in the province (Section 92(16)), and they control most fields that bring government into direct contact with individual citizens, including hospitals and charities, education, the administration of justice, local prisons and municipal institutions.

Despite this division of powers provided in the Constitution, a problem arises when provincial legislation in reaction to a local trade matter serves as an obstacle to interprovincial trade (Vegh, 1997). There has been a history of provincial attempts to use their economic powers and their fiscal capacity to pursue regionally based economic development strategies (Shawanen, 1995; Brown, 2003). This trend began in as early as 1900 with Ontario’s attempts to regulate value-added production in the resource sector and continued through Quebec’s Quiet Revolution of the 1960s to efforts in the 1970s involving

³²Other important federal powers are: 91(2A) unemployment insurance (by amendment in 1949); 91(3) the raising of money by any mode or system of taxation; 91(14) currency and coinage; 91(15) banking, incorporation of banks, and the issue of paper money; and 91(10) and (12) navigation and shipping.

all provinces to varying degrees. As a result of this trend, non-tariff barriers in the Canadian economic union proliferated.³³

At the beginning of the negotiations³⁴ of the AIT, Prime Minister Jean Chretien and John Manley, Minister of Industry, were interested in seeing internal trade policy from a national perspective, and tried to play a mediating role toward this end (Doern & MacDonald, 1997). As a result, the debate focused on the trade and commerce power of the federal government. From the perspective of these decision makers, the federal government did have jurisdiction to enact laws to secure the freedom of goods, services, people and capital to move and do business within Canada without discrimination (Doern & MacDonald, 1999). But due to political constraints, as well as the desire of the federal decision makers to avoid the conflict with the premiers, the trade and commerce power issue remained silent during the negotiations and was not used in connection with interprovincial trade. The political constraints that led the federal government to avoid using its constitutional powers over interprovincial trade have been explicitly recognized by the federal government in its participation in the negotiations for an interprovincial trade agreement for the removal of these barriers (Trebilcock & Behboodi, 1995). John Manley, the Minister of Industry, noted that “we have constitutional authority with respect to interprovincial trade in goods and perhaps in services, but that is not the intent of the problems we are trying to deal with under the Internal Trade Agreement because it would disrupt the current process” (The Globe and Mail, 1998).

This position is also reflected in Chapter 3, Article 300 of the Agreement on Internal Trade (1994), which states that “nothing in this Agreement alters the legislative or other authority of Parliament or of the provincial legislatures or of the Government of Canada or of the provincial governments or the rights of any of them with respect to the exercise of their legislative or other authorities under the Constitution of Canada.” Thus, during the

³³Specific provincial measures included: subsidies, investment controls, the agricultural marketing board, liquor board practices, procurement preferences, resource management policies and service regulation (Prentice, 1994). Federal policies — such as those for transportation rate structures, agriculture and regional and industrial development — have also been considered non-tariff barriers (Palda, 1994).

³⁴Federal-provincial negotiations may include several objectives: to exchange information, to generate policy alternatives, to assess the interjurisdictional consequences of policies, and to harmonize the exercise of jurisdiction by both levels of government (Murray, 1983, p.3). Nevertheless, Rocher and Rouillard (2002, p.235) argue that the federal-provincial negotiation process in Canada “seeks to bring together conflicting regional interests rather than identifying common problems and articulating policies that address national or pan-Canadian priorities.”

negotiations of the Agreement on Internal Trade, the dynamic of the process “reflected more interdepartmental struggle within provincial governments, and among provincial governments” (Doern & MacDonald, 1999, p.53) as opposed to being couched in terms of one jurisdiction attempting to gain more power at the expense of the other. The agreement was signed without increasing the powers of the federal or provincial governments and, hence, re-established the status quo. Taking into consideration the absence of intrusion into others’ jurisdiction and that all decision makers had power in joint decision making regarding the conclusion of the Agreement of Internal Trade, the authority and power dimension of the AIT falls under collaboration.

4.3.2. Resources: Mobilizing Electoral Support and Tapping into Technical Capabilities

Reform of the economic union could not be separated from the broader regional and linguistic politics that were implicated throughout, including the role of Quebec electoral politics and pending referendums on Quebec secession from the union (Brown, 2002). Electoral support, party leaders’ ideology and the technical capabilities of departments responsible for the negotiations are all important institutional factors in the interactive process of elite negotiations of the Agreement on Internal Trade.

Electoral support

The AIT negotiations began in a period of sharp political transition in March 1993 and were completed within 15 months. After Prime Minister Mulroney’s resignation as the Conservative leader early in 1993, the new leader, Kim Campbell, called a general election for October but was defeated by the Liberals, led by Jean Chretien. In Quebec, the sovereigntist Bloc Quebecois, led by Lucien Bouchard, took a majority of the federal seats in Quebec. This result allowed Bouchard to form the official opposition in Parliament (McRoberts, 1997). A provincial election in Quebec was expected in 1994, and in the two years prior to it, the sovereigntist Parti Qubcois under Jacques Parizeau led in the public polls (McRoberts, 1993).

The issue of the economic union became important in the light of growing support for Quebec sovereignty after the rejection of the Meech Lake and Charlottetown agreements.

The failure to bring Quebec back into the Canadian family provided an incentive for federal decision-making elites to demonstrate the strength of the federal system and national unity through the non-constitutional means of reform and, as a priority for concerted intergovernmental action, political elites singled out the need to reinforce the economic union and revitalize internal trade (Brown, 2003). The political elite sought to achieve outcomes before the next Quebec election. The negotiating position of the Liberal decision makers, Chretien and his cabinet, was based on the principled premise that individual Canadians, as citizens, workers, investors and business people, should have the right to work and invest anywhere in Canada (Doern & MacDonald, 1999). This approach could foster a greater sense of national unity at the individual level. Thus, the federal elites were torn between their role as “a reformer of the economic union and a defender of national unity sensitive to public opinions in Quebec” (Brown, 1995, p.144).

The Liberal government in Quebec had an important stake in advancing the four freedoms of an economic union because, in the wake of constitutional failure Bourassa had frequently referred to the European Union as a potential model for a new Quebec–Canada accommodation within federalism (Doern, 1991). This led the Liberal elite of Quebec to stress the need to maintain economic and financial ties with Canada. In other words, the upcoming election of 1994 and the potential for a victory by the Parti Quebecois provided an incentive for the Quebec Liberal government leader, Bourassa, to complete the negotiations prior to the elections. The goal was to balance between a desire to show that progress could be made in federal-provincial matters following the defeat of constitutional negotiations and a determination to demonstrate the openness of the Quebec economy in the Canadian economic union (Cohen, 1990; Simeon, 1990; Cook 1994; McRoberts & Mohanan, 1993). At the same time, it was important for the Quebec government to demonstrate to its own constituents that it was not ceding its provincial powers to the federal government. Thus, the negotiating approach of Quebec’s Liberal Bourassa and his cabinet was structured in terms of the 1994 Quebec elections, which might have ended in a separatist victory of the Parti Quebecois.

In short, the interest of Bourassa in the economic union, although based on different reasoning than that of the federal government, helped conclude the Agreement. While Chretien pointed to the improvements in the functioning of the economic union as a way of

strengthening national unity, the Liberals in Quebec premised their ideas on strong continuing economic relations with the rest of Canada. “The Agreement was presented by the federal government and the Liberal government in Quebec as evidence of the flexible federalism which offered increased autonomy for Quebec as part of Canada” (Cohen, 1995, p. 261).

Financial³⁵ and technical resources

The other feature of the process was the mobilization of technical resources by federal and provincial decision-making elites during the negotiations of the Agreement. It should be noted, however, that the degree of the involvement of provincial elites in the process of negotiation of the internal trade issues was not equal. The willingness of the decision makers to compromise and collaborate depended in part on the issue and on the interest mobilized (Simeon, 1985). The interest of the provincial premiers in the internal trade issues was selective. The provincial jurisdiction was a major factor in protecting regional interests. Larger and economically dominant provinces were more consistently involved than smaller and poorer provinces that lacked the resources of personnel and finances required to follow internal trade issues more closely.

Even for the most involved premiers and their ministers responsible for trade negotiations from provinces such as Ontario, Quebec, Alberta and British Columbia, the involvement in internal trade negotiations varied by issue because every province had its own grievances, resources and expertise, which paled in comparison with those of the federal government. Thus, provincial elites sought to mobilize their regional grievances by identifying and differentiating regional issues. The premier of Saskatchewan, for example, was mainly concerned with whether the AIT agreement was able to undermine the role of federal institutions such as the Canadian Wheat Board (Skogstad, 1995; Skogstad, 1998). The premier of Alberta, with its well-developed trade bureaucracy concentrated more on trade issues of the highest economic significance to the province, notably energy resources and agriculture. In the case of agricultural and food goods, these fell under concurrent

³⁵While in general both types of resources, financial and technical, are important in collaborative arrangements, this section will mainly focus on the ability of elites to mobilize technical resources because these type of resources along with the electoral support played a crucial role in the process of securing the Agreement on Internal Trade.

jurisdiction according to the Canadian Constitution. Accordingly, barriers to internal trade in the agri-food sector were both federal and provincial in nature and origin, and as a result, the federal government and Alberta's Premier were the primary advocates of a removal of barriers at the sectoral table in 1994.

Some participants approached the table with much more developed positions of strength. The federal government and the provinces of Ontario, Alberta and Quebec had the largest expert bureaucracies and the greatest trade policy capacity, and they possessed expertise in various areas of trade issues, which played an important role during negotiations (Brown, 2002). The uneven distribution of resources led to a power struggle between the more and the less resourceful elites during negotiations. When the technical aspects of the barriers to trade were at the centre of negotiations, the premiers and their advisors from the smaller provinces and territories were almost inevitably outgunned in this regard by the decision makers from larger provinces. In addition to different regional and jurisdictional interests, the different profiles of negotiators from three distinct policy communities — trade policy, regional development and industry, and the intergovernmental relations community³⁶ — complicated the process of negotiations (Brown, 2003). Consequently, the bureaucratic decision makers from these policy communities often held conflicting views on the nature of the Agreement. The dynamic of the process was also affected by the lack of experience and expertise of provincial negotiators on many trade issues. During the negotiations on the labour mobility chapter, for instance, the federal government was represented by a negotiator from the Human Resource and Development Canada, while the provincial negotiators came from departments dealing with education and training and thus had no experience in trade negotiations (Doern & MacDonald, 1999). The federal government was also represented by and heavily relied upon its chief negotiator from Industry Canada, John Manley, who was familiar with the international trade agreements and, as a result, structured the internal trade negotiations in terms of his international trade experience.

The various sectoral tables were managed by line-department experts and were influenced by the policy-field cultures and prior agendas that participants brought to the negotiations. For example, environmental issues were negotiated by the experts from line

³⁶In Alberta, for example, the negotiations were anchored in the Intergovernmental Affairs Ministry rather than in the provincial Industry Department.

departments of both orders of government. In particular, the environmental chapter was negotiated by the strategic planning committee of the Canadian Council of Ministers on Environment (CCME) (Knox, 1998). It was believed that this group's expertise on federal-provincial harmonization could be applied to an internal trade exercise. The federal negotiator was a Director of the Federal-Provincial Relation Branch of Environment Canada, and the provincial negotiators were experienced in environmental policy making (Knox, 1998). Some ministers from this council had been involved in negotiating the NAFTA side agreement on the environment. Environment was a concurrent jurisdiction, and the federal decision makers favoured a strong federal role and tough environmental enforcement measures (Brown, 2002).

Finally, there were the other trade issues for which provincial negotiators of the Agreement possessed a greater expertise compared with that of the federal negotiators. Natural resources processing was one such issue. Negotiators from the provincial natural resources ministries had considerable expertise in this area. On the view that natural resource ownership falls under provincial jurisdiction, the group was co-chaired by negotiators from Alberta and British Columbia (Doern & MacDonald, 1999). The only exception was fisheries, which included a federal representative from the Department of Fisheries and Oceans (Brown, 2002). The federal negotiators wanted the broadest coverage to ensure that the resource processing sector was as efficient and as competitive as possible, and they also wanted assurance that any private sector firm that needed access to the resource could obtain it (Knox, 1998). Provincial negotiators claimed for exceptions for their management of resources, such as unprocessed fish for Newfoundland and Quebec and unprocessed logs for British Columbia and Alberta.

In short, the mobilization of electoral and technical resources by provincial and federal elites was critical in both the negotiation of the Agreement and the ability of elite actors to reach an agreement. The sharing of technical resources and even the dependence on the technical resources of each other was a detrimental factor. However, the uneven technical capacities of elite actors affected the dynamic of the negotiations in three ways. First, premiers that had the strongest position — with the largest expert bureaucracies, the greatest trade policy capacity, and wide expertise in various areas of trade issues — exercised more power during the negotiations as opposed to the premiers from smaller provinces and

territories, especially so when the technical aspects of the barriers to trade were at the centre of negotiations. Second, the lack of previous experience in trade negotiations of many premiers and their negotiators allowed the federal elite to take the lead on the substantive parts of the Agreement. Third, the different background of the negotiators and the ministers responsible for the negotiating process made it difficult for the elite actors to reach an agreement, reconcile divergent views and build a comprehensive approach to trade negotiations. That said, the involvement of elite actors in trade negotiations was very selective. At the end of the day, the economic issues and challenges of varying importance to each province determined the particular areas of provincial involvement since provincial and federal decision makers had a strong and natural political incentive to see policies primarily in terms of their jurisdictional impact. The provincial elites were mobilizing their grievances by highlighting differential regional issues and then transforming their regional grievances into intergovernmental issues, which to some extent exacerbated the conflict and affected intergovernmental interactions during the negotiating process. From this perspective, the resources dimension of the AIT falls under coordination.

4.3.3. Activities and Provision of Services: The Raising Dynamics of Interprovincialism

The first ministers and the senior bureaucratic decision makers were the prime actors and principal players involved in joint private political activities in the process that produced the Agreement. Based on provincial interests and ideologies, it is possible to classify the decision makers into two broad groups: i) those with a strong desire for free trade, and thus the proponents of the Agreement; and ii) those interested in their ability to govern within their jurisdiction and thus opposed to the signature of the Agreement. Debates, ideological visions and interaction among these two elite groups shaped the final outcomes and policy trade-offs reflected in the Agreement.

The first group comprised the federal elite and the premiers of Alberta and Manitoba who shared the Conservative pro-free trade views and continued their support for international free trade. When the Liberal government of Chretien was elected in 1993, it simply adopted the priorities on internal trade from the previous economic platform of the Conservative Mulroney government and moved ahead with the negotiation of the Agreement

(Leeson, 2000). John Manley, the Minister of Industry, stated that the Agreement on Internal Trade “can create jobs, not just because of the encouragement of the internal trade in Canada, but the fact that we have these internal barriers is a deterrent to foreign investment” (House of Commons Debates, 1994, p.162).

Thus the federal elites moved ahead with the AIT, driven by the ideologically contradictory assumptions of free trade capitalism internationally, by the economic integration and harmonization embedded in the economic union, and by the very notion of federalism based on the need to preserve the cultural and linguistic diversity in Canada. “Stronger economic union can be viewed as promoting both economic and political integration, and thereby undermining the potential for diversity across provinces and territories” (MacDonald, 2002, p.139). This happens because the search for economic efficiency calls for greater harmonization of economic, fiscal, and social policies, which all become increasingly blurred. It calls for a level playing field that can come only through greater national or pan-Canadian uniformity and through greater homogenization of regional and provincial distinctiveness. The irreducible opposition between continental integration and federalism becomes all too evident — the former press towards uniformity, while the latter is synonymous with diversity. Greater economic integration can come only at the cost of federalism itself” (Rocher & Rouillard, 2002, p.227).

In other words, when the Agreement was negotiated, the elites following in the wake of the potential economic benefits from the elimination of barriers to internal trade (integration and harmonization) tended to ‘forget’ the context of federalism and need to recognize the preferences and requirements of each province, especially in the field of regional economic development. The larger “importance of regional economic development and the vagueness as to how to assess general economic development policies” remain, and these issues and dynamics are anchored in the very nature of governing in a federation where economic regions “are simply too diverse for only trade-driven rules to prevail” (Doern & MacDonald, 1999, p.97).

For example, historically, procurement practices were under the provincial jurisdiction. However, as a result of the dynamics of trade liberalization, they began to attract some federal attention because the barriers to trade in the procurement sector were

significant.³⁷ The overall objective and principle of this chapter of the Agreement were developed and strongly supported by both the provincial and federal elites. However, the position of Chretien and his negotiators was based on the philosophy of trade liberalization and, hence, lower procurement barriers at the bilateral or provincial levels. On the provincial side, the issue was the usage of procurement as a regional development policy instrument and thus the exceptions of various sectors from the Agreement (Knox, 1998). The premiers of Saskatchewan, British Columbia and the Atlantic provinces in particular were pushing for wide exceptions. Procurement related to the municipalities, academic institutions and social and health services (MASH) was excluded³⁸ from the Agreement initially because these sectors were under provincial jurisdiction. Procurement barriers were seen in Ontario as important but also problematic, primarily because of the perceived institutional differences of the Ontario and Quebec procurement regimes (Knox, 1998). Procurement was central to be dealt but always with regional development exceptions. In December 1993, the Agreement on the Opening of Public Procurement for Ontario and Quebec came into effect.

Ralph Klein and his Conservative government in Alberta, in favour of free enterprise, was a strong advocate of a disciplined agreement. He had no concerns about legitimate objectives and provincial powers, and was even prepared to give up some of the province's resource-based regulatory practices³⁹ (Doern & MacDonald, 1999). Klein, therefore, supported a tough dispute settlement mechanism and sought to ensure that the architecture of the Agreement reflected a wide and effective procurement agreement and strong limits of regional-development policies,⁴⁰ provincial or federal (Brown, 1992).

The Conservative government of Gary Filmon, Manitoba's Premier, was broadly supportive of a need for an Agreement on Internal Trade. The position of Filmon came from the nature of the province's resource-based economy, which is dependent on internal trade

³⁷Taking into consideration the \$50 billion annual cost of procurement for both governments, the barriers to procurement were considered among the most significant in economic terms (Doern and MacDonald).

³⁸With the third Protocol of Amendment that came into effect on April 17, 1999, the MASH sector was incorporated into the Agreement on procurement practices.

³⁹For example, the removal of permits and related instruments that had in the past contributed to the building of the Alberta oil and gas and petrochemical industries.

⁴⁰Alberta had few Crown corporations and was interested in ensuring that the other provinces' Crown corporations did not exercise provincial development policy.

(Brown, 1992). The Filmon government and its small team of negotiators in the Department of Industry and Tourism entered into negotiations with the view that Manitoba had few barriers to discard (Doern & MacDonald, 1999). This posture of support was also reinforced by the fact that Manitoba's two lead ministers, Eric Stefanson and Jim Downey, were also co-chairs of the negotiations along with the federal minister of Industry, John Manley (Knox, 1998).

British Columbia, Saskatchewan, and Ontario were three provincial New Democratic Party (NDP) governments united by scepticism about a free trade agenda and the intentions of the federal government (Brown, 2002). The Ontario government, led by the NDP premier Bob Rae was against⁴¹ the completed NAFTA⁴² and was sceptical about the intentions of the federal government (Abelson & Lusztig, 1996). In particular, the Ontario premier was sceptical over the costs of internal barriers to trade as a justification to enter into the Agreement on Internal Trade. In addition, the Ontario economy profited enormously from the internal trade market. In 1994, Ontario had a negative foreign trade balance but a positive internal trade balance, and had a foreign trade surplus every year between 1997 and 2007 (ref Statistics Canada). However, on the national unity front, Rae was aware that federalism was needed to be shown to work. Because the Ontario premier believed that any gains by other provinces would be at Ontario's expense, he placed emphasis on the principle of reciprocal non-discrimination (Abelson & Lusztig, 1996).

The British Columbia NDP premier, Mike Harcourt, was also very sceptical about the Internal Trade Agreement. He was afraid that in the wake of constitutional failure, the AIT was a deal being prepared by the federal Liberal government both to weaken provincial powers and to play out a Quebec-centred strategy (Doern & MacDonald, 1999). British Columbia's premier shared a philosophical opposition to the federal government's free trade agenda and saw the proposed internal trade agenda both as an extension of it and as an attempt to weaken provincial governments. In addition, the basic nature of the province's economy had an important role to play. The province's trade was oriented towards the

⁴¹In Ontario's view, the Agreement threatened to bring severe dislocation costs to localized and politically influential sectors in its provincial economy.

⁴²Hocking (2004, p.5) argues that "the provision of this Agreement rub against various aspects of domestic politics, ultimately posing challenges to the independence and autonomy of national and subnational jurisdictions."

Pacific Rim region (Holden, 2010) and as a result there was no much concern about the pan-Canadian trade.

The Saskatchewan NDP Premier, Roy Romanow, governed its resource-based economy, and, in his view, the province would not receive many benefits from entering into an Agreement. In addition, he was sceptical about the claims of significant costs resulting from trade barriers. Thus, the British Columbia and Saskatchewan premiers entered into the Agreement more out of concerns with national unity than with a view to economic benefits (Doern & MacDonald, 1999).

The four premiers from the Atlantic provinces and the leaders of the two territorial governments feared that the federal government together with the other provinces, especially Ontario and Quebec, would bring to an end any commitment to regional development policy and to the real capacity of regional jurisdictions to attract investment and foster employment (Brown, 2002). Premier of Nova Scotia, the largest of the Atlantic provinces, tried to ensure that the federal elites would not abandon federal funding of regional incentive programs. These provinces and territories saw the Internal Trade Agreement less as an opportunity and more as an exercise in damage control (Doern & MacDonald, 1997).

Thus, the presence of the premiers from Alberta and Quebec as allies — although driven by different reasoning — of the Prime Minister on issues of internal trade helped conclude the Agreement in a timely manner. The elites' positions during the process of negotiations were shaped by a variety of factors, including their position in the regional political economies, and mainly by the leading parties and their leaders' ideological views on the economy.

The context of free trade as the dominant policy mode for the governments, together with a strong commitment to trade liberalization in the international arena, tended to reinforce a commitment of some elite decision makers — the prime minister and the premiers of Alberta and Manitoba — to domestic free trade in the AIT negotiations even at the expense of federalism itself. Similarly, scepticism about trade liberalization on ideological grounds, such as was expressed by the New Democratic Party premiers of Saskatchewan and British Columbia, tended to affect the position of actors during the internal trade negotiations. As for Quebec, one would expect, based on the province's historic role discussed in Chapter Three of this dissertation, its premier not to align it with

the Agreement. However, the Quebec Liberal Party leader who led the negotiations had a pressing need to reach an agreement in an electoral attempt to demonstrate that federalism works.

The Agreement on Internal Trade did not produce considerable results until 2003. In fact, it can be argued that the Agreement authorized the parties to establish non-tariff barriers to trade so that they could respond to specific needs and be considered legitimate players in the areas of regional development, Aboriginal peoples, cultural industries, national security and the preservation of the financial sector. Cohen (1995) stated that three out of five principles of the application of the Agreement (Canada, 2011, article 101.4) perpetuate the existence of commercial barriers: exceptions and transition periods; exceptions to meet regional development objectives in Canada; and the need to take into account consumer protection, environmental objectives and labour standards.

In 2003, the creation of the Council of the Federation represented by the premiers launched discussion of the issues of internal trade. At the first meeting of this interprovincial forum, where Ottawa was not present, the strengthening of the Agreement was identified as a priority (The Council of the Federation, 2004). However, the Committee of Ministers on Internal Trade, an organization responsible for the AIT, was supposed to be represented by both the federal and provincial ministers. On February 2004, the meeting of the Council ended with the adoption of an action plan on internal trade (The Council of the Federation, 2004).

The Council of the Federation required that the provinces keep track of the progress accomplished in the different sectors and that this progress should be discussed every meeting (twice a year). But despite the action plan, delays have occurred, and resolution of the most disputed cases moved slowly. For example, the rules relative to the mobility of labour were delayed with respect to the initial objective of 2005, the Protocol of Amendment that was signed in 2009 are only now being implemented. Moreover, the chapter on energy, set aside since 1994, was completed in 2009 and represents Chapter 12 of the Agreement. The provinces met for a new chapter on agriculture in 2009 (the 11th Protocol of Amendment), and it was signed 2010.

The Social Union Framework Agreement signed by the First Ministers in February 1999 committed the federal and provincial elites to resolve all outstanding barriers to

mobility by July 1, 2001. However, the governments failed to meet this commitment because the process for resolving differences in occupational qualifications and standards was too complex and there was no mechanism to ensure that regulating bodies respected the obligations established by the AIT (Certified General Accountants, 2007). Currently, all provinces and territories have agreed that a worker certified for an occupation in one province or territory will be recognized as qualified for that occupation by all other provinces and territories. However, to be more effective, the scope of the chapter on labour mobility needs broadening, because diverse certification and occupational standards are not the only factors that can restrict mobility (Knox, 2010). In addition, governments can exclude some occupations from the chapter unilaterally. There are still differences in occupational standards, and some professions that are recognized in some jurisdictions are not included others (Knox, 2010).

The Agreement, widely presented at the moment of its signature as an example of the flexibility of Canadian federalism, only had a little impact on the improvement of interprovincial trade. In fact, it was demonstrated that the premiers were looking to preserve their sovereignty in the areas of their jurisdictions. Poirier (2008, p.21) maintains that intergovernmental agreements of this type “non formellement incorporées ne pouvaient imposer des obligations aux tiers.” Even if in 2003 the AIT made some progress in comparison with the initial accord, it has not been a source of a significant breakthrough in the field of interprovincial trade except for the recent inclusions of the municipal sectors, school boards, and health as requirements of internal markets. Inclusions of these sectors in the provisions of Chapter Five of the AIT concluded in 1999 constitute probably the major modification to the Agreement prior to 2007. In total, there have been four Protocols of Amendment signed between 1995 and 2003, with a further seven signed between 2003 and June 2008.

The fact that the Agreement did not produce any considerable results until 2003, when the dynamics of interprovincialism⁴³ replaced those of intergovernmentalism, is of significant importance. In other words, the establishment of the general principles of the Agreement did not seem to respond to the specific needs of the provinces. As a result, the

⁴³By interprovincialism this dissertation implies the leadership, interdependency and varying degrees of concerted action among the provinces and territories to solve joint policy problems.

premiers started to find solutions in the bilateral agreements to promote the free movement of goods and services with their primary trade partners in the common economic space.

Thus, facing the delays associated with the multilateral approach to internal trade, some limited bilateral initiatives took place in the provincial arena. Among the most important accords are the Trade, Investment, and Labour Mobility Agreement (TILMA) between British Columbia and Alberta, signed in April 2006, and a similar accord between Quebec and Ontario, the Agreement on Trade and Cooperation (the TCAQO that was concluded in September 2009 and came into effect on October, 1 2009 (ACCQO, 2009).

Like many other trade enhancement agreements,⁴⁴ these Agreements relate to the AIT by Article 1800 of the Agreement. They demonstrate the ascendancy of the AIT in the multi-lateral negotiations on internal trade. Nonetheless, previous experience shows that provincial elites partially neglect the negotiations related to the AIT which are always difficult to conduct due to the requirement to achieve consensus in voting, and often opt for pragmatism in bilateral negotiations.

The Trade, Investment, and Labour Mobility Agreement

The influence of the TILMA on the future of interprovincial trade seems to be considerable. The TILMA went much further in the liberalization of trade. It refers to the same general principles as the AIT without exception to the barriers, non-discrimination, harmonization of standards and policies, transparency and legitimate objectives that are applied to a new common market formed by British Columbia and Alberta (Golblatt, 2007). However, it applies the rules of free trade to all economic sectors without exception as opposed to the AIT, where only some sectors are subject to free trade.

The TILMA adopted a simpler dispute resolution mechanism with the possibility of financial penalties of up to \$5 million for governments that refuse to open provincial markets (Gould, 2007). This mechanism takes place in three steps: i) if a dispute falls within the

⁴⁴For instance, the Trade Enhancement Agreements include: the New West Partnership Agreement signed between BC, Alberta and Saskatchewan on July 1, 2010; the Trade and Cooperation Agreement between Quebec and Ontario signed on October 1, 2009; the Agreement between New Brunswick and Quebec on Labour Mobility signed on April 2, 2009; the Trade, Investment and Labour Mobility Agreement signed between BC and Alberta on April 1, 2009; the Partnership Agreement on Regulation and the Economy signed between New Brunswick and Nova Scotia on February 24, 2009; the Agreement on the Opening of Public Procurement signed between new Brunswick and Quebec on December 2, 2008; the Atlantic Procurement Agreement signed on February 18, 2008; and the Northern Cooperation Accord signed on September 3, 2003.

jurisdiction of a regulatory body with an established dispute resolution process, that process shall first be used (the procedure related to the statutory authority presented in each province, for example, the BC College of Social Workers, the BC Oil and Gas Commission, the College of Dental Surgeons of BC, Alberta's Association of Architects, Alberta's Securities Commission); ii) consultation between the parties on the subject of disagreement; and iii) establishment of an arbitrary impartial panel to make a decision regarding the parties in dispute. Of course, the Agreement excludes some sectors from open trade, including Aboriginal, social policy, water, but the other sectors are liberalized (financial institutions, mobility of persons) for the transitional period of two years.

These bilateral and multilateral accords between the provinces allow the adaptation of the liberalization of the internal trade to the specific needs identified by the provincial governments. This trend seems to be growing in popularity in spite of the reluctance expressed by some provinces, such as Saskatchewan and Yukon, which declined an invitation to join the Agreement (SCFP, 2008; Yukon 2008).

The Agreement on Cooperation and Commerce between Quebec and Ontario

The other Agreement was signed between Quebec and Ontario on Cooperation and Commerce in September 2009. It aimed at surpassing the provisions of the AIT, more specifically, those regarding the mobility of labour, financial services, transport, public markets, agricultural and food products, environment and sustainable development. One of the objectives of this Agreement is to “reduce and eliminate, to the greatest extent practicable, barriers to the movement of persons, goods and services and to investments and investors between the Parties to a higher degree than that achieved in the Agreement on Internal Trade” (ACCQO, 2009, p.2).

The premiers of the two provinces went even further in the process of integration by mutually engaging in the exchange of information on legislative programs in order to prevent the creation of barriers to economic integration. It should be noted that this Agreement was not put to a vote in the Assembly of Quebec or the Legislative Assembly of Ontario. The exceptions remain the same as the ones mentioned in the AIT despite the considerable efforts to reconcile them with the general principles. “Notwithstanding any other provision of this Agreement, except for the obligations set out in Chapter 3 (Regulatory Cooperation), any

measure adopted or maintained with respect to culture, cultural industries, language requirements, education, health or social services is exempted from the provisions of this Agreement” (ACCQO, 2009, article 14.7). Finally, a complex dispute resolution mechanism was established, and financial charges of no more than \$10 million dollars could apply to a party that does not comply with the provisions of the Agreement.

In short, the premiers seemed to be more willing to consider tailored solutions as opposed to participation in the never-ending negotiations related to the pan-Canadian agreements. This allowed the premiers who want to go further in the integration of the markets to accomplish their goals without waiting for the approval of the other provincial governments during the negotiations. Taking into consideration the interests of various decision makers, these agreements seem to be a promising strategy because they permit a focus on specific issues of interest to both parties and avoid the complexities of multilateral negotiations by reducing the number of actors and, hence, the number of interests to be accommodated. It appears that the single, innovative interprovincial way is the one that reunites the smaller number of the provinces. In terms of the economic union, this objective allowed some provinces to attain more precise and results-oriented objectives. From this perspective, the activities and provision of the services dimension of the AIT fall under coordination.

Finally, it should be mentioned that all these Agreements related to the AIT by Article 1800 of the Agreement, which permits the premiers to enter into additional arrangements to liberalize trade, investment and labour mobility beyond the level required by the Agreement on Internal Trade. That being said, these bilateral partners could well exist without the AIT. These are all reasons to believe that the Agreement was concluded because of the economic and political reasons discussed above. In short, the intergovernmental dynamic seems more dictated by the provincial economic imperative than by any reinforcement of the unity in the Canadian political community.

4.3.4. Information Sharing: The Institutionalization of Internal Trade

Collaborative arrangements are characterized by frequent and prioritized communication and information sharing based on the interdependent relationship between autonomous elite actors. The information-sharing processes and elites’ interests during the

negotiating processes of the AIT were mediated by the elites — the first ministers — through established and new, jointly created institutions. During the actual negotiations, the role of the first ministers was limited to signing the actual Agreement, developing the institutions of internal trade and providing the necessary political environment in which these institutions could function (Doern & MacDonald, 1999). These institutions were: the Committee of Ministers on Internal Trade (CMIT), the table of chief negotiators and sectoral tables, the Internal Trade Secretariat (ITS) and the dispute resolution mechanism. All these institutions were established by summer 1993, together with a mutually developed and agreed-upon set of guiding principles and rules for the negotiating processes.

The Committee of Ministers on Internal Trade

The institutionalization of internal trade began in November 1987, when the first ministers established the Committee of Ministers on Internal Trade (CMIT) with responsibilities for: i) continuing the identification of existing barriers to efficient and balanced internal trade; ii) receiving representations from individuals, businesses and industry associations concerning new and existing government policies, programs, regulations and practices that they believed impeded trade in Canada; iii) examining, reducing and removing such barriers through consultation and appropriate negotiation and mediation processes; and iv) reporting to First Minister on internal trade conditions in Canada (Industry, science and technology 1987). The Committee was also charged with an initial list of sector-specific areas, including government procurement, liquor board marketing practices and transportation regulation.

Between 1987 and 1993, the CMIT concentrated its efforts on conceptualizing a comprehensive framework for internal trade negotiations. The Committee created the following mutually agreed-upon four principles: i) governments treat people, goods and services and capital equally, irrespective of where they originate in Canada; ii) governments reconcile relevant standards and regulations to provide for the free movement of people, goods, services and capital within Canada; iii) governments ensure that their administrative policies operate to provide for the free movement of people, goods, services and capital; and iv) parties will not establish new barriers to internal trade and will facilitate the cross-

boundary movement of persons, goods, services and investments within Canada (Agreement on Internal Trade, 2009, article 101.3).

Before the AIT negotiations began, the federal and provincial elite developed a set of negotiating rules agreed to by the CMIT on 18 March 1993. The central features of the rules for negotiation were: i) setting a time frame and deadline to complete negotiations;⁴⁵ ii) agreeing on a dispute resolution mechanism as an essential component of negotiations; iii) establishing the institutional order for internal trade policy making by outlining the mandate of the CMIT as director of negotiations and recognizing the ultimate authority of the first ministers; and iv) establishing the role of chief negotiator by the CMIT in June 1993 (Swimmer, 1997). This set of rules was closely followed by the actors and facilitated the conclusion of the Agreement.

Table of chief negotiators and sectoral tables

In order to make such a cross-jurisdictional policy process work as effectively as possible, a neutral chair for the negotiations, Arthur Mauro, a lawyer-businessman from Winnipeg, was appointed on August 1993. He was approached in June 1993 by the federal minister of trade and industry, Michael Wilson, who was concerned that the lack of a neutral negotiator would jeopardize the success of negotiations (Brown, 2002).

In order to ensure the flow of negotiations, Arthur Mauro had several private meetings with the premiers to determine their positions with respect to the AIT in order to be able to accommodate the differences in the opinions of the political actors and to navigate the negotiations. In particular, Mauro noticed that three NDP premiers — of Ontario, Saskatchewan and British Columbia — were opposed to signing the Agreement. The premiers from Alberta and Manitoba, on the other hand, were supportive of Prime Minister Chretien's intentions to conclude the AIT. The Atlantic premiers were supportive but worried about federal abandonment of the regional-development powers, and Quebec wanted to proceed with caution.

In other words, Mauro played a very critical facilitating role during the entire negotiating process, in that he: i) initiated the preparation of a text of the Agreement in order

⁴⁵Negotiations would begin no later than 1 July 1993 to remove barriers and reconcile regulations standards and administrative practices in all the economic sectors and the subject areas as agreed by the governments. The deadline for signing was agreed to 30 June 1994 with an objective of reaching agreement by June 30, 1994.

to work on it rather than on broad conceptual issues, ii) emphasized a critical need for the dispute resolution provisions, and iii) met with ministers and chief negotiators throughout the entire process in order to facilitate it (Brown, 2002, p.147).

The substance of the negotiations was completed by the table of chief negotiators and the sectoral tables, with the latter negotiating the specific rules applicable to the sectors of the economy. Usually, one jurisdiction accepted the role of chair in order to distribute responsibility among all the parties. Trade issues that could not be resolved at the sectoral tables were returned to the main table of the chief negotiators. During the final stages of the negotiations, the main table was responsible for preparing a draft of the Agreement on Internal Trade.

The Internal Trade Secretariat

The negotiating process was also supported by the Internal Trade Secretariat (ITS). The ITS was staffed and paid for by the federal government and located in Industry Canada. However, it was independent from the federal chief negotiator, Andrei Sulzenko, and reported to the neutral chair, Arthur Mauro. The role of the Secretariat was to provide research and administrative support to the negotiators. As a bureaucratic agency, the Secretariat was intended to function with political impartiality (Knox, 1998). In other words, the main role of the ITS was to provide the negotiating elite actors with analytical and research resources. The ministers instructed the Secretariat to prepare a draft text of the Agreement by 14 February 1994 and asked the chief negotiator to present a preliminary text of the Agreement to the CMIT by 31 March 1994 (Doern & Macdonald, 1999). The preparation of the draft of the Agreement further enhanced the ITS's role as a key institutional player in the process.

Dispute resolution provisions

The other aspect of the AIT institutions and its central political aspect is the dispute resolution mechanism. On 28 June 1994, the CMIT announced the Agreement in principle followed by a formal public release of the Agreement at the first ministers' meeting of 18 July 1994. The prime minister stated that "for the first time, under this new Agreement, we

will have clear rules and impartial dispute settlement mechanism to resolve trade differences between the provinces” (Swimmer, 1997, p.136).

This impartial dispute settlement mechanism set out in Chapter 17 of the Agreement includes an overall principle of resolving disputes in a conciliatory, cooperative and harmonious manner and is based on a dual scheme: government-to-government and person-to-government mechanisms designed by the governments.⁴⁶ Several features of the process are important: consultations are confidential; the committee-assistance stage centres around the committee on internal trade and includes sectoral committees; panels are composed of five members; each disputing party appoints two panellists from the roster; all proceedings before the panel are public, but all documents filed are accessible only by the actual parties in the government-to-government mechanism allow the complaining party to suspend benefits (Agreement on Internal Trade, 2009, chapter 17).

During the negotiations of the Agreement, the federal negotiators and the premiers of Manitoba and Alberta pressed for a binding dispute resolution mechanism. They suggested linking the dispute settlement mechanism to a permanent federal-provincial internal trade committee that would directly manage and appoint the dispute settlement panel (Knox, 2006). The premiers of Ontario, British Columbia and Quebec formed an alliance calling for a broad consultative approach, by which was meant only minimal dispute settlement provisions (Knox, 2006). The other provinces were somewhat in the middle, with the premier of Saskatchewan the most opposed to any binding system. They rejected this idea on the basis that provinces are sovereign entities within a system of federalism, that no enforcement mechanism should be given to a third institution or to the courts, and that the federal government should not be the arbiter of disputes (Knox, 1998). As a result, access to the courts and to some special tribunal was ruled out, and the two-avenue process described above emerged.

In short, the institutions of collaborative federalism pertinent to internal trade were developed by the elite actors for a policy-making process. The tradition of executive federalism was extended to include a neutral third party in the form of the chair of the table

⁴⁶The two processes have many common stages of progression, including consultation, assistance of the committee, a panel stage, panel report implementation and non-implementation provisions such as publicity and retaliation actions. The main difference is that, in the early stages of the person-to-government process, there is a screening stage that requires an independent screener to be appointed by each party to ensure that private actions are not harassing in nature.

of chief negotiators and the bureaucratic Internal Trade Secretariat (Doern & MacDonald, 1999). The first ministers frequently communicated and shared information with the Committee of Ministers on Internal Trade and with the Internal Trade Secretariat.

A collaborative arrangement requires an establishment of a structured process, the engagement of old institutions and the creation of new ones. In fact, the old institutions of federalism have been actively engaging with new institutions of collaborative federalism such as the CMIT and SIT. These institutions and the creation of an independent chair on negotiations, Arthur Mauro, played a crucial role in the successful negotiation of the Agreement. The structured process of the application of the rules and principles and the framework for negotiation allowed the Agreement to be concluded in a timely manner. These institutions mediated various interests of the provincial and federal elite actors.

The dispute resolution mechanism, however, has been far from being effective in responding to the needs of the elite actors mainly due to its complex nature. The dispute settlement mechanism is not binding and cannot be enforced by the tribunals (Trebilcock, 2001; Poirier, 2008). Because the Agreement is political in its nature, the dispute settlement mechanism is governed by a committee of experts chosen by the parties. The resolution of disputes is longer and less effective (Industry Canada, 1999). The decisions aimed at reinforcing the Agreement that are taken based on the consensus of 13 parties are very difficult to achieve.

The majority of complaints registered by the Internal Trade Secretariat were protests to the Canadian International Trade Tribunal (CITT) concerning bids made in federal procurement (Certified General Accountants, 2001). Also handling procurement issues under NAFTA, the CITT is a quasi-judicial third party and, unlike the dispute panels formed under Chapter 17 of the AIT, has the authority to reverse procurement decisions and provide compensation. Moreover, the dispute resolution provisions, which should be the glue of the Agreement, are slow, complicated, expensive and apparently not respected by all governments (Certified General Accountants, 2001).

The federal and provincial elites simplified the dispute resolution mechanism by the seventh Protocol of Amendment that came into effect in May 2007. Even if the dispute resolution mechanism was simplified, it was not made more accessible or enforceable (Certified General Accountants, 2007). In 2009, the elite actors — the premiers — signed the

Tenth Protocol of Amendment, which includes financial penalties in the mechanism of dispute resolution. This declaration, signed by all the premiers, anticipated an establishment of financial sanctions of up to \$5 million, based on the size of jurisdiction, for non-compliance with the Agreement (Tenth Protocol of Amendment, 2009). While reforms of Chapter 17 constitute an important innovation, it is too early to judge on their success. From this perspective, it could be argued that the information-sharing dimension falls to a large extent under coordination.

In short, the origins of the Agreement on Internal Trade are historically rooted in basic ideological conceptions about how Canada should be organized politically and economically in and the comprehensive debates about the role of governments in the political community discussed in the previous chapter of this dissertation. The more immediate causes of the Agreement on Internal Trade can be traced back to the recent constitutional negotiations and Canada's integration into the continental economy.

By approaching the negotiations with new and old institutions and agreed-upon rules of the game, the federal and provincial elites were able to reach compromises on a national scale through trade-offs across a large number of policy fields. During this interactive process of negotiations, the constitutional jurisdiction and normative views of federalism played much less a role than has been the case in intergovernmental negotiations, such as, for instance, those on the Canadian Constitution or the Social Union Framework Agreement, which will be considered in the next chapter.

Even if the premiers, except for Alberta, were trying to safeguard their provincial autonomy, they justified their positions not so much in terms of the normative views of federalism but rather in terms of the need to continue to protect vulnerable regional economic sectors. "Governments are concerned less with job protection and constitutional imperatives, as had been the case when the AIT was negotiated, and more with ensuring that provincial and territorial labor and investment needs are met" (Macmillan & Grady, 2007, p.8). The provincial elites were mobilizing their grievances by highlighting different regional issues related to internal trade and then transforming their regional grievances into

intergovernmental issues, which to some extent exacerbated the conflict and affected the dynamic of intergovernmental interaction during the negotiating process.

The ideological views of the leaders of political parties on the economy also influenced and shaped the complex process of internal trade negotiations. The New Democratic Party leaders' scepticism towards trade liberalization made it difficult for the negotiations to proceed. Taking into consideration the historic role and vision of Quebec for Canadian federalism outlined in the previous chapter of this dissertation, one would expect the premier of Quebec not to align the province with the signature of the Agreement. However, the Quebec Liberal Party leader had a pressing need to reach the Agreement to demonstrate for political purposes that federalism works. The Conservative Party premiers from Alberta and Manitoba were strongly committed to trade liberalization and tended to facilitate the conclusion of the Agreement on Internal Trade.

The term collaborative federalism was supposed to describe a new way of conducting federal-provincial relations. Characterized less by unilateralism, this approach collectively establishes the definition of public policies, is not determined by the hierarchical view of the two orders of government, and should be translated into results. From the normative point of view, it is necessary to give a meaning to the notion of collaboration and conceptualize it.

In reality, if collaboration does not produce the intended results, the process can be characterized by rivalry, competition and mistrust. In other words, the conclusion of an agreement is usually considered as a more preferable option than disagreement, even if it forces elites to a legitimate desire to defend their interests in a given context. From the point of view of political analysis, this bias profoundly characterises the judgement that elites exercise, their interests, their strategies and their actions or inactions. What should also be noted is that the multiple critiques of the Agreement are not related to the emergence of a new form of collaborative federalism but rather to the effects, realities, major or minor impacts or consequences of the provisions of the AIT. The fact that this Agreement did not produce any considerable results until 2003 when the dynamic of interprovincialism replaced that of intergovernmentalism does not seem to have attracted the attention of commentators.

The liberalization of internal trade, the improvement and development of the Canadian economic integration, and the signature of the AIT called upon the provincial decision makers to favour an approach to internal trade that does not increase the federal

power or change the balance of power in the federation but rather maintains the status quo. In order to address regional and global integration through the economic union, elites attempted to transform the goals and strategies of established institutions and tilt the balance between efficiency, equity and autonomy in favour of efficiency as defined in neo-liberal policy prescriptions. As a result, the very nature of federalism was put aside, including its concerns with diversity and the different needs of provinces, which, in turn, looked to the bilateral or the so-called trade enhancement agreements to address their specific needs.

As already mentioned, this Agreement stayed relatively on hold and in the shade, until the creation of the Council of Federation in 2003. Moreover, until 2003, the AIT neither produced the intended results nor met the objectives of intensive negotiations, which were not only to oversee trade disputes but also to promote the reduction and elimination of trade barriers through government cooperation. If multiple dimensions constituted the purpose of negotiations, notably in the field of the liberalization of energy markets, that did not take place. Significant barriers to internal trade are still an ongoing challenge for Canadian businesses. A survey identifying barriers to trade conducted by the Canadian Chamber of Commerce (2004) found that of the 106 responses by its members, 37 companies (34 %) had experienced barriers to trade within Canada. Thus, while certain measures of the AIT have been successful, significant barriers to trade still remain combined with ongoing problems of the decision makers' commitment, slow progress in continuing the AIT negotiations, and a weak dispute resolution mechanism. Thus, the effectiveness and perceived credibility of the AIT have been limited.

The prevailing political and electoral contexts, and, more specifically, the coming into power of the sovereigntist government in Quebec, curbed interprovincialism. Once the Liberal Party government in Quebec came to power in 2003, this dynamic changed. The fact that the premiers had to establish the Council of the Federation to give a new dynamic to the Agreement also speaks for the inability of the federal-provincial agreements to address the individual needs of the provinces. It seems as if the dynamic of collaboration has been replaced by the dynamic of bilateralism in the Internal Trade Agreement. Even if the agreements between the provinces are concluded under the jurisdiction of the AIT, these initiatives are established more in the hope of finding concrete and tailored solutions to specific problems. To be sure, in this context, the governments are engaged in the way of

collaboration. However, this objective is less to establish a model called collaboration that is applicable to the combination of intergovernmental relations than to be engaged in pragmatic management determined by particular interests — in this case, those of the business world — and inspired by the necessity to find immediate solutions to concrete problems.

As recent events demonstrate, intergovernmental collaboration was put aside to the advantage of bilateralism because the provisions of the Agreement on Internal Trade were unable to fully address provincial needs. In Canadian federalism, where federal and provincial elites collaborate with enthusiasm, the interests of important economic sectors make the headlines, mainly when they require modification to the sectoral accords of the AIT. “The failure of the AIT is mainly due to its complex, limited nature, which makes it difficult to understand and apply. The AIT is unenforceable, and its obligations can be and are ignored by governments” (Knox & Karabegović 2009, p.7).

The fact that federal and provincial elites succeed in agreeing on how to manage internal trade issues can certainly be considered as a positive development, but this dynamic moves away from the case of collaborative federalism. This happens because, in order for the Agreement on Internal Trade to be considered as collaboration, federal and provincial elites should share authority and power in decision making, resources and information, and implement joint activities that achieve the collaborative results. However, this chapter demonstrates that, on the one hand, the prime minister and the premiers were able to avoid intrusion into other jurisdictions and conclude the Agreement on Internal Trade. The decision makers were also dependent on the resources of each other and shared and mobilized the electoral and technical resources in the process of negotiations. However, the participation of the decision makers in this process was not entirely equal. This happened due to the complex technical nature of the Agreement itself and, accordingly, the unequal distribution of expertise, experience and capacities of the decision makers during the negotiations of the technical chapters. On the other hand, this chapter also shows that federal and provincial decision makers were engaged in joint activities through shared, transformed and jointly created new rules, structures, procedures and institutions. But their joint activities were unable to produce the intended results and fulfil the emerging needs of the provinces. The current capabilities of the dispute resolution mechanism also remain weak, and it is too early

to assess the effect of the recent improvements made to this mechanism. For these reasons, it can be argued that the Agreement on Internal Trade falls under coordination.

The Agreement on Internal Trade was not premised on a direct concern for social policy per se. Yet the constraints placed on signatories to the Agreement in the areas of procurement, labour mobility, consumer-related measures and standards, and environmental protection have potential social policy implications. The next chapter will analyze whether the Social Union Framework Agreement can be considered as an example of collaborative federalism.

5. The Social Union Framework Agreement

This chapter analyzes the Social Union Framework Agreement and examines whether it can be considered as an example of collaborative federalism. The analysis begins with the historical context, namely, with the review of particular events that led to the conclusion of the Agreement by the provincial and federal decision-making elites, and is followed by a description of the content of the Agreement. The theoretical framework constructed in the preceding chapters of this dissertation is then applied to analyze the Agreement in terms of four determinants of collaboration: authority and power, resources, activities and provision of services, and information sharing.

In particular, this chapter analyzes and explains the processes that were crucial in shaping this Agreement by focusing on how the political identities at the heart of the Agreement were mobilized by the elite actors. This chapter explores the contested visions and continuous struggle of the three groups of decision makers — those of the federal government, Quebec and the Western provinces — in constructing and shaping the SUFA and the related questions of how these elites defined their interests during the negotiations and how their interests were then reflected in the SUFA's provisions. The section also identifies the struggle for and unequal distribution of power among elites and the institutional factors that served as incentives or constraints in both identity formation and interest definition by the elites. Finally, this Chapter analyzes whether the SUFA can be referred to as the example of collaborative federalism through the examination of three case studies that fall under the SUFA's mandate. These initiatives are the 2004 Canada Health and Social Transfer split, the National Wait Time Reduction Strategy and the Universal Child Care Benefit. The SUFA was supposed to serve as a point of reference in the development and implementation of these initiatives.

5.1. The Context: The Quest for the Renewal and Modernization of Canada's Social Union

The early 1990s witnessed a pressing need for the substantial renewal and modernization of Canada's social union. The concept of the social union is usually

understood to be “the processes and mechanisms for intergovernmental relations in the development and delivery of social policies and programs. It includes the norms and expectations, structures and protocols, practices and procedures to facilitate intergovernmental relations in advancing social policy objectives” (Biggs, 1998; O’Hara, 1998, p.15).

Many social welfare programs launched in the 1960s and 1970s by the federal government and the provinces were in the need of reform. The need to resolve certain social policy issues — such as the increase in child poverty, the economic vulnerability of single-parent families, the increase in demand for child care, and the rise in international competition with its downward pressure on employment and wages, especially for low-skilled workers — encouraged the provinces and territories and the federal government to consider measures to facilitate intergovernmental collaboration in the development and delivery of national social policy and program initiatives (Paterson et al., 2004; Warriner, 2005; Boychuk, 2000). Given the extent of federal–provincial entanglements, it was far from clear which order of government should be charged with the inevitably controversial task of program redesign (Kershaw, 2006; Richards, 2002). In addition, the Canadian public sector had been in consistent deficit since the mid-1970s. By the recession of the early 1990s, both orders of government were also running serious deficits, which complicated the prospect of potential reforms.

From the perspective of the provincial and territorial social policy reform agenda, a new approach to intergovernmental relations was required in order to develop, manage and protect social programs. Provincial and territorial elites had long sought to constrain the federal government's ability to spend money in areas of provincial jurisdiction (Telford et al., 2008). Accordingly, it was of particular importance to establish a process to address the general opposition to federal unilateralism’s dictating funding arrangements and setting and enforcing national standards and principles (Gibbins, 2001). The initial idea was to transform the spending power from “a federal government regulatory device into a multilateral device designed to meet the contemporary federal realities of fiscal imbalance and policy interdependence” (Fortin, 2003, p.32).

Quebec's challenge to the legitimacy of the federal government's leadership in social policy had been the most prominent, though not the sole, influence on the course of social

development in Canada. After the failures of the 1987 Meech Lake Accord and the 1992 Charlottetown Accord, the limits of constitutionalism as a solution to intergovernmental problems became evident (Lazar, 2000; Inwood, 2000; Cameron & Simeon, 2002; Day, 2006). It was, therefore, believed that the SUFA would serve as an alternative means to constitutionalism and would be able to accommodate federal and provincial interests and convince Canadians that the positive renewal of the federation was possible outside the constitutional arena (Gibbins, 2001).

More generally, and perhaps more importantly, the SUFA was portrayed as an example of collaborative federalism and promoted as a way to demonstrate that Canadian governments can work together in a productive and civil fashion to develop social programs designed to meet citizens' needs (Gibbins, 2001; Dion, 1999). Emphasis was placed on demonstrating national unity and normalizing Quebec's role in intergovernmental relations. The central objective of this approach was to manage the Quebec–Canada relationship through a process of elite accommodation designed to convince Quebecers of the possibility of a flexible and accommodating federalism in the absence of any real change (Cameron, 2004; Digiacomio, 2005).

5.2. The Content of the Social Union Framework Agreement

The Social Union Framework Agreement is an umbrella agreement that provides the framework for the Social Union. The SUFA was signed on February 4, 1999 by the federal government of Canada, nine provincial governments and the leaders of the territories.⁴⁷ Encompassing seven sections, it establishes principles that should be followed in the management of pan-Canadian social policies, namely, that “Canada’s social union should reflect and give expression to the fundamental values of Canadians — equality, respect for diversity, fairness, individual dignity and responsibility, and mutual aid and our responsibilities for one another” (The Social Union Framework Agreement, 2011).

In the subsequent sections, the Agreement outlines several themes. Section 2 assures mobility within Canada by: i) preventing the creation of new barriers in new social policy

⁴⁷The province of Quebec chose not to sign the Agreement. Although the First Nations are not signatories to SUFA, the Agreement contains the following commitment: “Governments will work with the Aboriginal peoples of Canada to find practical solutions to address their pressing problems. For greater certainty, nothing in this agreement abrogates or derogates from any Aboriginal treaty or other rights of Aboriginal peoples including self-government” (SUFA Agreement, 1999).

initiatives; ii) eliminating any residency-based policies and practices in the field of post-secondary education, training, health, social services and social assistance; and iii) ensuring full compliance by July 1, 2001, with the Agreement on Internal Trade. Section 3 addresses public accountability and transparency. Under Section 4, the governments agree to: i) undertake joint planning to share information; ii) collaborate on the implementation of joint priorities; iii) give advance notice prior to the implementation of a major change in a social policy or program; and iv) consult prior to implementing new social policies and programs. Section 5 focuses on the federal spending power and outlines the need for predictability and sustainability in federal transfers to the provinces. In particular, it aims to commit governments to consult at least one year prior to renewal or significant funding changes in existing social transfers and to not introduce new initiatives without the agreement of a majority of provincial governments. Section 6 outlines a dispute avoidance and resolution mechanism. Section 7 commits governments to jointly undertake a full review of the Agreement and its implementation and to make appropriate adjustments, as required, at the end of the third year.

The SUFA was supposed to serve as a guideline for the design and implementation of those social programs that were either currently or previously cost-shared by the federal and provincial governments (Cameron, 2004). These programs are: (i) Children's Benefits and Services funded until 1996 under the Canada Assistance Plan, (ii) labour market programs for people with disabilities, (iii) health care agreements, and (iv) Post-Secondary Education (PSE).⁴⁸

Table 5.1 provides a list of programs and agreements in the particular policy areas covered by the SUFA. It is important to note that of the agreements listed in this Table, Quebec has associated itself only with the 2003 Accord on Health Care Renewal. As for the 2004 10-year plan to strengthen health care, Quebec Premier Jean Charest maintained that

⁴⁸While PSE can be placed under the social services, it is only partially covered by the SUFA because there is no explicit legislation covering PSE. Since 1995, Ottawa provided support for PSE through transfers (both cash payments and tax points) under the Canada Health and Social Transfer (CHST). In 2004, the CHST was split into the Canada Health Transfer (CHT) and the Canada Social Transfer (CST). The latter was supposed to support post-secondary education as well as social programs, but there has been no designated post-secondary portion and no requirements with regard to the use of the funds (Bakvis and Cameron, 2000).

the province, resting on asymmetrical federalism, supports general objectives of this plan but would exercise its own responsibilities regarding planning, organizing and managing health services within its jurisdiction and, to these ends, would implement its own plan for renewing Quebec's health care system (Bernier, 2006). The funding under the Social Union Framework Agreement was provided by the federal government through the federal transfer support outlined in Table 5.2.

Table 5.1. Multilateral agreements under the Social Union Framework Agreement.

Policy area	Program type
Children's benefits and services	- Communiqué on Early Childhood Development (2000) - Multilateral Framework on Early Learning and Care (2003) - New National System on Early Learning and Child Care, ELCC (2004) - New Universal Child Care Benefit (UCCB), replacing the ELCC initiative (2006)
Programs for people with disabilities	- Multilateral Framework for Labour Market Agreements for Persons with Disabilities (2004), superseding the 1997 Multilateral Framework on Employability Assistance for People with Disabilities (EAPD)
Health care	- Communiqué on Health (2000) - Agreement on a Dispute Avoidance and Resolution Process around the <i>Canada Health Act</i> (2002) - The Health Care Renewal Accord (2003) - A Ten-year Plan to Strengthen Health Care (2004) - The 2004 Wait Time Initiative - The 2002–2003 Primary Care Reform Initiative - The 2003–2004 Infrastructure for Health Initiative
Post-secondary education	- Canada Chair on Research (1999).

Table 5.2 demonstrates Canada Social Transfer allocations by the type of programs, including support for children, post-secondary education, and social programs. In 2011-2012, the CST cash transfer to provinces and territories will be about \$11.5 billion. Provinces and territories also receive CST support through a tax point transfer. In 2011-2012 CST tax transfer will be about \$8.3 billion.

Table 5.2. Canada Social Transfer Cash Support in millions of dollars.

Programs	2007–08	2008–09	2009–10	2010–11	2011–12
Support for children	1,100	1,100	1,133	1,167	1,202
Post-secondary education	2,435	3,235	3,332	3,432	3,535
Social programs	6,202	6,202	6,388	6,579	6,777
Total	9,737	10,537	10,853	11,179	11,514
Note: Totals may not add due to rounding. Does not include funding of \$250 million for development of child care spaces in 2007–08, as the funding has been provided outside the CST in that year, and does not include Budget 2007 transition protection payments. Does not include Budget 2008 transition protection payments to Saskatchewan and Nunavut.					

Source: Department of Finance of Canada (2011)

In the health care sector, the Government of Canada committed \$41.3 billion in federal funding to provinces and territories under the 10-year Plan to Strengthen Health Care.

Table 5.3 demonstrates that the funding is allocated to provide federal health support, address wait times so that Canadians have timely access to essential health care services, and to provide support for medical and diagnostic equipment; \$5.5 billion of the total funding was invested to help provinces and territories reduce wait times according to their jurisdictional priorities

Table 5.3. Increased Transfer Support for Health from 2004–05 to 2013–14 in millions of dollars.

Province	Canada Health Transfer	Wait times	Medical equipment	Total
Newfoundland and Labrador	529	86	8	623
Prince Edward Island	983	23	2	172
Nova Scotia	787	157	15	1,156
New Brunswick	8,168	126	12	925
Quebec	13,813	1,287	118	9,573
Ontario	1,260	2,146	194	16,152
Manitoba	1,035	200	18	1,479
Saskatchewan	3,729	166	16	1,217
Alberta	4,723	563	50	4,342
British Columbia	33	728	66	5,516
Yukon	46	5	0.5	39
Northwest Territories	33	7	1	54
Total	35,285	5,500	500	41,285
Note: Based on equal per capita allocation. Figures are based on Statistics Canada population estimates for 2007–08 and Finance Canada population projections for 2008–09 to 2013–14, and are subject to revision upon periodic release of Statistics Canada official population estimates. Totals may not add due to rounding.				

Source: Department of Finance of Canada (2011).

An escalator of six percent annually has been applied to the CHT base of \$19 billion since 2006–07 (Department of Finance Canada, 2011). The Canada Health Transfer and the Canada Social Transfer programs are coming up for renewal in 2014.

5.3. The Social Union Framework Agreement: An Example of Collaborative Federalism?

For collaborative arrangements to happen, federal and provincial political elites should share power in decision making on the use of the spending power. They should share resources, construct new and use old structures for information sharing, and be jointly engaged in the activities and provisions of services that deliver results.

5.3.1. Authority and Power: Circumscribing the Federal Spending Power

The idea of a social union in its pure form in Canadian federalism is really a debate about the existence or not of positive social rights in the Constitution — “the idea of a Canadian social charter” (Brown, 2002, p.57). Those in favour of the idea of a social charter see the opportunity for a national social union that decreases tensions between economic classes and grants vulnerable social groups an equal place in society as a right of citizenship (Banting, 1987). Those opposed to the very idea of the constitutionally guaranteed social union argue that the notion is flawed because of the inability to grant positive rights in a substantive manner (Bakan & Schneiderman, 1992).

This debate continues and is tied more directly to the tensions,⁴⁹ inherent in the Canadian federation, between the politics of the federal spending power and the politics of social reform (Banting 1987, p. 51). As an instrument of the redistribution of collective wealth, federal spending power comprises the economic and social virtues, efficiency and equity (Asselin, 2001; Boadway, 1998). With the provinces holding key jurisdictional power

⁴⁹English and Young (2006, p.48) argue that historically provinces opposed the federal use of tax dollars in the field of social policy because they run these programs in response to local values and preferences and alter their spending and taxing priorities, and that citizens of provinces that opt out of the programs have paid taxes without receiving any benefit. On the other hand, the federal government maintains that the spending power remains “vital in maintaining equal opportunity for individual Canadians, in ensuring comparable provincial services, and in establishing programs of national importance.” One of the main rationales for a federal role in social policy within an economically integrated federation is to prevent the social race to the bottom among regions that can erode social standards while attracting private investments (Howse, 1992).

over social policy⁵⁰ under the property and civil rights section of the Constitution, the federal government has been forced to make its attempts at forging a social and economic union⁵¹ through the use of the federal spending power in relation to its obligations for peace, order and good government in Section 91 of the Constitution (Savoie 1990, p.278). The Quebec Premier's position regarding spending power was that it has no real basis in Constitution and, in fact, is contrary to the very nature of federalism because it entails no limit or constraint on the activity of one level of government in areas of exclusive jurisdiction belonging to the other (Lajoie, 1988).

In March 1998, the Federal/Provincial/Territorial Council on Social Policy Renewal launched the negotiations on the SUFA with the Federal Minister of Justice, Anne McLellan, and Saskatchewan Minister of Intergovernmental and Aboriginal affairs, Berny Weins, co-chairing the discussions. At the outset of the negotiations, the competing visions of the federation and diverse agendas made it difficult, although not impossible, for the decision makers to speak with one voice and reconcile multiple visions for the social union (Cotter & Himelfarb, 2001). As a result, the negotiations were difficult and prolonged. The Ministers started the Council's meeting by acknowledging a need to develop a framework agreement on Canada's social union that would "define a new partnership approach between governments in the planning and managing of Canada's social union, and focus on principles, collaborative approaches to the use of the federal spending power, ways to manage and resolve disputes, ground rules for cooperation and processes to clarify roles and

⁵⁰Exclusive jurisdiction over most of the areas of social policy rests with the provinces, however, pensions (Section 94a) are a shared jurisdiction and unemployment insurance (Section 91(2a)) is a federal responsibility.

⁵¹"An economic union has significant consequences for personal and labour mobility across the country which are, in turn, linked to the design of social policy" (Howse, 1992, p.106). The federal role in social policy provides the means by which the social costs of increased economic integration within Canada can be fairly spread across the country, which is essential for "maintaining the regionally equitable economic union" (Howse, 1992, p.105). This happens because uniformity and portability of social benefits help ensure that: i) individuals do not lose important benefits when they move to take advantage of opportunities in Canada, and ii) inefficient mobility is discouraged to take advantage of enhanced social benefits in other provinces. Chappell (1997) argues that Canadian economic and social policies are related in three ways. First, the state of the economy determines which social programs are needed. For example, there is an increased demand for social services in times of high unemployment. Second, the recent pattern of social spending depends on the government's economic priority of fiscal restraint in order to reduce the budget deficit. Third, social programs may discourage economic growth because they decrease the consumption and spending of working individuals and increase their debt. The last point is highly debatable; Battle (1993), for instance, demonstrated that these programs actually promote economic growth by putting more money into more hands.

responsibilities within and across various social policy sectors” (Federal-Provincial-Territorial Council on Social Policy Renewal, 1998, p.1).

At the outset of negotiations, Quebec Premier Lucien Bouchard was highly critical of the idea of the SUFA because, in his view, the proposed approach was contrary to the Canadian Constitution. Bouchard indicated that Quebec could not engage in a process regarding the management of the federal spending power without a countervailing recognition of the unconditional right to opt out with compensation (Boadway & Watts, 2000). He stated that “for the first time in the history of this country, the whole provinces, Quebec excepted, and the federal government are on the eve of concluding an agreement according to which the federal government will be allowed to spend in all the jurisdictions of the provinces in spite of the Constitution (...) there is some kind of a revolution in the perception of what should be the relation between the federal government and the provinces. There is now a move towards constituting a central, a very centralizing government with the provinces having no power, no responsibilities, but to accept what the federal government will decide in terms of programs and funding” (Warriner & Peach, 2007, p.142).

Quebec’s minister of intergovernmental affairs reinforced Bouchard’s position and informed the Council members that Quebec would participate in negotiations if the federal government would agree to “include in the framework agreement an unconditional right of provinces to opt out, with full compensation, of every new federal initiative or new federal program, regardless of whether or not it is co-funded in the social programs sectors which fall under provincial responsibility” (Federal-Provincial-Territorial Ministers Responsible for the Negotiations of a Social Union Framework Agreement, 1998).

The other ministers indicated that this issue would be the subject of further discussion and encouraged Quebec to participate. Provincial and territorial intergovernmental affairs officials drafted a consensus working document on collaborative approaches to federal spending on Canada-wide social programs that listed the principles⁵² of an approach to

⁵² These principles are: joint priority-setting on federal cash and tax expenditures on new or modified Canada-wide programs in areas of provincial jurisdiction; joint agreement on objectives and principles for new or modified Canada-wide programs; an agreement to develop, measure and publicly report on outcomes of new and modified Canada-wide programs, consistent with each government’s roles and responsibilities; any new or modified Canada-wide program in areas of provincial jurisdiction to require the support of a majority of provinces; full financial compensation to any provincial or territorial governmental that chooses not to participate in any new or modified Canada-wide program, providing it carried on a program or initiative that

federal spending in areas of provincial jurisdiction (Warriner & Peach, 2007). Following this document, Quebec's Premier indicated his interest in joining the SUFA negotiations and supporting the provincial and territorial approach.

The flexibility aspects of this approach involved consent and opt-out provisions that could be used if collaboration did not work out. These articles provided that any new or modified Canada-wide programs in areas of provincial jurisdiction required the consent of a majority of provinces, and that the federal government would “provide full financial compensation to any provincial or territorial government that chooses not to participate in any new or modified Canada-wide program providing it carries on a program or initiative that addresses the priority areas of the new or modified-Canada wide program” (Warriner & Peach, 2007, p.146).

At the July 1998 Western Premiers Conference, the Western premiers reiterated their commitment to successfully conclude the SUFA. They reemphasized the importance of the SUFA to Canadians on the grounds that the agreement would “foster cooperation between governments, enhance a capacity to establish national social programs, and provide for flexibility in the delivery of national programs” (Western Premiers Conference, 1998, p.1). The premiers also endorsed the Western finance ministers' report, which called for the federal government to restore funding for health care, education and other social programs; increase funding through existing fiscal arrangements; and introduce an escalator to the Canada Health and Social Transfer (Western Premiers Conference, 1998).

The prime minister outlined the position of the federal government on the social union in the position paper entitled “Working Together for Canadians.” In this paper addressing various issues, including mobility, one of the most important topics for the federal government, he wanted to ensure that there would be no barriers to mobility that inhibit access to basic services in any new or current health, education and social policies and programs. The prime minister also pledged that the federal government will not use its spending power for the creation of a Canada-wide shared-cost program and that any non-

addresses the priority areas of the new or modified Canada-wide program; and measures to ensure the adequacy and certainty of funding to be incorporated.

participating province would be compensated if it establishes an equivalent or comparable initiative (Canada, 1998; Phillips, 2001).

In other words, the negotiating agenda of the federal negotiators encompassed a variety of objectives, including the following: (i) affirming the legitimacy of the federal government in social policy; (ii) promoting the removal of barriers to mobility, both to strengthen the rights inherent in Canadian citizenship and to promote economic efficiency; and (iii) concentrating on public accountability as a way of putting pressure on the provinces to meet their social policy obligations (Lazar, 2000). As such, the primary interest of the federal elite was in the mobility provisions of Section 2 and the accountability provisions of Section 3 of the SUFA.

At the 1998 Annual Premiers' Conference in Saskatoon, the premiers stated that "flexibility afforded to provinces/territories through the ability to opt out of any new or modified Canada wide social program in areas of provincial/territorial jurisdiction with full compensation, provided that the province/territory carries on a program or initiative that addresses the priority areas of the Canada-wide program, is an essential dimension of the provincial/territorial consensus negotiating position" (Annual Premiers Conference, 1998, p.1). On this basis, the Quebec government agreed to join the other provinces and territories in their negotiations with the federal government on the SUFA. According to Quebec's intergovernmental affairs minister, "Quebec's participation in these negotiations is linked to the interprovincial consensus on the right to opt out with full financial compensation" (Facal, 2005, p.2). Ryan (1999) notes that the Quebec government, in accepting the principle that the right to opt out should be accompanied by a commitment to implement a program in the same area, had made a significant concession.

Thus, premiers attached great weight to Sections 4 and Section 5 of the Agreement, which outline the federal government's use of the spending power.⁵³ They wanted to ensure that: (i) there were rules constraining the use of the federal spending power to introduce new social programs, (ii) there was stability in federal funding once such programs were in place, and (iii) there was a clear and relatively formal set of rules for a dispute avoidance and resolution mechanism (Lazar, 2000; Dunn, 2000).

In response to premiers, Prime Minister Jean Chrétien reiterated the federal government's commitment and interest to work with the provinces and territories to strengthen Canada's social union. He also expressed the federal position that the objectives of the Social Union Framework were to promote equality of opportunity for all Canadians and to ensure that governments work collaboratively and are publicly accountable (Warriner & Peach, 2007). The view of the federal government was also expressed by the Minister of Justice, Anne McLellan: "The government of Canada believes a new partnership should have three objectives: promoting equality of opportunity for Canadians, wherever they live or move within Canada; improving collaboration among governments to serve Canadians better; and enhancing accountability to Canadians for results achieved" (McLellan, 1998).

Saskatchewan Premier Roy Romanow, stated that the framework negotiations would provide three opportunities to strengthen the social union. First, they could address Canadian citizens' desire for greater transparency, accountability and responsibilities, and building in more objective outcome measures. Second, they could restore the confidence of Canadians that governments are working together to maintain the social safety net in the face of globalization. Third, the framework provided the possibility of a new, more collaborative and more respective federalism (Romanow, 1998, p.11).

⁵³It should be noted, however, that there were differences between the federal and provincial positions on the federal spending power and the opting-out provision (Warriner & Peach, 2007). These differences were twofold. First, the federal position referred only to shared-cost programs in areas of exclusive provincial jurisdiction, whereas the provincial position contemplated provincial involvement regarding all forms of federal funding in areas of provincial jurisdiction. Second, the federal position was that compensation was due to provinces that established equivalent or comparable initiatives, while the provincial position was that compensation was due to provinces that established programs that address the priority areas of the new national program.

New Brunswick Premier Camille Theriault observed that the framework agreement negotiations are the culmination of three years of provincial-territorial leadership in shaping the national agenda for social policy renewal. In shaping this agenda, the provinces and territories were united in a common purpose aimed at achieving the following objectives: i) showing Canadians that governments can work together to address their social needs, making the federation more efficient and effective by clarifying government's roles and responsibilities; ii) reducing overlap and eliminating duplication, securing adequate and stable funding for social programs; and iii) preventing federal unilateral action in areas of provincial jurisdiction through the use of its spending power (Theriault, 1998).

The Ontario Minister of Intergovernmental Affairs, Dianne Cunningham, stated that Ontario's objectives in the framework negotiations were to reduce overlap and duplication in order to make programs more efficient and effective, to increase accountability to the public, to strengthen Canada-wide standards and to ensure adequate funding for programs that Canadians value (Cunningham, 1998).

In December 1998, the negotiations became complicated by a federal proposal for a Health Accord. The proposal emerged at the meeting of Federal/Provincial/Territorial Deputy Ministers of Health, when the Health Canada Deputy Minister, David Dodge, indicated that the federal government wanted to increase the Canada Health and Social Transfer (Cotter & Himelfarb, 2001). He indicated that the amount and form of the increase, however, would be contingent on concluding a Health Accord in advance of the 1999 federal budget. In particular, Dodge proposed to enhance federal involvement in the health sector, with limited federal financial commitment, and required increased provincial/territorial commitments on the level and standards of health services and on performance measures and accountability (Peach, 2004). This proposal was not acceptable to all premiers, Quebec's in particular, and as a result the consensus was not reached.

Chrétien was interested in concluding the Health Accord in exchange for any commitment to increase the federal funding for health care. Federal negotiators used both a stick and a carrot to persuade the provinces to abandon much of their agenda. The stick was a "threat to wage ideological battle by charging the provinces with gutting social programs," and the carrot was an increase in CHST transfers (Richards, 2002, p.4). The premiers were opposed to signing such an Accord but agreed to offer a written assurance — a letter — that

additional federal funding through the CHST would be used for health care. In response to the premiers' letter, the prime minister indicated a willingness to increase health care funding in the 1999 budget. Making a connection between the Health Accord, SUFA and increased health funding, the prime minister noticed that "our collaborative work on a renewed health partnership and on a new social union partnership more generally, along with increased health funding, will reassure Canadians that governments are working together to address their health and other social needs" (Chrétien, 1999, p.1).

On January 27, 1999, Quebec Premier Lucien Bouchard issued a statement on the social union. He explained in this statement that Quebec was participating in the framework negotiations because the provincial-territorial consensus of the 1998 Annual Premiers' Conference "allows provinces which, like Quebec, wish to retain their jurisdiction and autonomy, to exercise their right to opt out with full compensation of and federal initiative in these fields" (Warriner & Peach, 2007, p.151). Regarding the proposed Health Accord, Premier Bouchard noted that the federal government decided "to open a second front and attempted to force the provinces to sign a separate agreement on health, outside the framework agreed upon for the Social Union" (Warriner & Peach, 2007, p.151). He explained that the federal draft agreement would give the federal government a substantial role in health care and express the view that the provinces should opt out of the agreement.

On February 2, 1999, the prime minister forwarded a proposed text of the SUFA Agreement to the premiers and invited them to meet and negotiate the Agreement. On February 4, 1999, the prime minister and premiers met and, except for Quebec's premier, concluded the framework to improve the social union for Canadians. In addition, the first ministers reached an informal understanding that the federal government would increase health-related transfers to the provinces and territories.

Quebec's Premier Bouchard could not accept the Agreement because, after heavy federal pressure, the final compromise failed to protect Quebec's right to opt out of new shared programs without financial penalty, as had been agreed in earlier provincial drafts (Facal, 2005). Signed without Quebec, the SUFA was seen in Quebec at the time as a major breakthrough for the federal government because it not only broke the Saskatoon interprovincial consensus but also recognized federal spending power and most of the fundamentals principles and goals held by the federal government (Facal, 2005; Facal, 1998).

The leader of the Quebec Liberal Party, Jean Charest, supported the decision of the Quebec government. It was clear that the provincial position collapsed, with the premiers other than that of Quebec abandoning their demand for the ability to opt out of any new Canada-wide social program with full compensation. Thus, what had begun in large part as a provincial and territorial initiative to limit the federal spending power, circumscribe the federal government unilateralism, and co-determine the pan-Canadian standards ended up as a framework to facilitate federal government's involvement in provincial programs (Banting et al., 1999, Stilborn, 1999; Schwanen, 1999; Harmes, 2007).

From the federal decision makers' perspective, the SUFA was a model of federal-provincial and interprovincial/territorial collaboration and an example of collaborative federalism. It was based on the assertion that it may have been possible to achieve pan-Canadian objectives through group effort among the provinces and territories without the direct involvement of the federal government (Prince, 2001). Federal Ministers Stéphane Dion and Anne McLellan also defended the SUFA's rationale by claiming that spending incentives are needed to "inhibit any pressures for a race to the bottom in social programs and services for Canadians" (Dion & McLellan, 1999, p.2). In the 1999 statement to the House of Commons, the federal minister of intergovernmental affairs also praised the SUFA and noted that it established constraints on the federal government "that go beyond the provisions on limiting the federal spending power contained in the Meech and Charlottetown agreements" (Dion, 1999).

In a nutshell, political identities are highly contested in Canada, and social programs and policies that underpin the social union have emerged as instruments of nation building. The social union, like the economic union, is predicated on the idea that "a defining characteristic of a unified country is a shared and common set of aspirations, standards, and norms with respect to the basic elements of social citizenship" (O'Hara, 1998, p.15). For federal decision makers, social policy has been seen as an instrument of territorial integration and part of the social glue holding together a vast country (Rice & Prince, 2000). National social programs create a network of relations between citizens and the central government throughout the country, enhancing the legitimacy of the federal state (Biggs, 1998). However, provincial premiers, especially in the case of Quebec, have also seen social policy as an instrument for building a distinctive community at the regional level, one reflecting the

linguistic and cultural dynamics of Quebec society. For both federal and provincial elites, social policy has been an instrument of social justice and statecraft to be deployed in the processes of nation building (Noel, 2000). The co-existence of multiple political identities — expressed through the nationalizing vision of Canadian federalism by the federal elite, asymmetrical federalism by Quebec's elite and through the principle of the equality of the provinces expressed by the Western elite — transformed the debate on the division of powers from a discourse about effectiveness into a discourse about community and national unity. "Social programs become cultural instruments, and controversies over jurisdiction take on a political symbolism that has made their resolution more difficult" (Banting, 2005, p.137).

The SUFA failed to accommodate the divergent conceptions of the federal and provincial decision makers of the Canadian political community. If the SUFA's creation was based only on legal and institutional dimensions, these differences eventually could be resolved. However, the intergovernmental agenda for the Social Union Framework Agreement was shaped largely by regional and jurisdictional interest of elites, and at the heart of the SUFA are various visions of the Canadian political community and of the elements that compose its identity. These concepts were expressed by the premier of Quebec and his cabinet ministers through their vision for the asymmetrical model of federalism, the nationalizing federalism promoted by Chrétien and federal negotiators, and the principle of the equality of the provinces promoted by the Western Premiers. All attempts to reach consensus during the SUFA negotiations failed because it was very difficult to compromise about issues and interests that had come to be defined as affecting one's core political identity. That is why the negotiations on SUFA turned into an endless struggle from which no winner could emerge. Unlike the jurisdictional conflict, political identity is not divisible and, therefore, it is inherently difficult — if not impossible — to negotiate, bargain or compromise.

The absence of equality and power sharing in decisions pertinent to the use of the federal spending power in the social policy initiatives directly reflects the absence of collaboration between elites. The exclusion of Quebec belies SUFA's credentials as an example of collaboration. Rather it resembles the cooperative mode between the federal and

provincial decision makers. Federal elites unilaterally made decisions in this area, and provincial elites were left to comply with their decisions.

5.3.2. Resources: Return of the Federal Orthodoxy

In the fields of social welfare and health care, which fall mainly under provincial jurisdiction, there appears to be a broad consensus among provincial and federal elites on general policy goals in these areas. “Widespread public support for such programs as income security and medicare has reduced regional differences and muted ideological ones” (Fletcher & Wallace, 1985, p.161). While creating these programs, decision makers tended to view “federal-provincial divergences in tax powers and spending responsibilities as institutional hurdles peculiar to federalism, to be somehow overcome in the orderly pursuit of national social welfare and income redistribution policies” (Hum, 1983, p.9). The conflict, however, prevails over the division of costs, the means of delivery of the social and health care programs, local preferences and national standards, as well as political blame and credit, especially during election periods when the governments gain popularity by developing and extending the social welfare programs as opposed to cutting them (Wharf, 1981).

Electoral support

Following the 1993 federal election, the new Liberal majority government of Jean Chrétien came to power and the Progressive Conservative Party of Canada was reduced from a majority government with 151 seats in the House of Commons to only two seats. In the West, conservative voters gave their support to Preston Manning, the leader of the Reform Party of Canada.⁵⁴ In Quebec, the public gave further support to Bouchard, leader of the sovereigntist Bloc Québécois as opposed to Campbell, leader of the Progressive Conservative Party. Both the Reform Party and the Bloc were highly regionalized political parties. Chrétien was able to take advantage of this highly fragmented party system by winning elections in Ontario and gaining moderate voters’ support in other regions of the country.

⁵⁴The Reform Party of Canada was later renamed the Canadian Alliance Party.

Chrétien largely “abandoned the interventionist nationalism that had dominated his party’s outlook during the 1980s in favor of a neo-liberal philosophy that embraced the concepts of economic globalization, deficit reduction, and a redefined role for governments which involved the close integration of economic and social policies” (Hale, 2001, p.228). Chrétien used this neo-liberalism ideology to shape, organize and justify his course of action, and to legitimize the power held by his active political party. The central elements of this neo-liberalism⁵⁵ were spelled out by Finance Minister Paul Martin in a paper titled “A New Framework for Economic Policy.” In this paper, he argued for the complementarity of economic and social policies and accepted the need for deficit reduction, a balanced budget and reducing the size of national debt relative to the economy as a means of ensuring government’s economic capacity to sustain Canada’s public services and major income support programs (Canada, 1994). The Chrétien government’s decision to promote its policies as means of sustaining public services and the welfare state was crucial to maintaining public support from centrist voters (Angus Reid Associates, 1994).

Shortly after the publication of this paper, the federal Minister of Human Resources Development Canada, Lloyd Axworthy, announced that the federal government would be undertaking a major review and overhaul of Canada’s social security system. It also became apparent that the federal decision makers would increasingly seek to engage provinces on a bilateral basis and possibly narrow the scope of the review to those policies and programs that could be undertaken by the federal government without consent of the provinces (Rice & Prince, 2000).

The interim report of the Standing Committee on Human Resource Development outlined five principles that were crucial from the federal elite’s perspective to the success of social policy reform: i) social assistance and social services must be available to all those in need; ii) reforms must reflect the fact that full employment is essential to an individual’s dignity and self-respect; iii) federal and provincial social security programs and policies should work together so as to better serve the needs of individual Canadians; iv) the social security system should be financially sustainable, and all federal–provincial financial arrangements should be stable and predictable and not subject to unilateral change by either

⁵⁵At the core of neo-liberalism is the emphasis on a market-driven approach to economic and social policy based on neoclassical theories of economics.

level of government; and v) the social security system should recognize that caring for families and individuals is a shared responsibility (Standing Committee on Human Resource Development, 1994).

The federal decision makers' position was that the issues of program ineffectiveness and inefficiency were related to federal–provincial overlap and duplication and that disentangling the roles and responsibilities of the two orders of government was fundamental to the overall reform of the social security system (Peach, 2004). Framed in this manner, the principle of shared jurisdiction was undermined, and, as a result, potential difficulties arose in the establishment of cost-shared programs, the application of federal criteria and the establishment of national standards (Rice & Prince, 2002).

Most premiers were hesitant to provide unqualified support for the social security system reform, especially since there was no clear indication of how they would be involved in decision making or the nature of the reforms. The premiers were also concerned that the federal government would take unilateral actions while claiming that provinces had been consulted. Accordingly, the premiers expressed the views that the process should be managed on a federal–provincial basis with ongoing consultations and that the review should be as broad as possible to examine all aspects of the social security system (Rice & Prince, 2000).

That being said, the premiers generally acknowledged the need for reform, the most vocal advocates being the premiers of Newfoundland, New Brunswick, Prince Edward Island, Manitoba and Alberta. These same premiers were also most concerned with the affordability of existing programs (Warriner and Peach, 2007). The premiers of Ontario, Quebec, British Columbia, Nova Scotia and Saskatchewan, while generally supportive of the need for reform, continued to be cautious on the extent to which the review would be federal–provincial in its nature. The premier of Ontario showed little interest in the national social security review because he believed that the provincial social policy agenda should not be determined by developments at the national level (Warriner and Peach, 2007).

The Quebec premier was not prepared to collaborate on intergovernmental initiatives based on the federal agenda. However, Quebec was interested in pressing for its demands regarding jurisdictional disentanglement and the decentralization of programming in areas of provincial jurisdiction (Gagnon, 1993). In particular, the Quebec premier took the positions

that labour market training programs should be devolved entirely to the province and that Quebec would not engage constructively in the reform process until substantial progress had been made on the transfer of labour market programs (Brown, 2002).

The premiers of Manitoba and Alberta argued that reform should focus on removing disincentives to work and developing stronger training and human resource development programs. Thus, benefits to employable people should generally be conditional on enrolment in training programs. The British Columbia premier supported the federal aims regarding the reduction of overlap and accepted the need for social security reform. However, the interests of the premier centred on the disentanglement of federal–provincial roles in social security.

At the end, the social review initiative lost momentum because the perceived need for deficit reduction took over the social policy agenda and the Chrétien government announced fiscal restraint measures in the 1995 federal budget. However, this discourse signaled a more proactive role on social policy reform that would be undertaken by the premiers during the SUFA negotiations. The objective was to assert provincial non-cooperation in case of any threats to their jurisdiction (Campbell & Gray, 1995).

Financial and bureaucratic resources

Fiscal resources are difficult to assess. Many studies tested the causal relations between state wealth and public policies. Erikson et al., (1993, p.84) demonstrated that socio-economic variables are silent in multiple regression equations explaining state public policy orientations as opposed to state public opinion variables. Simeon and Miller (1980, p. 249) also highlighted that “the impact of fiscal resources on provincial policies is difficult to test because federal transfers remove a high proportion of the original inequality in provincial access to public revenue.” The activism of the Quebec government, for instance, and the conservatism of its Ontario counterpart probably had more to do with the policy preference of their respective electorates than with their relative wealth (Simeon & Miller, 1980; Simeon & Blake, 1980).

Economic disparities among the provinces, however, significantly reduced the bargaining power of premiers and made it easier for federal decision makers to split provincial common fronts by pitting the smaller provinces against the larger ones (Facal, 2005). For premiers from the smaller, poorer provinces, autonomy was less important than

ensuring the continued flow of federal funds. For the premiers from richer provinces, such as Ontario, Alberta and British Columbia, increased autonomy in shared jurisdictions and the limitations of Ottawa's ability to interfere with their programs and priorities were of considerable interest (Cameron & Simeon, 2002).

The federal minister of finance played a central role in shaping the Canadian social union. "With the authorization for executive action in most areas of social policy located in financial legislation, the Department of Finance remained firmly in control of the government's social policy agenda" (Cameron, 2007, p.173). In order to get back into the black, Prime Minister Chrétien gave his Finance Minister, Paul Martin, unprecedented control over his government's fiscal and economic agenda. As a result, Martin's power to coordinate the government's fiscal, economic and social policies "expanded to a degree not seen since the heyday of Keynesian public finance in the 1950s and 1960s" (Hale, 2001, p.226) while weakening the influence of social policy departments. This, in turn, changed social policy discourse from one with a socially redistributive outlook to one with a reallocation of resources, overshadowing the goals of anti-poverty and social integration and fostering competition among social programs and between governments for funding (Rice & Price, 2000).

In particular, the Department of Finance determined which new spending policies and social and economic programs were central to the government's agenda. It also set and enforced fiscal targets and imposed spending reductions on provincial governments and the other departments, which, in turn, were forced to accommodate their policy and spending plans to meet the government's agenda of deficit reduction (Johnson, 2006). Thus, the Department of Finance, by determining the development of social policy, mediated the interests of the federal elite in the fiscalization of social policy. The fiscalization of social policy discourse led to: i) the decline of social policy making in Canada, ii) the erosion of the legitimacy of the social security system, iii) the diversion of the public and media attention from critical social issues, iv) the weakening of social advocacy groups and the social policy community, and v) economic management of social policy planning (Rice & Price, 2000, p.145).

In short, Chrétien followed the federal orthodoxy established by the Trudeau government. He strongly opposed Quebec's separation, and his vision for a federation was

shaped by the concept of individual liberal rights and the principle of equality of citizens, along with a vision for a strong central state able to redistribute wealth, a key to a social justice. Based on a nationalizing vision of federalism promoted by the federal elite, the Agreement recognizes the federal spending power in areas of provincial jurisdiction. The SUFA demonstrates the nationalizing vision of Canadian federalism established through the administrative agreement as opposed to the means of constitutional change. The Agreement provided an opportunity for the federal elite to demonstrate to federalists in Quebec that non-constitutional renewal of the federal system was possible (Gibbings, 2001), while at the same time keeping the federal government fully in play with respect to provincial social programs (Vaillancourt, 1998). It also reaffirmed the role of the federal government in the daily lives of Canadians and ensured that, at some level, all citizens were part of the common political community with shared commitments to each other. During the process of SUFA's negotiations, federal and provincial elites were actively engaged in resource sharing, although the agenda was largely set and dominated by the federal decision makers and the economic disparities of the provinces exacerbated the conflict even further. From this perspective, the resource dimension of the SUFA falls under cooperation.

5.3.3. Activities and Provision of Services: A Reality Check

In collaborative arrangements, provincial and federal elites are supposed to be actively involved in the development and implementation of activities and provision of services that deliver results. The Social Union Framework Agreement was supposed to serve as a guideline in the following areas of social policy: (i) funding changes in existing social transfers, (ii) the creation of new policy initiatives financed through direct transfers to provinces and territories, and (iii) the creation of new policy initiatives financed through transfers to individuals and organizations. Three social policy initiatives in these areas are analyzed to identify whether in reality the SUFA has been a point of reference in the design and implementation of these initiatives. These initiatives are the 2004 CHST split, the National Wait Times Reduction Strategy and the Universal Child Care Benefit.

5.3.3.1. The 2004 Split of the Canada Health and Social Transfer

The issue of the federal spending power was prominent on the agenda during the split of the Canada Health and Social Transfer⁵⁶ introduced in the 1995 budget as part of Chrétien's efforts to reduce and eliminate the fiscal deficit. By unilaterally introducing the CHST legislation, Chrétien and his minister of finance explained that transfers to the provinces could not be exempted from expenditure reductions (Boismenu & Graefe, 2004). "At least from 1996–1997 to 1999–2000, the total CHST was reduced unilaterally by the federal government, and transfers to the provinces were reduced from \$29.7 billion in 1995–1996 to \$23.7 billion in 1999–2000" (Madore & Blanchette, 1997, p.7). The cash transfer component was also reduced unilaterally from \$17.5 billion in the first year of the implementation of the CHST and then to \$12.5 billion the following year. The net effect of these cuts led to: (i) the loss of Ottawa's power over the provinces and its legitimacy; (ii) reductions in transfers from the provinces to their agencies and ultimately to citizens; (iii) a drop in the share of federal transfers, including equalization, in the provincial revenues; and (iv) the emergence of the vertical fiscal imbalance (Harmes, 2007).

These unilateral reductions in transfers contradicted the spirit of the SUFA since they were made without prior notice to the constituent units. In particular, the actions of the federal government violated Section 5 of the Agreement concerning the federal spending power and a need for predictability in federal transfers to the provinces that was supposed to serve as a point of reference for this case. To defend their actions and position on cuts, Chrétien argued that the provinces were in a position to absorb the impact of the cuts and that they wanted increased federal transfers to satisfy their own cost-cutting and tax reduction measures (Madore, 2003). This position of the federal government angered the premiers. They believed that the federal government acted inappropriately because provincial

⁵⁶Since 1995 and until 2004, the federal government had been helping provinces to assume their responsibilities for health care, post-secondary education, early childhood development, child care, and social assistance and services through transfers under the Canada Health and Social Transfer (CHST). The CHST was a five-year block funding system that came out of combining two major programs for transfers to the provinces: the Established Programs Financing (EPF) and the Canada Assistance Program (CAP). The Canada Health and Social Transfer (CHST) had a cash transfer component and a tax point transfer component. Because the CHST was a block fund, each province and territory decided, according to its own priorities, how it would spend its CHST allocation.

entitlements did not cause the federal deficit and the decrease in the federal contribution to the provinces shifted the cost from one level of government to another (Madore, 2003).

The transfer cuts heated the interest of the premiers to constrain the federal spending power. Shortly after the announcement of the budget, the premiers issued a report that called for the expansion of areas of specific provincial and federal responsibility in place of ad hoc federal and provincial involvement (Richards, 2000). The report proposed the delineation of federal provincial roles and responsibilities, and restrictions on federal spending power.

As Courchene (1995) argues, on the one hand, all the provinces lost because they all received reduced federal transfers. On the other hand, some provinces lost even more because they received relatively less than the others. In addition, the CHST funding formula did not reduce interprovincial disparities or made it easier for some less prosperous provinces to provide their residents with a broad range of programs and services (Coulombe & Merette, 2000). In 2000, the premiers called on the federal government not only to fully restore the cash component of the CHST but also to establish an appropriate escalator to ensure that the CHST kept pace with the economic and social factors affecting the sustainability of the health care system (Annual Premiers' Conference, 2000).

In 2002, the Romanow Commission headed by Roy Romanow, former Premier of Saskatchewan, recommended significant changes to federal financial support for provincial health care plans. The Commission's report stated that: i) the combined use of cash and tax-point transfers made the CHST contribution to Medicare extremely difficult to estimate; ii) the inclusion of financing for health care, post-secondary education and social assistance in one block transfer made for a lack of clarity in federal-provincial fiscal relations; and iii) the absence of a funding escalator, which leaves the amount the provinces receive to the discretion of the federal government, reduces predictability (Romanow, 2002).

The Commission stated that the portion of the CHST cash transfer notionally allocated to health care covers only 18.7 percent of provincial-territorial expenditures on *Canada Health Act* services. Therefore, there is a need to create new federal transfers that would solely target health care. Once the Canada Health Transfer would be fully implemented in 2005–2006, the federal government should not be allowed to let the amount of this transfer fall below 25 percent of provincial-territorial expenditures on *Canada Health Act*

services⁵⁷. The Commission recommended to set the breakdown in the CHST at the following rate: 42 percent to be allocated to the Health Transfer and 58 percent to be allocated to the Social Transfer (Romanow, 2002).

Federal elites thought that it would be a good idea to divide the CHST based on a Romanow-style suggestion. That is why, Bill-C-28 enacted in 2003 put an end to the CHST by dividing it into two distinct transfers: the Canada Health Transfer and the Canada Social Transfer. Both the CHT and the CST took effect on April 1, 2004. These two transfers are now designed to support health care on the one hand (CHT) and post-secondary education, social assistance, related social services and early childhood and early learning programs on the other (CST).

The pertinent issue of transfer allocation, however, was addressed by federal elites unilaterally again. Chrétien followed the recommendation of the Senate Committee and as a result, some 62 percent of the CHST tax transfer was allocated to the CHT, while the remaining 38 percent was devoted to the CST (Canada, 2003).⁵⁸ The Senate Committee provided no explicit rationale for its 62–38 split. But the federal minister of finance argued that because 62 percent of provincial social spending on health, social services and postsecondary education goes to health care, the appropriate split of the CHST is to dedicate 62 percent for health care (McIntosh, 2004).

Under this plan, Chrétien and his finance minister committed \$26.85 billion dollars (\$13.75 in cash and 13.10 in tax points) in funding for health care over the four-year period from 2004–05 to 2007–08. And \$16.45 billion dollars (\$8.45 in cash and 8.00 in tax points) was to be allocated to social transfer over the four-year period from 2004–05 to 2007–08 (Canada, 2003). At the First Ministers' Meeting in September 2004, Prime Minister Paul Martin and the premiers signed a 10-year, \$41-billion Agreement on Healthcare. In order to ensure that no province or territory experience declines in either its CHT or CST cash relative to what its cash transfers would have been in 2007–08, the effective 2007–2008

⁵⁷That is, the services provided by physicians and hospitals.

⁵⁸This allocation has been labelled as a “Romanow gap” because it represented a departure from what the Romanow Commission had been proposing.

budget restructured the Canada Social Transfer (CST) to provide equal per-capita cash support to provinces and territories.⁵⁹

In short, the unilateral decision of federal elites on how to split the CHST was contradictory to the spirit of the SUFA and far from the very notion of collaboration. While the 2003 budget can be considered to some extent as the required “sufficient notice” to the provinces, the major decisions were made by Chrétien and his cabinet ministers. “Having secured provincial agreement to split the CHST into its component parts, the federal government appears likely to forge ahead with imposing its own formulation of how the CHST will be split and what it will comprise, namely cash and tax points” (McIntosh, 2004, p.36).

Despite the objectives of the Social Union Framework Agreement — which were, most notably, that the notions of collaboration and efficiency would take precedence over the division of powers — the federal government has, since 1997, made use of traditional and new policy instruments in an attempt to increase its participation and visibility in Canada’s social policy (Vaillancourt, 1998). As long as the CHT and CST remain cash transfer programs, the federal government retains a convenient spending mechanism through which it can offer the carrot of new money to leverage provincial and territorial policy decisions (Kershaw, 2006). The cash transfer also provides a stick to enforce national standards, not only for health care but also for post-secondary education and other social services.

5.3.3.2. The National Wait Times Reduction Strategy

Wait list management is not new on the Canadian scene. The codification of patient rights and the possibilities of ensuring guarantees have been suggested and implemented at various times within Canada (Torgerson, 2005). At the 2004 Annual Conference of Federal-Provincial-Territorial Ministers of Health, the Canadian first ministers agreed to achieve meaningful reductions in wait times in five key areas — cancer, cardiac interventions, joint replacement, sight restoration and diagnostic imaging procedures — by March 31, 2007. The National Waiting Times Reduction Strategy was an effort to better manage wait times and

⁵⁹Effective 2014–2015, similar changes are to be made to the Canada Health Transfer.

achieve meaningful reductions where they are longer than medically acceptable (Canada, 2004).

Each of Canada's premiers was given the responsibility to markedly decrease wait times in these five areas within their province. To reduce wait times, \$4.5 billion was allocated over the past six years to the provinces in the Wait Times Reduction Fund. In 2010–11, \$250 million ongoing was added to the CHT base, primarily for health human resources. This funding was aimed at hiring more health professionals, clearing backlogs, building capacity for regional centres of excellence, expanding appropriate ambulatory and community programs and developing tools to manage wait times. The Wait Times Reduction Fund constitutes part of new, \$41-billion federal funding (Canada, 2004) over the next 10 years in support of the action plan on health.

As for Quebec, recognizing an asymmetrical federalism, the first ministers agreed to release a separate communiqué that reflected the arrangements between the Government of Canada and the Government of Quebec regarding the interpretation and the implementation of the 2004 Communiqué on Health. “The funding provided by the federal government was supposed to be used by the government of Quebec to implement its own plan aiming, notably, at ensuring access to quality care in a timely manner and at reducing waiting times” (Government of Canada, 2004a).

In 2007, Prime Minister Stephen Harper brought back the idea of wait times guarantees by creating new financial incentives in the *Budget Act*. The federal budget of 2007 established a one-time pilot project fund of up to \$612 million to help provinces and territories undertake innovative projects in order to accelerate the implementation of wait times guarantees in at least one of the five priority areas mentioned above. By mid April, all jurisdictions had agreed to a care guarantee in exchange for new funding. “Although care guarantees are difficult to implement, they reflect a political need to assure Canadians that they will receive care within clinically appropriate time periods. The federal government has not brought forth legislation that would require provinces to create wait times guarantees, and it is unlikely to do so” (MacAdam, 2008).

The design and implementation of this initiative were supposed to be guided by the Social Union Framework Agreement. In fact, the first ministers agreed to collect and provide meaningful information to Canadians on progress made in reducing wait times by

establishing: i) comparable indicators of access to health care professionals, diagnostic and treatment procedures with a report to their citizens to be developed by all jurisdictions by December 31, 2005; ii) the establishment by December 31, 2005, of evidence-based benchmarks for medically acceptable wait times, starting with cancer, heart, diagnostic imaging procedures, joint replacements, and sight restoration, through a process to be developed by the federal, provincial and territorial ministers of health; and iii) the establishment by each jurisdiction of multi-year targets to achieve priority benchmarks by December 31, 2007.

The results to date, however, are too far from what was agreed on. There has been a slow progress in establishing nationally comparable indicators and measurement systems (MacAdam, 2008). The role of the Health Council of Canada is to monitor achievements agreed on under the Health Accord of 2003 and to report on progress on wait times across jurisdictions. Since 2004, the Council has published a series of monitoring reports about the wait times agreement. By 2005, the premiers had agreed to medically acceptable wait times for radiation therapy, hip fracture repair, hip and knee joint replacement, cataract removal, breast and cervical cancer screening and cardiac bypass surgery. “They still have not established pan-Canadian benchmarks or indicators for diagnostic screening, although some individual provinces have established provincial benchmarks” (MacAdam, 2008, p.3).

In February 2008, the Canadian Institute for Health Information (2008) published its third annual report on wait times for the five priority areas. Among their chief findings was the fact that it is impossible to compare and measure the progress on wait times reductions across country because provinces do not use shared measurement systems. Additionally, the Health Council of Canada (2007, p.4) stated that “the information needed to paint a cross-Canada picture — information that allows Canadians to see changes over time and to compare wait times data from different parts of the country — is not available from all jurisdictions, despite widespread recognition that it should be.” In order to demonstrate to the public whether wait times are getting longer, shorter, or not changing at all, jurisdictions need to identify how long the wait time was to start with in order to have a baseline measurement to mark the starting point of any progress. They also need to report data consistently collected from across their jurisdiction (Health Council, 2007). In other words, there is a need for the benchmark for safe and medically acceptable wait times.

In short, the first ministers' commitments in 2004 have clearly led to focused efforts to reduce wait times within — and, in some jurisdictions, beyond — the five priority areas. But, because of the lack of comprehensive and comparable data, “it is not possible to report whether each jurisdiction achieved meaningful reductions in wait times for targeted health care services by March 31, 2007” (Health Council of Canada, 2007, p. 16). The policies that are endorsed and promoted by the First ministers, and that are reflected in the Ontario Wait time strategy, take an overly narrow and restrictive view of what is needed to improve wait times generally (Trypuc et al., 2006).

In addition, the National Wait Time Strategy did not formally involve the public directly in the priority-setting activities as the SUFA prescribed because elites saw public input as an obstacle for the wait time strategy. The selection of the five focus areas were chosen by elites based on what was perceived to be areas of concern for Canadians, particularly voters between age 45 and 65 (Bruni et al., 2007). “There is no concrete documentary evidence to support the notion that the public selected the five areas. The notion seems to have stemmed from informal communications between various politicians and a few constituents, and attention given by the media. Nor is there guidance for how to involve the public in a wait time management priority setting initiative” (Bruni et al., 2007, p. 7). Finally, regarding the spending power, the federal government decided alone on the amount of money allocated to the provinces for wait times in 2004. This initiative is part of the \$41-billion budget for health care.

5.3.3.3. The Universal Child Care Benefit

In the 2004 Speech from the Throne, it was announced that the federal government would work with the provinces and territories to put in place a national system of early learning and child care⁶⁰ based on four key (QUAD) principles: quality, universality,

⁶⁰In general, child benefits are government payments in the form of cash or tax savings to families with children. Child benefits serve two purposes: reducing child poverty and helping parents with the costs of raising children (Battle, 2008). Education and child care fall under provincial jurisdiction, and the federal role is limited largely to the transfer of funds to provincial and territorial governments for early childhood programs and services. However, the federal government plays a direct role in providing early learning and child care for First Nations' communities, military families, and immigrants and refugees. Different approaches to early childhood services among the provinces and territories have resulted in significant differences across the country in the availability and affordability of high-quality child care services (Cool, 2007).

accessibility, and developmental programming (Government of Canada, 2004b). However, despite then-Prime Minister Paul Martin's best intentions, negotiations with the premiers did not lead to a multilateral agreement on child care program. The main point of contention was the requirement to report on "measurable outcomes related to the QUAD principles and concerns that the funding could be spent openly on non-profit child care" (Cool, 2007, p.10). Meeting in February 2005, the federal, provincial and territorial social services ministers stressed the need for a flexible approach for the development of the early learning and child care systems across the country and decided to resume discussions after funding details were announced in the upcoming budget (Ministers Responsible for Social Services, 2005).

In the 2005 Budget, the finance minister committed \$5 billion over five years to enhance and expand early learning and child care in collaboration with the provinces and territories, allocating \$700 million in the 2006–2007 fiscal year and \$1.2 billion in each of the next three years (Department of Finance of Canada, 2005). To provide some funding while it negotiated the terms of child care agreements with the provinces, the finance minister set aside \$700 million in a trust fund to be accessed by the provinces by 31 March 2006. The federal elite entered into negotiations with individual premiers, leading to bilateral agreements with nine provinces between April and November 2005. In signing the agreements, "the provinces made a commitment to developing detailed action plans that identified their spending priorities, based on the four QUAD principles" (Cool, 2007, p.10). Ontario and Manitoba premiers released their action Plan and entered into final funding agreements with the Government of Canada in November 2005. Quebec's premier had not signed an agreement-in-principle but negotiated and signed a funding agreement to support the province's existing early learning and child care system in October 2005.

In 2006, social policy was prominent in the Harper Conservatives' 2006 election campaign. He campaigned for the Choice in Child Care Allowance, which was renamed the Universal Child Care Benefit (UCCB) after he won office. When Harper came to power, he gave the premiers a one-year notice that it would cancel these bilateral child care agreements (Cool, 2007). As child care was one of the priorities of Harper's government, he promised to provide direct financial support to families and to encourage the creation of new child care spaces in collaboration with the premiers. Accordingly, Harper declared that his government would meet the needs of children through: i) a new, \$1,200 per year Choice in Child Care

Allowance (subsequently renamed the Universal Child Care Benefit) for each child aged six or younger, regardless of family income, starting in 2006 as promised in the election campaign; and ii) a Community Child Care Investment program (subsequently renamed the Child Care spaces Initiative), which would provide tax credits for employers to create new child care spaces for their employees or for the wider community (Government of Canada, 2006). In 2007, Ottawa added a non-refundable child tax credit providing federal income tax savings up to \$300 per child under 18 to all except the poorest families, which got nothing. These two “new” child benefit programs are basically “social policy dinosaurs from the past”⁶¹ (Battle, 2008, p.346).

The UCCB is widely criticized as being insufficient to make regulated child care more affordable and accessible for most parents. The new finding under these initiatives represents a substantial cut to the \$1 billion committed by the previous government in 2005 (Doherty, 2007). The true value to be received would be less than \$1,200 because it would increase families’ taxable allowance income and thus trigger both reductions in federal and province/territorial income-tested benefits and increases in taxes (Battle, 2006, p.2). “In addition, this initiative would not be able to address the need to increase the supply of affordable, quality child care. Nor would the scheme do much to help families pay for child care, “since it would offset only a fraction of the cost of child care” (Battle, 2006, p.2). The interesting point, however, is that despite the criticisms levelled above, this initiative has not been criticized for the absence of compliance with the SUFA’s provisions.

While Harper in fact gave a one-year notice in 2006 that he would cancel the bilateral child care agreements with the provinces, he did not work collaboratively with all the premiers to identify Canada-wide priorities and objectives but introduced this new initiative without the agreement of a majority of premiers, which contradicts the SUFA’s provisions. In particular, Harper simply gave a one-year notice that he was going to make changes as it

⁶¹Over the past decade, the federal government has adopted a series of measures for young children, including the National Child Benefit (1998), the Early Childhood Development Initiative (2000), the Multilateral Framework on early learning and Child Care (2003) and the 2005 bilateral agreements with provinces, as well as the 2006 Universal Child Care benefit. Since 2000, the federal government has transferred funding to the provinces and territories to allow them to support early childhood and development services, first through the federal–provincial and territorial Early Childhood and Development Initiative and then through the Multilateral Framework on Early Learning and Child Care.

was specified in Harper's election platform. No consultation with the premiers took place, and Harper did not seek any agreement with the premiers. This abrupt cancellation demonstrates the fragile nature of virtually all intergovernmental agreements, showing that they are essentially political and that their durability depends on the political commitment of all parties concerned (Friendly & White, 2008).

When introducing the UCCB, cancelling the early learning and child care agreements, and allocating \$250 million in a 2007 budget to create new child care spaces, Harper also failed to consult with citizens on these matters as required by the SUFA provisions. Soon after the announcement of these initiatives, parents, children, and child care workers gathered outside the PM's residence. "The cancellation represented a massive reduction of more than \$1 billion in transfers to the provinces for early learning and child care, starting in 2007–2008. Canadians were furious about the magnitude of the cuts when child care programs are so desperately needed" (Ballantyne, 2008, p.340).

In other words, there was no offer to consult, no joint planning, no sharing of information and, most definitely no collaboration between the federal and provincial decision makers. Nevertheless, only the premiers of Saskatchewan, Manitoba, Ontario, Quebec and Nova Scotia publicly argued against the cuts. The leader of the Bloc Québécois, Gilles Duceppe, opposed the new government's unilateral decision to end the agreements, but at the same wanted to ensure that all federal transfers be unrestricted. The leader of the New Democratic Party focused on "the massive federal transfer cuts that would result in terminating the agreements, arguing that the previous Liberal government had not gone far enough in its negotiations with the provinces" (Ballantyne, 2008, p.342). In 2007, the B.C. premier responded to the cancellation of its bilateral child care service agreement signed with Ottawa before the 2006 federal election by "cutting the funding for child care services by over \$30 million annually" (Kershaw, 2007, p.5).

The Conservatives' UCCB initiative also provides an example of cooperation rather than collaboration between the provincial and federal elites because there was not any consent from a majority of premiers regarding the introduction of this initiative, no power sharing in decision making, no consultation with the provinces, no joint-planning resource sharing, and no compliance with the provisions of the SUFA.

5.3.4. Information Sharing: Institutionalizing the SUFA

Information sharing was conducted under the SUFA through a three-tiered structure. At the top was a coordinating body consisting of the ministers responsible for social services referred to as the Ministerial Council on Social Policy Reform and Renewal (later renamed as the Provincial/Territorial Council on Social Policy Renewal). On the second level was a coordinating body, consisting of the provincial/territorial deputy ministers responsible for social services, which delegated operational responsibility. At the bottom of this structure and serving as its foundation was the provincial/territorial working group of officials.

The Ministerial Council

The Ministerial Council established by the provincial and territorial ministers (except Quebec) played a key role in shaping the SUFA. It held its first meeting in Winnipeg in October 1995. The Council structured provincial elites' interactions and allowed them to develop a common approach to the proposed federal provincial discussions and negotiations of the SUFA and to oversee the reform from the provincial-territorial perspective. In other words, it was a vehicle for interprovincial leadership in social policy reform (Cameron, 2004). It also acted as a forum for the elite actors by structuring their discussions on social policy matters, facilitating knowledge sharing and fostering the exchange of information. The Council's specific mandate included: i) leading interprovincial consultations regarding the SUFA, ii) developing positions that could be collectively advanced to the federal government, and iii) developing an interprovincial policy statement on the principles that should guide social policy reform (Meekison et al., 2004).

Various materials — the ministers' position, information, a statement of principles and recommendations on social policy reforms — were then presented in reports to the premiers to guide and structure their discussions with the federal decision makers during joint meetings. In particular, the ministers supported and recommended a power-sharing position in the design of Canada's system of fiscal arrangements to ensure that provincial expenditure responsibilities and revenue capacities were balanced, the governments' accountability was improved and that governments were able to provide comparable social programs across Canada (Federal-Provincial-Territorial Council on Social Policy Renewal, 1998).

It should be noted, however, that Quebec, though officially uninvolved, was informally represented by observers during the Council's meetings. Quebec's minister did not support his counterparts' recommendation of a power-sharing position because it advocated power sharing over social policy, which was contrary to Quebec's position of exclusive provincial jurisdiction over social policies and Quebec's rejection of national standards in social programming on the grounds that they would erode the province's cultural uniqueness and distinctiveness (Richards, 2002). That being said, Quebec's presence as an observer did have a useful effect, since it allowed the premiers and their ministers to become familiar with the views of the province and eventually eased its participation in the provincial/territorial consensus on the Social Union Framework Agreement in 1998.

The ministers also actively supported the premiers and helped them to advance their position on social policy reform during the Annual Premiers' and First Ministers' Conferences. For example, during the Annual Premiers' Conference in 1997, the premiers endorsed the work of the ministers on social policy renewal and discussed the impact of the unilateral cuts in transfers to provinces. The premiers also agreed, based on the ministers' suggestions, that the provinces should have a role in the allocation of the federal funds, and they identified health care as a priority (Annual Premiers' Conference, 1997). The ministers' input was also incorporated in the negotiations of the social policy reform at the Federal/Provincial/Territorial Council on Social Policy Renewal that was created in 1996 to lead the reform and renewal of Canadian social policy and negotiations on the SUFA. Nevertheless, Bakvis et al. (2009, p.183) argue that one drawback of the council's work was that it "failed to ensure consistency across sectors as the implementation of the agreement was left to individual sectors such as health, social services and education."

Dispute avoidance and resolution mechanism

With respect to the dispute avoidance and resolution mechanism, federal decision makers believed that sector ministers should be responsible for dispute avoidance and resolution, not some overarching body like the Ministerial Council. In support of the federal view, Section 6 of the SUFA suggests that sector ministers are to play the lead role in this function. This section also assigns to the Ministerial Council the task of supporting sector ministers by "collecting information on effective ways of implementing the agreement and

avoiding disputes and receiving reports from jurisdictions on progress on commitments under the SUFA” (Lazar, 2000; Tremblay, 2000).

As premiers wanted to ensure that there were rules constraining the use of the federal spending power, and a clear and relatively formal set of rules for dispute avoidance and resolution (Lazar, 2000; Dunn, 2000), they were interested in the explicit mechanism for the interpretation of the SUFA’s rules between sector departments. Choudhry (2000) stated that during SUFA negotiations, the premiers constantly called for a need to institutionalize federal–provincial relations, as they were irritated by the unilateral federal enforcement of the *Health Act*. Aside from their expectations, they got Section 6 to establish an implicit framework for the creation of dispute settlement machinery in the future without the specification of the important details. The federal elites’ lack of interest in pushing forward with the SUFA by establishing a dispute- resolution mechanism or by firming up the spending power provisions suggests that it does not see such collaborative mechanisms as the institutional centrepiece of renewed federal-provincial policy-making (Western Premiers' Conference 2001; Day, 2006).

In short, the frequent exchange of communication and information between provincial and federal elites was implemented and structured through the newly created Ministerial Council. The Council, a main coordinating body for SUFA at the political level, was mediating the elites’ interests during negotiations. The absence of a strong dispute resolution mechanism to a large extent undermines the true notion of collaboration and instead suggests coordination between the federal and provincial leaders.

The construction of the Social Union Framework Agreement involves the definition, protection, promotion and mobilization of the elites’ interests. Federal and provincial elites refer to their fundamental interests almost as much as they do to the matter of identity. They speak, among other things, of the imperatives of cultural preservation, economic development and political empowerment or a combination of these. They denounce policies and/or institutions that they consider to be detrimental to these objectives. Interests feature prominently in the discourse and actions of national and provincial elites. The interests are not given but need to be defined. The concept of the elite becomes an attractive tool because

it links culture and macro-socio-economic conditions to national leaders' claims. It sheds light on the process of defining interests by examining patterns of the elites' interactions and relations in the institutional context, thereby accounting for the claims, ideas and ideologies of federal and provincial leaders.

The interpretation of situations, the construction of alternative strategies and, more generally, the definition of group interests are the realms of political elites. Elite power struggles are crucial to their interest definition since political elites tend to project their own interests upon the larger group. In this context, a socio-economic environment becomes relevant. The nature of the interests articulated by elites generally corresponds to their sociological profile. In turn, the relative influence of the different sociological categories is itself shaped by larger processes linked to social, political and economic changes. Changes in elites' programs, claims and ideologies correspond to alterations in the elites' balance of power.

Culture plays an important role in the process of interest definition as shaped by elites. Cultural change such as linguistic assimilation has important power implications, and certain elites (such as Quebec premier and leaders of political parties) may be particularly sensitive to it because it affects their social, political and economic status. This concern with cultural preservation and language ability may translate into their definition of group interest. Cultural and linguistic preservation and promotion are more pronounced in Quebec than in western Canada as it was demonstrated in Chapter Three in this dissertation. Quebec's political elite argued that the transfer of power from the federal to the provincial government was at the heart of modernization and the protection of French language. Quebec political elites also suggested that cultural-linguistic protection required that the province have a distinct status within the Canadian federation. They argued that symmetrical federalism, embodied by the principle of the equality of the provinces, was detrimental to the interests of Quebec as it threatened their most fundamental linguistic distinctiveness.

Thus, the definition of Quebec's political interests during the SUFA negotiations incorporated the ideas of decentralization and asymmetry of the federal model and required that the provinces have a right to opt out with financial compensation when the federal government wanted to intervene in provincial jurisdiction. In this case, the decentralization of social programs serves as a means of accommodating the cultural and linguistic diversity

of the country. The Social Union Framework Agreement does not respond to Quebec's position as all provinces must work toward objectives and invest the funds in a way that is compatible with the national objectives expressed in the Agreement. In other words, the SUFA failed to accommodate the divergent conceptions of the Canadian political community. All attempts to reach consensus during the SUFA negotiations failed because it was very difficult to reach a compromise about issues and interests that have come to be defined as affecting one's core political identity. That is why the negotiations on SUFA turned into an endless struggle from which no winner could emerge. Unlike the jurisdictional conflict, political identity is not divisible, and, therefore, it is inherently difficult, if not impossible, to negotiate, bargain or compromise.

At the center of the definition of elites' interests during the SUFA negotiations was the rise to power of Jean Chrétien, who became leader of the Liberal Party in 1990 and Prime Minister of Canada in 1993. Chrétien was able to mobilize the support for his economic and social policies by increasing work incentives for recipients of social benefits and by focusing on the economic needs of lower-income working families, who were central to his social policy review and to his entire ideology of neo-liberalism (Rice & Prince, 2000). Chrétien strongly opposed Quebec's separation. His vision for a federation was shaped by the concept of individual liberal rights, and the principle of equality of citizens, along with a vision for a strong central state able to redistribute wealth, was seen as a key to social justice. Based on a nationalizing vision of federalism promoted by the federal government elites, the Agreement recognizes the federal spending power in areas of provincial jurisdiction. The SUFA demonstrates the nationalizing vision of Canadian federalism established through the administrative agreement as opposed to the means of constitutional change. The Agreement provided an opportunity for the federal elite to demonstrate to federalists in Quebec that non-constitutional renewal of the federal system was possible while at the same time keeping the federal government fully in play with respect to provincial social programs (Gibbins, 2001). It also reaffirms the role of the federal government in the daily lives of Canadians and ensures that, at some level, all citizens are part of the common political community with shared commitments to each other (Vaillancourt, 1998).

At the centre of the definition of the Western provinces' interests was a restructuring and decentralization of the Canadian federation on the basis of equality of the provinces that

was required in order to offset the Western provinces' perceived lack of power in the federal institutions. Economic disparities among the provinces significantly reduced the bargaining power of the provinces and made it easier for the federal government to obtain the consent of the provinces to sign the SUFA in exchange for the federal transfers for health care.

Autonomy was seen of less importance, especially for smaller, poorer provinces, than ensuring the continued flow of federal funding for social programs. Provincial and territorial premiers were willing to sign the SUFA in part because "they did not demand as much autonomy and freedom as the Quebec government and in part because they came to accept the options defined by the federal government as the only options available" (Noel, 2001, p.61). "Taken as a whole, the provincial position implied a greater decentralization of social policy in Canada, while the federal response to it sought measures to strengthen the Canadian economic union. Together, this particular combination of decentralization and centralization fits well with the neoliberal approach to federalism" (Harmes, 2007, p.432).

Political institutions occupy a central position in the process of interest definition for two reasons. First, they structure elite relationships. The patterns of elites' interactions, such as competition, collaboration and influence, do not occur in a vacuum but are shaped by the institutional context. It is an historical and incremental process. The structuring effects of institutions on agencies are long-lasting. Second, political structures institutionalize elites' interests. Not only interests are defined and articulated by elites whose behaviour is shaped by institutions, but also these very definitions come to be reflected in the institutional environment produced and reproduced by elites. The institutionalization provides a semi-permanent character to fluid interest definitions.

That being said, the SUFA survived as a result of institutional inertia. Once elites made policy choices and a social policy was formed, it will persist and determine its path for its continued existence, and there may have to be significant decisions to reverse the initial choices. While institutions may be "rigid and unresponsive, they allow for an incremental policy change and adaptation" (Thelen & Steinmo, 1992, p.18). However, this change would be still restricted to the options granted by the prevailing structures.

The chapter also demonstrates that the Social Union Framework Agreement cannot be portrayed as an example of collaborative federalism. Rather than collaboration, the SUFA demonstrates blame shifting and jurisdictional wrangling, inequality of federal and provincial

elites, exclusion of Quebec, the federal government's unilateralism in the use of the spending power — hence, cooperation in the field of social policy. The resource-sharing dimension of the SUFA also falls under cooperation because during the negotiation process the federal and provincial elites were actively engaged in resource sharing, but the agenda was largely set and dominated by the federal decision makers, and the economic disparities of the provinces exacerbated the conflict even further. While the implementation of the 2004 CHST split, the National Wait Time Reduction Strategy, and the Universal Child Care Benefit is yet to be desired, these three examples demonstrate that the SUFA's provisions were ignored in the design and implementation of these programs. These joint activities were implemented without any reference to the SUFA and therefore did not comply with the SUFA provisions that were supposed to serve as guidance in their development and implementation. The information-sharing dimension of the SUFA falls under coordination because elites were able to establish also weak dispute resolution mechanism and the new institution for information exchange.

While Cameron (1999) argues that the federal spending power is subjected to regulation and control under the SUFA and constitutes a good arrangement for Quebec, this chapter supports the view of Ryan (1999), who points out that the SUFA sharply increases the federal scope for action under the spending power and is unacceptable for Quebec. The SUFA is seen less as a provincial constraint on the federal spending power than as a reaffirmation of it (Vaillancourt, 2002; Thériault, 1998; Romanow, 1998; Jérôme-Forget, 1998; Finnie, 2000; Dufour, 2002). The SUFA also contradicts its own stated principles of equality and fairness and lacks accountability. The SUFA excluded many interest groups, such as Aboriginal people and voluntary organizations, as well as the province of Quebec.

The acceptance of collaborative federalism, of a continuing federal role in social policy, likely involved a mixture of reasons: fiscal prudence, political philosophy, policy pragmatism and clientele politics (Prince, 2001). The inspiration for the new Social Union came from international relations (treaty) and has important implications for the accountability of the executive to the legislature. By conducting their relations through political accords rather than through agreements that are subordinate to legislation, the first ministers are able to escape scrutiny from both their legislatures and the courts (Choudhry, 2000). Without a statute, it is impossible for the auditor general or the courts to scrutinize

executive action (Cameron, 2004). In addition, in all areas except health (*Canada Health Act*), under the SUFA the only federal legislation is financial.⁶² The consequences of using financial legislation rather than social legislation are that the federal budget becomes the primary instrument for social policy and that the minister of finance and the Department of Finance become the chief architects of the Canadian social union (Courchene, 2008; Harmes, 2007).

The SUFA does not recognize that social policy is in most instances an area of exclusive provincial responsibility, but instead calls on the governments to act “within their respective constitutional jurisdiction” (Noel, 2000, p. 11). In particular, the consent of a majority of premiers constitutes as little as six provinces accounting for 15 percent of Canada’s population. The SUFA institutionalizes the position on the spending power that the federal government articulated in the late 1960s. The agreement means that “Ottawa, along with the have-not provinces, could launch a new social program without the agreement of Ontario, Quebec, Alberta or British Columbia” (Telford, 2003). The SUFA promotes a “subordinate role for the provinces by imposing upon themselves mobility constraints” (Fremont, 2003, p. 76), the lack of commitment regarding the sufficiency, stability and predictability of program financing, and weak dispute-resolution mechanisms (Noël, 2000). Boismenu and Graefe (2004, p.71) argue that the federal government is using “old and new tools to shape the direction of provincial policy development.”

The federal government has continued to “introduce social policy initiatives in areas of exclusive provincial jurisdiction through the use of its spending power and without consultation or approval of the provinces” (Facal, 2005, p.17). When Charest came to power, he promised to initiate the revision of the SUFA and discussion on fiscal imbalance, but Ottawa denied the existence of fiscal imbalance and hence the necessity to negotiate (Cornellier, 2003). Six years after the adoption of the SUFA without Quebec, the same issues lead to the same disputes using the same rhetoric. As for Quebec, its core principles and historical demands of respect for provincial autonomy and recognition of the founding dualism of Canada are more marginalized than ever (Facal, 2005). Graefe (2007) stated that calls for national standards hamper policy formation and that it is not realistic to expect a

⁶²For instance, the *Income Tax Act* has provisions for the Canada Child Tax Benefit. The Canada Social Transfer to the provinces for social assistance, children’s services and post-secondary education is found in the *Federal-Provincial Fiscal Arrangements Act*.

return to social policy based on fixed federal standards. There is a need for a new system that will create a more equitable process. For Quebec, “national standards and norms emerging from intergovernmental consensus are little better in principle than federal unilateralism” (Cameron & Simeon, 2002, p. 63).

Finally, because of the lack of reporting by the provinces and territories, as well as the federal government’s failure to track the funds it transfers, it is unclear what programs and services have been paid for since 1995 under the CHST, and now under the CST (Day & Brodsky, 2007). After reaching the Agreement in 1999, the increase in the use of various programs to enhance the presence of the federal government in social programs goes on unchecked. This current method of funding — which now includes intergovernmental transfers, transfer supplements, trust funds, special funding arrangements and arm’s-length foundations — complicates federal–provincial relations and, more importantly, makes it more difficult for citizens to hold their governments accountable for their actions (Laurent and Vaillancourt, 2004).

The unilateralism of the federal government and the absence of power sharing in decision making pertinent to the use of the spending power prompted the premiers to consider the establishment of a counterforce to federal elites in order to change the power imbalance in the federation and the dynamic of intergovernmental relations. This counterforce is the Council of the Federation, a provincial and territorial institution, that will be considered in the next chapter.

6. The Council of the Federation

The Council of the Federation is fundamentally different from the SUFA and the AIT in that it was created by provincial and territorial political elites to channel intergovernmental processes and function as a counterweight to the federal leadership in the policy-making process. By analyzing the horizontal relations between provincial and territorial elites, this chapter complements the previous two case studies, which analyzed mainly the federal-provincial dimension of intergovernmental collaboration. The power relations between the federal and provincial elites are crucial to understanding the overall dynamics of a multilevel polity. Understanding horizontal relations in the federation, however, is equally relevant for the study of collaborative federalism.

This chapter analyzes the Council of the Federation and examines whether it can be considered as an example of collaborative federalism. The analysis begins from the context or, notably, from the review of the particular events that led to the creation of the Council by provincial and territorial elites, and is followed by a description of the content of the Council's Founding Agreement. The theoretical framework constructed earlier in this dissertation is then applied to analyze the Council in terms of four determinants of collaboration: authority and power, resources, activities and provision of services, and information sharing. Taking into consideration that many of the activities of the Council have already been considered in the preceding chapters, including the issues pertinent to internal trade and health care, this chapter will consider the cases of vertical fiscal imbalance and international trade in order to assess whether the Council can be considered as an example of collaborative federalism.

6.1. The Context: Creating a Unified Front

The evolution of the idea of the Council of the Federation has taken many turns since the late 1970s, as there have been several attempts to introduce proposals aimed at the institutionalization of relations among the governments within the Canadian federation. The origins of the Council are rooted in the constitutional discussions, when such an institution

was first envisioned by the Task Force on Canadian Unity⁶³ (Pepin-Robarts) in 1979. In 1980, the Quebec Liberal Party under the leadership of Claude Ryan proposed the creation of a special intergovernmental body — the Federal Council — that would be separate from Parliament but would include the federal government as a member. “In the fall of 1980, after a constitutional patriation resolution was tabled in Parliament, the Standing Senate Committee on Legal and Constitutional Affairs proposed a federal-provincial council playing a coordinating role” (Bakvis et al., 2009, p.110).

In 1991, the Government of Canada’s formal proposal that triggered the discussion and negotiations leading eventually to the Charlottetown Agreement suggested the establishment of a federal-provincial Council of the Federation to improve intergovernmental relations (Smith, 2005). After the rejection of the Charlottetown Accord in 1992, the issue of constitutional reform was taken off the table for the foreseeable future. This did not prevent the leaders of the Quebec Liberal Party, Daniel Johnson and Jean Charest, from continuing to focus on the issues of affirming provincial power and strengthening interprovincial relations.⁶⁴ They raised the idea of the Council of the Federation and argued that the purpose of this institution should be to promote federal-provincial and interprovincial relations inside common structures (Rae, 2003). In particular, they initially suggested the creation of a Council that would comprise the prime minister, the premiers and the ministers or other representatives of the federal government and the provinces, depending on the issue. The Council would have a federal-provincial dimension for matters of joint jurisdiction and a horizontal interprovincial one for issues under exclusive provincial jurisdiction⁶⁵ (Watts, 1997; Meekison et al., 2004; Pelletier, 2001).

The combination of various factors — Paul Martin’s massive cuts to provincial transfers in his 1995 budget, the emergence post-NAFTA of a north-south trading axis (Courchene, 2004), a growing dissatisfaction among provinces and territories concerning

⁶³ In 1979, the creation of a Council was mentioned in the Task Force on Canadian Unity (Pepin-Robarts), *A Future Together: Observations and Recommendations*.

⁶⁴ This issue was considered in detail in two policy documents published by the party in 1996 and 2001. These documents were *Recognition and Interdependence* and *A Project for Quebec – Affirmation, Autonomy and Leadership* (the Pelletier Report).

⁶⁵ The mandate of the Council was supposed to address the strengthening of the Canadian economic and social unions. It was also supposed to play a role in the negotiation and ratification of international treaties that deal with matters of both federal and provincial jurisdiction.

how intergovernmental relations are handled in the federation — provided an impetus for the provinces and territories to establish the Council of the Federation. “Having failed to curb Ottawa’s unilateralism through vehicles such as the SUFA,” the provinces were moving toward trying to create a more united front against Ottawa (McIntosh, 2004, p.48).

The proposal for the creation of the Council of the Federation was submitted for consideration at the 2003 Annual Premiers’ Conference in Charlottetown. After intense debate on the nature and structure of the institution, the premiers agreed to establish a purely interprovincial Council of the Federation in December, 2003, which was presented “as a new institution for a new era in collaborative intergovernmental relations” (Council of the Federation, 2003, p1). The Premiers described the agreement as “historic” and stated that “the Council will make a difference to Canadians and break new ground” (Council of the Federation, 2003, p.1; Courchene, 2004, p.1). This initiative, it is argued, holds some significant promise of establishing a “renewed basis for more extensive collaboration among governments in Canada” (Rae, 2003, p.1). It enables Premiers to work “collaboratively to strengthen the Canadian federation by fostering a constructive relationship among the provinces and territories, and with the federal government” (Government of British Columbia, 2011, p.1).

Thus, the Council was the formalization and institutionalization of the Annual Premiers’ Conference into a permanent organization with staff, budget and a set of rules for decision making. Thirteen premiers established the Council without a constitutional amendment by means of an intergovernmental accord and pledged to meet on a regular basis to address public policy issues of common interest to the provinces and territories.

6.2. The Content of the Founding Agreement

In the preamble of the Council of the Federation’s founding document, the provincial and territorial governments state the need to “institute a new era of intergovernmental collaboration by promoting a constructive dialogue between the partners of the federation” (Council of the Federation, 2003, preamble). This statement endorses a particular vision of Canadian federalism and intergovernmental relations, often referred to as collaborative federalism.

In particular, the Founding Agreement for the Council of the Federation includes four objectives and a six-point mandate for the Council, which was established to address present and future challenges facing the federation. These objectives are: i) to strengthen interprovincial-territorial co-operation, forging closer ties between the members and contribution to the evolution of the Canadian federation; ii) to exercise leadership on national issues of importance to provinces and territories and improve federal-provincial-territorial relations; iii) to promote relations between governments that are based on respect for the constitution and recognition of the diversity within the federation; and iv) to work with the greatest respect for transparency and better communication with Canadians (Council of the Federation, 2003, p.2).

In pursuit of these objectives, the Council pledged to: i) serve as a forum where members can share and exchange viewpoints, information, knowledge and experiences; ii) provide an integrated and coordinated approach to federal-provincial-territorial relations through the development of shared common analysis and positions; iii) reinforce the work of sectoral intergovernmental forums by providing direction, when appropriate, on issues that are of concern to the Council; iv) analyze actions or measures of the federal government that in the opinion of the members have a major impact on the provinces and territories; v) develop a common vision of how intergovernmental relations should be conducted in keeping with the fundamental values and principles of federalism; and vi) address any issue of priority that, in the opinion of the members, requires the pooling of expertise, a greater dialogue between them or the coordination of their actions (Council of the Federation, 2003, p.2).

The Council's activities in various policy areas have evolved over time. Table 6.1 demonstrates that the Council's current initiatives, while created initially to address policy issues related to economic and social unions and fiscal imbalance, cover a wider variety of policy issues, such as climate change, Canada–U.S. relations, international trade, health care, education, water, energy and transportation. Every year, the premiers rotate in chairing the Council and hosting its annual meetings. The last meeting of the Council of the Federation was held in summer 2012 in Halifax. The focus of this meeting was to discuss current fiscal arrangements and collaborate on the economy. Ontario will be hosting the 2013 summer

meeting to discuss how provincial elites can strengthen their approaches regarding national policy making.

6.3. The Council of the Federation: An Example of Collaborative Federalism?

The Council can be considered as an example of collaborative federalism if there is power sharing in the decision making among provincial and territorial elites and no jurisdictional intrusion; if the provinces and territories are involved in the joint provision of activities and services and achieve shared results; if there is an interdependency and sharing of resources among the members of the Council; and if there exists a formal structure for information exchange and dispute resolution.

6.3.1. Authority and Power: Power Sharing in the Decision-making Process

In general, the focus of the analysis in the authority and power section is on the constitutional division of legislative powers between the two orders of government, as was shown in Chapter 5 on the AIT and Chapter 6 on the SUFA in this dissertation. As the present chapter considers collaboration among the territorial and provincial elites, the analysis in this section will rather focus on power sharing in the decision-making process in the Council of the Federation. The Council has no powers or jurisdictions of its own, its decisions are not legally binding on member governments, and individual provinces and territories retain complete legal sovereignty in the exercise of their Constitutional authorities (Abele & Prince, 2003).

The decision-making process of the Council is established by consensus, “in accordance with the established practice of the Annual Premiers’ Conference” (Council of the Federation , 2003, section 10). In the decision-making process, the premiers have an equal say regardless of differences in the population and wealth of their province. As a result, the Council’s decisions cannot be adopted unilaterally by the Council Chair or even through a majority vote of its members. Instead, all premiers must endorse a particular decision for it to be formally adopted.

The premiers believed that this new institution with regular meetings would strengthen their position in relation to Ottawa by facilitating the development of a strong consensus on various policy issues and, hence, transforming a multilateral negotiating process into a bilateral one between a collective and a single entity (Bakvis, 2009). Thus, provincial elites thought that they had obtained a strategic advantage against federal elites and gained an opportunity to take collective control of the intergovernmental agenda. Of course, this required a high level of negotiation and compromise in order to bring all members on side, and often resulted in the premiers being unable to take a position on highly contentious or divisive issues (Courchene, 2004).

6.3.3.1. The Case of Vertical Fiscal Imbalance⁶⁶

After the 1995 budget of Prime Minister Paul Martin announced significant cuts and the roll-up of the Canada Assistance Plan and Established Programs Financing into a single federal block transfer, CHST, the Premiers gathered at the Annual Premiers' Conference in August 1995 in St. John's. Angered with the decision of the federal government, the premiers noted that "it is unacceptable for the federal government to on the one hand reduce federal transfers to provinces and territories and on the other prescribe the structure and standards of provincial and territorial social programs" (Annual Premiers' Conference, 1995, p.2). As a result, the Provincial/Territorial Council on Social Policy Reform and Renewal was established and, at the APC of August 1996, the premiers directed their financial ministers to work with their federal counterparts "to ensure that the agenda for the redesign

⁶⁶ The very notion of the existence of vertical fiscal imbalance is highly debatable in academia and among practitioners and also subject to individual interpretation as the concept is more rooted in politics than economics. This dissertation is not attempting to prove or disprove the existence of vertical fiscal imbalance. The case of vertical fiscal imbalance, however, was chosen to demonstrate the struggle for power, interest definition and politicization of the issue by provincial elites. In order to address the vertical fiscal imbalance, provincial elites first had to come to an agreement and define the meaning of this notion. This proved to be a very vicious exercise. Lazar, Tremblay (2004, p.157) argued that the difference between the actual and desired vertical fiscal gap (that is, the level of intergovernmental transfers) could constitute evidence of vertical fiscal imbalance. "The size of the current vertical fiscal gap, however, does not tell us whether it is adequate or appropriate. And it tells us even less about whether there is a vertical fiscal imbalance above and beyond the observed or even the desired level of vertical fiscal gap. And this is what is at issue in the current debate. One's view of what constitutes an appropriate vertical fiscal gap for Canada will depend on what is perceived to be the appropriate role of the state in general, and that of the federal government in particular. Irrespective of these views, however, one would presumably also take into account the extent of vertical fiscal imbalance, if the latter could be ascertained."

of financial arrangements proceeds and is coordinated with social policy renewal” (Annual Premiers’ Conference, 1995, p.2).

At the 1997 Annual Premiers’ Conference, the premiers publicly endorsed a background paper produced by their provincial and territorial finance ministers on the issue of fiscal imbalance. In the paper, the finance ministers stated that “there is a fiscal imbalance between the federal government and the provinces, even after the federal transfer system is taken into account and this imbalance is likely to widen” (Provincial and territorial finance ministers, 1997, p.8). Therefore, “finding the right distribution of fiscal resources between the federal government and the provinces means dealing with both the existing imbalance and the need for new financial arrangements to reflect any coming rebalancing of federal-provincial roles” (Provincial and Territorial Finance Ministers, 1997, p.8).

In other words, the provincial and territorial leaders advanced their position by emphasizing that “their political abilities to raise revenue through various forms of taxation are insufficient to meet their constitutional spending obligations for such high-cost programming as health, education, and social policy” (McIntosh, 2004, p.43). After 1997, it became apparent that, as Ottawa’s financial position was improving to the point that it began to generate surpluses, provincial expenditure responsibilities were continuing to grow. At the Winnipeg APC in August 2000, the premiers drew attention to the fact that the federal government’s surpluses were projected to rise quickly as a result of greater than expected growth in revenues and reduced expenditure commitments (Lazar et al., 2004). In support of their view, provincial elites released a report on health care costs that outlined in detail the growing cost pressures on provincial health care systems and called for a redesign of fiscal arrangements, including the sharing of revenue (Provincial and Territorial Ministers of Health, 2000).

The issue of fiscal imbalance entered the political discourse again when Quebec’s political elites established the Commission on Fiscal Imbalance chaired by Yves Seguin in 2001. The Commission produced a report entitled “New Division of Canada’s Financial Resources” that laid out the nature of a vertical fiscal imbalance from both Quebec’s and a broader provincial and territorial perspective (Quebec, 2002). In particular, Quebec’s political elite asserted that the system of intergovernmental transfers was inadequate because it “applies to fields of jurisdiction attributed to the provinces, and its attendant conditions, as

well as its defining terms, clearly limit the provinces' decision-making and budgetary autonomy in these fields of jurisdiction" (Quebec, 2002, p. ix). As for Equalization, it failed "to eliminate major differences in the fiscal capacities of the provinces" due to several deficiencies in program design (Quebec, 2002, p. ix). Finally, the use of the federal spending power exacerbated these difficulties, distorted provincial budgetary choices and had a destabilizing impact (Quebec, 2002). Therefore, addressing the fiscal imbalance as a result of which Ottawa has the money to use its spending power would improve provincial autonomy and reduce distortions.

With the premiers' creation of the Council of the Federation in 2003, the issue of fiscal imbalance became a continuing part of the new institution's agenda and work plan. During the first meeting of the Council on February 23, 2004, in Vancouver, the premiers agreed to establish the Secretariat on Information and Cooperation on Fiscal Imbalance. The purpose of this Quebec-based Secretariat was to support the Council's members by "consolidating the standpoint of the provinces and territories in order to present and defend a vision that would provide a solution to fiscal imbalance and the spending power claimed by the federal government" (Council of the Federation, 2004, p.20).

In the following year, the premiers established an Advisory Panel on Fiscal Imbalance during their annual summer meeting in Banff that was intended to provide an independent review of this situation and make recommendations to address any fiscal imbalance in the federation over the long term. They argued that "significant fiscal imbalance remains in Canada, which makes it increasingly difficult for provinces and territories to maintain and improve crucial services such as health care, education, and other social programs, while continuing to fund other priorities including environmental protection and enhancing job training, transportation, agriculture and infrastructure to strengthen Canada's competitiveness" (Council of the Federation, 2005, p.3). A panel co-chaired by Robert Gagne and Janice Stein released its report in March 2006. The report found that provinces had "insufficient resources to accomplish the tasks for which they are constitutionally responsible," that the federal government had been running "budgetary surpluses and spending significantly in areas that the Constitution of Canada assigns to provinces" and that the provinces' budgetary situation would deteriorate as a result of the aging of the population

and rising health care costs as opposed to the growth in the federal budgetary surplus (Gagne & Stein, 2006, p.9).

While there seemed to be a broad consensus among premiers on the existence of fiscal imbalance, the solutions to address the fiscal imbalance varied significantly. The proposed solutions included: transferring the entire tax proceeds of the General Sales Tax to the provinces (Quebec, 2002); transferring more income tax points to the provinces (Quebec 2002); significantly increasing the healthcare transfers (Romanow, 2002, Gagne and Stein, 2006); and increasing federal equalization and territorial formula financing payments even if that does not benefit all provinces (O'Brien, 2006).

The issue was also complicated by a wide range of premiers' policy preferences and needs and by the fact that any new arrangement would create losers as well as winners, especially since there was no consensus among premiers on how best to reform fiscal arrangements. Another problem was Martin's decision to make special bilateral arrangements with two provinces — Nova Scotia and Newfoundland and Labrador — and exempt them from the equalization clawbacks that other resource-producing provinces were subject to (Bakvis, 2009). The premiers of Ontario and Quebec widely criticized this decision, arguing that it distorted the logic and purpose of the existing equalization program. Moreover, the richest provinces, led by the premiers of Ontario and Alberta, advocated for program transfers to be determined on a per capita formula in order to put an end to what these provinces saw as the penalty for their relative wealth (Brown, 2003). They opposed any measures to enhance the equalization program, which essentially had a redistributive character (Boothe, 1996).

Thus, the proponent of tax transfers was the premier of Alberta. The premier of Quebec supported tax transfers for some years but by 2005 seemed to prefer the idea of increasing equalization payments as a way of reducing fiscal imbalance. "Quebec supported tax transfers until it became clear that it could not afford them without some form of equalization either as equalized tax points or enhanced general equalization program" (Brown, 2003, p.77). The other premiers were open to a combination of tax and cash solutions, but did not share Quebec's position on equalization. For example, Ontario's premier was against enhanced equalization, because it was felt that it would divert to other provinces the funds required to correct a fiscal imbalance specific to Ontario (Bakvis, 2009).

In the end, a significant disagreement on how to address fiscal imbalance generated little interest and weak support from most premiers for the Gagne-Stein panel's recommendations. As a result, a meeting of the Council of the Federation scheduled to discuss the report was abruptly cancelled, as several provincial elites felt that "the rifts seemed to represent a significant development in Canadian intergovernmental relations now looked less promising" (Bakvis, 2009, p.152).

As for the federal elites, their view was quite different from the premiers' position. The federal elites disputed the idea that there was a vertical fiscal imbalance. The federal Minister of Finance released a paper entitled "The Fiscal Balance in Canada" in August 1999 that presented initial counter-arguments to the premiers' claim of a vertical fiscal imbalance. This document was subsequently expanded and updated in April 2002 (Department of Finance of Canada, 2004). In these reports, the federal Minister of Finance maintained that both orders of government have access to the same major revenue bases and are able to set their own rates. Moreover, provincial revenues, including federal transfers, have exceeded federal revenues for more than two decades, and provinces have exclusive access to certain revenue bases such as royalties, which are growing rapidly (Department of Finance of Canada, 2004). On the expenditure side, the federal Minister of Finance argued that provincial health spending had been rising sharply, but not if it was measured as a share of the economy. He also pointed to federal government's spending pressures in areas such as elderly benefits, Aboriginals, skills and learning, and national security (Privy Council, 2002).

When the Conservatives came to power in 2006, Prime Minister Stephen Harper recognized in general the existence of fiscal imbalance in the 2006 and 2007 budget. This acknowledgment, however, did not bring provincial and territorial leaders any close to agreeing on what should be done to address fiscal imbalance. At times, the interests of the premiers were simply so distinctive that no tinkering with rules could easily overcome them (Lazar, 2003). Instead of developing a set of rules or policies for dealing with interprovincial conflict, the Council served as a platform for attacking the policies of the federal government. In the absence of more formal rules for intergovernmental relations, the premiers were limited in their ability to solve collective action problems (Painter, 1991).

The Council of the Federation could be more effective if provincial and territorial elites considered replacing consensus decision making with a majority-vote decision rule. This

would make it possible to secure a certain level of support for the Council's decisions and guarantee an adequate protection for minority opinions, and it would not discriminate between the defenders of the status quo and the promoters of policy reform (Scharpf, 1997). In its current shape, consensus decision-making approach represents the so called joint-decision-making trap in policy making (Scharpf, 2006) that forces premiers to accept decisions that are well below the common denominator.

From the normative perspective of liberal political theorists (Buchanan & Tullock, 1962), unanimous decisions are welfare improving because all premiers must prefer the outcome to the status quo, whereas the autonomy of individual action will continue to prevail if negotiations fail. But that assumption holds only for voluntary negotiation systems and when negotiators are still writing on a clean slate (Scharpf, 1997). But Canada uses compulsory negotiation systems, where certain policy purposes can be realized only through agreement due to strong interdependency (Scharpf, 1997). Moreover, once a binding rule is agreed upon, individual action is no longer permitted and the veto of one or a few premiers will prevent all others from correcting or abolishing a rule in response to changed circumstances or preferences (Tsebelis, 1995; Tsebelis 2002). Hence, the capacity for policy innovation will progressively diminish.

In short, taking into consideration the fact that in the decision-making process each premier in the Council is recognized as being equal, regardless of differences in population and wealth, the authority and power dimension of the Council of the Federation falls under interprovincial collaboration. This does not mean, however, that the decision-making process is free from the cross-jurisdictional disputes, as the case of vertical fiscal imbalance demonstrated. Moreover, one of the main purposes of the creation of the Council was to serve as a way of increasing the premiers' capacity to reach agreement among themselves. Yet the operating rules of the Council only reinforce the essential autonomy of each member and do nothing to facilitate collective decision making.

6.3.2. Resources: Quebec's Drive for a Leadership Role

Resources are another important part of the equation. Considerable variation exists in the financial and administrative capacity among the provinces and territories, which undoubtedly has an impact on the capacity of premiers and their ministers to collaborate in

the federation and to come to an agreement on policy recommendations requiring future allocation of resources (O'Reilly et al., 2006).

Electoral support

In general, electoral support/reform in Canada is more linked to eliminating the democratic deficit in each of the provinces stemming from the first-past-the-post system as opposed to addressing regional cleavages. The power in the decision-making process of the Council is not directly attributable to the electoral support in the sense that, if one premier gets less support from the electorate than another one, this does not mean that the premier would exercise less influence in the Council. That being said, the issue of change in the federal political landscape and provincial leadership in intergovernmental relations was prominent on Charest's agenda during the 2003 Quebec general election that eventually led to the establishment of the Council of the Federation in December 2003.

When in April 2003 the Quebec Liberal Party led by Charest came to power in Quebec, it took 76 of the 125 seats in the National Assembly of Quebec. The Parti Québécois (PQ) won 45 seats, while the Action Démocratique du Québec (ADQ) only got four seats. Charest's success stemmed from his ability to capitalize on the issues of importance to Quebec such as health care spending,⁶⁷ which he promised to increase if elected. Charest was also able to portray himself as being different from the other two parties. He declared that anyone who wanted change should vote for his party because "a vote for the ADQ is a vote for the PQ" (CBC, 2003). The idea of change turned to be very appealing for the electorate on election day, and Charest welcomed what he called a "mandate for change and a mandate for renewal" (CBC, 2003).

While all three political leaders stressed a need to address the fiscal imbalance between Ottawa and Quebec, Charest argued that he was in the best position to solve the problem because of the cooperative approach and very nature of his federalist party as opposed to the PQ's Landry and the ADQ's Dumont, who were in favor of sovereignty. Charest criticized the PQ leader for using the politics of confrontation because of its sovereignty position, and he argued that a Quebec Liberal Party will change the landscape of federal politics by

⁶⁷ In order to fix Quebec's health care system, Charest pledged to inject more than \$7 billion into health within five years.

restoring Quebec's "leadership role" in the federation that will "make Canada a stronger place" (CBC, 2003). "For Quebec, this is a return to what we feel without pretension is a leadership position within the federation," Charest said. "We have a role to play. We want to play that role" (CTV, 2003).

Shortly after the Quebec elections in 2003, Premier Charest and his minister of intergovernmental relations, Benoit Pelletier, initiated the creation of a new intergovernmental institution — the Council of the Federation. As a leader of a non-sovereigntist Liberal party, Charest included in his agenda two issues of importance to Quebec: the fiscal imbalance and asymmetrical federalism (Bakvis, 2009). Accordingly, the newly formed Council soon launched a special task force to review fiscal federalism and in 2004 endorsed a special arrangement between Ottawa and Quebec with respect to health care that exempted Quebec from certain conditions and affirmed its unique position in the federation (Maioni, 2008).

Thus, Quebec political elites played a leading role in bringing the proposal regarding the creation of the Council to the negotiating table. From the outset, Quebec understood Canada as a compact between two equal partners and founding cultures, one French and one English (Hueglin, 2006). When the Canadian federation expanded, from initially four to finally ten provinces, they saw the compact dissolve into an intergovernmental numbers game, with "the lone French province in a perpetual 9:1 minority position" (Hueglin, 2006, p. 13).

For decades after, the interests of Quebec political elites in intergovernmental relations revolved around establishing a formal recognition of the distinct character of Quebec society and achieving as much autonomy as possible within the Canadian federation (Noel, 2003). As previous chapters of this dissertation have demonstrated, constitutional debates, the issues of the superiority of the federal spending power and the disagreements on national standards were all driven by these two imperatives.

The key change in 2003 had to do with the intergovernmental policy orientation of Quebec's premier. The Council proposal put forward by Charest was a major departure from the long-standing Quebec approach to intergovernmental relations (Noel, 2003). Quebec's elite, it was said, was assuming a new role, one of leadership in the federation, that aimed at improving intergovernmental relations and putting co-decision and interprovincial

collaboration first (Rae, 2003). Alberta Premier Ralph Klein acknowledged that Charest changed the atmosphere at the table and stated that Charest is “the first leader from Quebec to come with a federalist, not a separatist, agenda in years” (CBC, 2003).

This drive to strengthen the interprovincial front was, in fact, of interest to all premiers. Quebec, including the other provinces, needed a vehicle to prevent the federal government from disuniting provincial elites during First Ministers’ Conferences and ministerial meetings (Peach, 2004). Concerned with Ottawa’s dominance, the premiers thought that they would be able to establish a strong common position on many contentious policy issues and, hence, foster negotiations and working processes with the federal government. This was especially true in the case of the premiers from the economically weaker provinces and territories that significantly rely on federal transfers for the provision of public services to their constituents. Northwest Territories Premier Stephen Kakfwi hoped that membership in the Council would give him a greater voice in the federation and stated that “for my part, it's been years of hard work trying to get attention and be treated as part of this country” (CTV, 2003). As for the Atlantic provinces, the premiers emphasized unity. Nova Scotia Premier John Hamm stated that the agreement was “an opportunity to re-establish what this country was all about in the first place” (CTV, 2003). Looking beyond the federal-provincial relationship, Ontario Premier Dalton McGuinty appreciated the inter-provincial and territorial workings aspect of the Council, especially when it came to trade barriers.

In other words, driven by the leadership of the Quebec premier, the premiers decided to create the Council because they were dissatisfied and concerned with how intergovernmental relations were handled in the federation. “When in some sectors the provinces and territories manage to reach agreements with the federal government both bilaterally and multilaterally, in other areas many disputes remain unsolved, particularly in the field of provincial and territorial jurisdiction. Furthermore, the federal government has a tendency to set the agenda of the F/P/T forums in order to impose its own priorities and its vision of policy development in various sectors. Many federal initiatives totally bypass the provinces and territories, although their constitutional responsibilities in these areas are indisputable. This approach has an effect of weakening federalism, which should involve harmonious and productive government-to-government relations and respect for the responsibilities of each federative member” (The council of the federation, 2004, p.13).

Technical capabilities

In general, it is difficult to aggregate and compare the actual spending and personnel devoted to intergovernmental management because of the considerable variation in these resources among provinces and territories. Previous studies concluded that there was “no single trend across all governments regarding the level of resources — both financial and human — allocated by a government to intergovernmental relations, or regarding the proportion of resources that governments put into intergovernmental affairs” (Pollard, 1986, p.13). That said, the federal government, Quebec, Ontario and Alberta are the main ‘spenders’ on intergovernmental relations and have the largest intergovernmental bureaucracies in the federation.

With regard to administrative capacity, from 1990 to 2002 most provinces in Canada, with the exceptions of Alberta and Ontario, did not witness downsizing in the resources devoted to intergovernmental management (Johns et al, 2007). The employment levels remained constant or even increased in Quebec, Manitoba, Nova Scotia, New Brunswick and Newfoundland and Labrador, and the territories have maintained stable employment levels since the mid-1980s (Pollard, 1986). The government of Saskatchewan doubled its employment levels between 1996 and 2002 as the result of Premier Romanow’s decision to raise the intellectual and policy capacity of his province’s intergovernmental unit (Johns et al, 2007).

With respect to the level of the human resources of the Secretariat of the Council of the Federation, its capacity remains very weak, currently consisting of only three people. In comparison, the Canadian Conference Secretariat employs 31 people, and the Secretariat of the Council of Atlantic Premiers consists of 28 employees. The low level of human resource reflects the fact that the main interactions on the intergovernmental matters are implemented through the Chair of the Council and the provincial unit responsible for intergovernmental relations at the time of Chair’s rotation.

Financial resources

The financial resources are crucial for jurisdictional autonomy. If an order of government lacks the fiscal resources to implement its decisions, it becomes dependent on

other orders of government for financing, and thus is almost always obliged to accept the terms and conditions of the financial donor (Telford, 2003). Many officials commented that the resources available to the federal government and wealthier provinces give an advantage to federal ministers and premiers from these provinces, both in meetings and in the development of policy (Rae, 2003). Considerable variation exists in financial capacity among the provinces and territories. There is a strong tendency to focus on fiscal transfers and particular programmatic or technical policy issues rather than on long-term policy planning, and the system, as designed, better serves executive federalism and a centralization of power than shared policy innovation (O'Reilly et al., 2006).

The Council of the Federation does not have any independent sources of funding or any powers to raise its own revenue. Instead, the premiers voluntarily contribute financially to the Council's activities and its administrative budget. Provincial and territorial contributions are based on population levels, with the more populous provinces, such as Ontario, Quebec, British Columbia, and Alberta, contributing more than their smaller counterparts. Statistical information on the amount of the yearly provincial contributions to the consolidated budget of the Council of the Federation and its spending activities is not publicly available.

In short, electoral support played a crucial role in the electoral campaign of Jean Charest, under whose leadership the Council of the Federation was created. Although it was not possible to identify the budget of the Council and the spending activities and contribution levels of premiers, it can be inferred that the member premiers pull together financial resources to address common priorities. The human resources capacity of the Council is very small because the main interactions on the intergovernmental matters are implemented through the Chair of the Council and a provincial unit responsible for intergovernmental relations at the time of Chair's rotation. Thus, it could be concluded that with regard to the resources dimension of collaboration, the Council of the Federation falls under interprovincial collaboration.

6.3.3. Activities and Provision of Services: Delivering on Joint Agenda

Since its creation, provincial and territorial elites of the Council of the Federation have been jointly involved in a variety of activities in various public policy fields, including

internal and international trade, post-secondary education, health care, environment and transportation, as Table 7.1 demonstrates. Many activities of premiers have already been considered in Chapter 5 on the AIT and Chapter 6 on the SUFA in this dissertation. For instance, it was shown how provincial elites demonstrated their capacity for leadership on the issues pertinent to internal trade. Provincial and territorial leaders were also actively engaged in health care and were able to secure \$41 billion in funding under the Canada Health Accord.

That being said, Peach (2004) has argued that the interprovincial cohesion on addressing premiers' demands for more federal funding was, however, far from "exercising leadership on national issues of importance to provinces and territories and in improving federal-provincial-territorial relations" (Council of the Federation, 2003, para.3), which was the main purpose of creating the Council of the Federation. In addition, partly because of the ideological differences, as was shown in the chapter on the Social Union Framework Agreement, the premiers' efforts at jointly improving health care over the past number of years did not achieve the desired results of policy innovation in order to better secure the sustainability of health care. Taking into consideration that the Accord expires in 2014 and that the federal government is currently preoccupied with the elimination of the budget deficit, it will be interesting to see how the negotiations over the federal funding for health care evolve. It was also shown in the previous section of this chapter that significant ideological differences among provincial and territorial elites prevented the Council from achieving results on a highly disputed policy issue such as fiscal imbalance. The inability of the provinces to come to an agreement leads, in turn, to substantively broad intergovernmental accords and documents as well as to the omission of highly disputed issues from the agenda (Courchene, 2004).

Table 6.1. Results of the Council of the Federation's activities by policy area.

Policy area	Results
Internal trade	- added chapter five on procurement to the AIT in 2004 - added chapter seventeen on dispute resolution to the AIT in 2007 and 2009 - added chapter six on investment to the AIT in 2009 - added chapter fourteen on transportation to the AIT in 2005 - added chapter seven on labour mobility to the AIT in 2009 - added chapter nine on agriculture to the AIT in 2010

International trade	- stressed the importance of establishing a formal federal-provincial-territorial agreement on the role of provinces and territories in international negotiations, agreements and forums - agreed to develop a framework for provincial-territorial involvement in international negotiations for discussion with the federal government - advocated for the importance of enhancing international relationships, particularly with the European Union (EU) and the Asia-Pacific region - welcomed the federal government's invitation to provinces and territories to take part directly in the EU negotiations in areas under their jurisdiction - released strategy on the global economy in 2011
Post-secondary education and skills training	- developed a sustainable and long-term strategy for post-secondary education in 2006 - released an international education marketing plan for provinces and territories in 2011
Health care	- negotiated and signed the 2004 Health Care Agreement - currently working on the establishment of a pan-Canadian purchasing alliance to consolidate public sector procurement of common drugs and medical supplies and equipment agreed in August 2010 - developed a national pharmaceuticals strategy (Quebec maintains its own Pharmacare Program) in 2006 - encouraged the federal government to work with the provinces and territories in renewing the existing transfer arrangements, which are due to expire in 2014 - acknowledged the 6% escalator on CHT that should not be financed by reducing other major transfers - directed their departments to work together to support their discussion in early 2012 on innovations to modernize health care system
Innovation	- encouraged citizens and the private and public sectors to further embrace innovation as a core principle
Environment and climate change, water, and energy security	- released CoF pan-Canadian energy strategy in 2007 - endorsed the CoF water charter in 2010 - organized forum on climate change adaptation - in the context of rising energy prices, committed to achieving a 20% increase in energy efficiency by 2020 in their respective jurisdictions and agreed on a five-point plan for achieving this - participated in the development of the Canadian position in advance of the Copenhagen meeting in December - currently working on the implementation of a Canada-wide water efficiency labelling program - currently working on the creation of a Council of the Federation Water Stewardship Council based on the already existing Council in Western Canada - called on the federal government to modernize <i>Canadian Environmental Assessment Act</i> - announced the establishment of an online community of practice on climate change adaptation - expressed support for the conclusion of their work with the federal government toward a National Polar Bear Conservation Strategy - pledged to work together to promote Canada's expertise in clean energy technologies and to advocate for the recognition of Canadian hydroelectric power and tidal energy as renewable energy sources in U.S. legislation - supported national disaster mitigation funding program
Transportation	- released a comprehensive national transportation strategy on December 8, 2005

Housing	- directed Housing Ministers to identify solutions to support affordable, adequate and suitable housing for all Canadians and to report back to the premiers by December 31, 2010
Economy, fiscal imbalance and equalization	- produced a seven-point action plan to address the economic recession of 2008 - established an Advisory Panel on Fiscal Imbalance in 2005. The Advisory Panel's report, <i>Reconciling the Irreconcilable: Addressing Canada's Fiscal Imbalance</i>, was completed on March 31, 2006. - met with the Federal Expert Panel on Equalization and Territorial Formula Financing and endorsed its recommendations on Territorial Formula Financing
Outreach	- met with Australian premiers to explore bilateral exchanges - met with U.S. Ambassador David Wilkins and conducted a mission to Washington, D.C. - planned trade mission to Asia in 2012 with the federal government to advance an ambitious trade agenda for Canada
Other initiatives	- exchanged views on measures to limit the spread of the H1N1 virus - established a Beef Strike Force - established the annual Award for Literacy - organized Youth Forum - developed the action plan for the national diamond strategy.

In the other areas of interprovincial relations, such as transportation, education, environment and international trade, provincial elites were able to more or less overcome their ideological differences and jointly achieve results. For example, in 2005 the premiers released a comprehensive national transportation strategy entitled “Looking to the Future: A Plan for Investing in Canada’s Transportation System.” The premiers stated during their annual meeting of the Council of the Federation in 2005:

“...federation was built on a vision, expressed in a railway, to unite the country from coast to coast. This expression of unifying the country continues to be reflected in our national transportation infrastructure, which now must include both east-west and north-south focus. Recognizing that Canada’s provinces and territories have a range of differing infrastructure needs, Premiers identified Canada’s transportation system as one of the most important foundations of our country’s international competitiveness and noted that it is key to ensuring a better standard of living for all Canadians” (Council of the Federation, 2005a, p.1).

The development of the strategy was led by British Columbia Premier Campbell, Nova Scotia Premier Hamm and the Northwest Territories Premier Handley who worked closely with other premiers and provincial and territorial Transportation Ministers. The premiers

invited the federal government to be a strategic partner in the implementation of this important national initiative.

In 2006, the premiers developed a sustainable and long-term strategy for post-secondary education and skill training entitled “Competing for Tomorrow” and released an international education marketing plan for provinces and territories in 2011. The 2006 education strategy “sets the stage for continued action in each province and territory to translate into a competitive advantage, economic growth and a higher standard of living for Canadians” (Council of the federation, 2006a, p.1). In particular, this strategy identifies areas of priority and demonstrates the importance that each premier attaches to higher education and skills in five key areas for action: i) improving access to post-secondary education and skills training; ii) enhancing quality of post-secondary education and skills training; iii) increasing participation in the labour force; iv) developing skills for the 21st century workforce; and v) expanding research and innovation capacity (Council of the Federation, 2006b). The 2011 marketing plan was developed jointly by all provincial and territorial leaders to promote Canada’s education systems on the international scene. “While developing and implementing their individual strategies to respond to their respective priorities, provinces and territories must nonetheless ensure that the promotion of international education in Canada is sufficiently coordinated” (Provincial and Territorial Ministers of Education and of Immigration, 2011, p. 11).

6.3.3.1. The Case of International Trade

Canada's economy is significantly dependent upon international trade and a continued and improved access to international markets. The federal government is responsible for the conduct of Canada’s foreign affairs and signing international treaty obligations. In terms of treaty-making power, the 1937 Labour Conventions decision⁶⁸ noted that Ottawa had the power to negotiate international treaties but did not have the right to implement agreements in areas of provincial jurisdiction (Skogstad, 2008). In 1867, Parliament was given exclusive control over the regulation of trade and commerce in Section 91(2) of the Constitution. The

⁶⁸ The 1937 judicial ruling in *Attorney General for Canada v. Attorney General for Ontario* decreed that the federal government’s right to negotiate and ratify international treaties does not extend to implementing provisions of international agreements whose subject matter falls within provincial jurisdiction (Skogstad, 2008, p.226)

provinces, however, were granted jurisdiction over property and civil rights (Section 92(13)), which includes the regulation of contracts in which international trade is conducted (Kukucha, 2004).

Since the end of the Second World War, Canada's global trade relations have been linked to international trade regimes and institutions, such as the General Agreement on Tariffs and Trade (GATT), the North American Free Trade Agreement (NAFTA) and the World Trade Organization (WTO) (Kukucha, 2010). More specifically, the prime minister and the minister of international trade formulate the objective of Canada's trade policy in relation to a neo-liberal global economy that is increasingly competitive, with ongoing pressures related to deregulation, privatization and the pursuit of greater liberalized trade (Skogstad 2002; de Boer 2002; Brown 1991; Hart 1998).

During the last two decades, many of these commitments, however, have increasingly moved into areas of domestic jurisdiction, and, as a result, trade policy has become domestic policy (Kukucha 2003; Helliwell 1998). In NAFTA negotiations, for example, a diverse range of sectoral issues was negotiated, including the licensing and certification of professionals, customs administration, rules of origin, technical standards, energy and financial services. In addition, trade deals have changed, as they now are much more "comprehensive" and involve "many more non-tariff barriers, many of which fall under provincial jurisdiction" (Meyer, 2011, p.2).

As international economic agreements became more intrusive in areas of domestic policy, it became clear that some mechanism was required in order to consult with premiers on issues of foreign trade policy. In August 1977, a Canadian Coordinator for Trade Negotiations (CCTN) was appointed with the mandate to coordinate information from the provinces, the federal bureaucracy, industry and other non-governmental organizations (Brown 1991, p.91).

Despite this mechanism, the premiers continued to push for a more inclusive role as Prime Minister Mulroney considered entering free trade negotiations with the United States. The loudest challenges came from the premiers of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Quebec, who all called for full provincial participation (Kukucha, 2004). The issue was finally settled when a compromise was reached that included regular first ministers meetings every three months during the FTA negotiations, and more frequent

updates through the CCTN, which became the Committee for the Free Trade Agreement (CFTA) shortly after the implementation of the FTA (Doern & Johnson, 2006).

During the subsequent NAFTA negotiations, the CFTA remained in place to deal with ongoing issues of federal-provincial concern, but a new forum was also established, the Committee for North American Free Trade Negotiations (CNAFTN) (Doern & Johnson, 2006). Following the implementation of NAFTA, the CNAFTN became the CTRADE committee system for international trade. The current CTRADE process involves a series of meetings between Ottawa and premiers that occur four times annually. CTRADE meetings are in addition to regular contact between federal and provincial officials regarding ongoing negotiations and trade disputes (Kukucha, 2003, p. 64).

On the surface, it would appear that CTRADE represents a significant improvement in federal-provincial relations on international trade. The concern, however, is that CTRADE does not really exist as a mechanism for consultation. Kukucha (2011) argues that, in reality, the majority of CTRADE meetings serve as forums for federal officials to update the provincial officials on current international trade issues. As a result, there are differing opinions among premiers regarding the importance of CTRADE. Some premiers suggest these briefings allow officials an opportunity to identify priorities and coordinate specific policies. The other premiers, however, disagree and see the meetings as nothing more than poorly planned information sessions (Kukucha, 2003).

As only provinces and territories can implement international obligations in areas of provincial and territorial jurisdiction, the premiers continued to seek to have a significant and clear role in the development of Canada's international position on areas within provincial and territorial responsibility. Toward this end, the premiers were pushing for the development of a formal federal-provincial-territorial agreement framework as a "necessary step to provide clarity, certainty, and continuity in their relationship with the federal government in Canada's international activities that affect provincial and territorial jurisdictions, responsibilities, and interests" (Council of the Federation, 2005b).

During their Council of the Federation annual meeting in August 2007, the premiers encouraged the increase in provincial and territorial involvement in Canada's trade policy agenda by "pursuing efforts to obtain a formal mechanism for provincial-territorial participation in the negotiation, implementation and management of international trade

agreements that impact their jurisdiction and, in concert with the federal government, implementing a rigorous analytical approach to determine commercial priorities in assessing trade policy” (Council of the Federation, 2007, p.1).

During their annual meeting of the Council of the Federation on August 6, 2010 in Winnipeg, the premiers reiterated the need for provinces and territories to be able to fully participate in Canada’s international negotiations and forums that impact their jurisdiction. The premiers emphasized the need to establish a formal federal-provincial-territorial agreement on the role of provinces and territories in international negotiations, agreements and forums (Council of the Federation, 2010). Accordingly, the premiers agreed to develop a framework for provincial-territorial involvement in international negotiations for discussion with the federal government. This framework would outline: i) the role of provinces and territories in the negotiation process; ii) the means by which provinces and territories would formally signify their consent to agreements; iii) the role of provinces and territories in the management of international agreements that affect their jurisdiction; iv) the role of provinces and territories in any institutional mechanisms that are established to implement an agreement; and v) arrangements to ensure the flow of information to provinces and territories (Council of the Federation, 2010).

The final quest for the formal framework with the federal government codifying provincial involvement in international trade negotiations came in the Council of the Federation’s provincial trade strategy entitled “Canada in the Global Economy” (Council of the Federation, 2011). In the strategy, the premiers pledged to establish a framework that would “describe the opportunities for full provincial and territorial participation and include provisions concerning their involvement in the negotiation, implementation and governance of international trade agreements, as well as the conditions related to provincial and territorial commitment to support those agreements prior to their signing” (Council of the Federation, 2011, p.2). But despite pushing so hard for the establishment of a federal-provincial-territorial agreement framework, premiers are still waiting for results, as the federal government accepted only the consulting and briefing role of premiers and resisted a more extensive role for them. The 2010–2011 Report on Plans and Priorities states that "provinces, territories and municipalities will continue to be consulted actively on Canada's

trade agenda and on areas of shared interest such as investment attraction and promotion of Canada's international business success" (Meyer, 2011, p.2).

That being said, federal and provincial elites and their officials are working closely together to avoid and resolve disputes with trading partners and to settle trading tensions in advance of formal complaints. "The pattern of intergovernmentalism around international trade disputes approximates pooled authority. The government of Canada has not chosen to use its exclusive legal authority with respect to transnational governance of trade disputes to attempt to centralize trade policy. The reasons are obvious. Most trade disputes have appreciable economic stakes for one or more provinces. As well, when a provincial policy is targeted by a trade action, provinces will possess more information needed to rebut an unfair trade charge. Both factors rule out unilateral federal approach to trade dispute resolution where provincial instruments are implicated" (Skogstad, 2008, p.230).

The provinces and territories also exercised a leadership role in promoting increased trade and advancing Canada's international trade position on the world stage. From the creation of the Council of the Federation, the premiers repeatedly called on the federal government to advance Canada's trade with the new and emerging economies that represent an opportunity for Canada and are competing intensely for export markets, investment, skilled human capital and leading-edge technologies (Council of the Federation, 2005a). In particular, the premiers encouraged the federal government to significantly improve its performance in international trade area by: i) allocating federal resources to move more aggressively to strengthen Canada's trade relations with Asia and other emerging markets; ii) concluding the agreement with China and India to obtain approved destination status for Canada; iii) developing initiatives with Asian countries aimed at liberalizing trade to allow Canadian businesses to better compete for trade and investment opportunities; iv) ensuring immigrants have the information and supports they need to integrate into Canadian society; and v) making the ongoing investments required to maintain heightened security at our gateways and borders while ensuring free flow of trade (Council of the Federation, 2005a; Council of the Federation, 2010).

In particular, the premiers pledged to reposition Canada as a global location of choice for trade, investment, skilled immigrants, tourists and international students by working individually, regionally and collectively to build stronger ties with Asia and other regions

(Council of the Federation, 2005a). As part of this commitment, the premiers took several missions abroad to broaden and deepen important trading relationships. For example, they met with Australian premiers in 2006 to explore bilateral exchanges between Canadian and Australian provincial, state and territory officials in order to facilitate policy and program information exchange, share best practices between the two countries and establish offices and ease visa requirements in both countries. In 2009, the premiers took upon themselves an advocacy role and conducted a mission to Washington, D.C., during the winter National Governors Association Meeting to promote the advantages of the Canada–U.S. trade and energy relationship. During their annual 2011 meeting in Vancouver, the premiers planned a trade mission to Asia with the federal government to advance a trade agenda for Canada in 2012.

During their annual 2008 meeting in Quebec, all the premiers⁶⁹ underlined the importance of transforming the relationship between Canada and the European Union into a stronger partnership (Council of the Federation, 2008). Initially, it was Jean Charest who raised the possibility of renewed Canada–EU discussions with European Trade Commissioner Peter Mandelson at the 2007 World Economic Forum in Davos, Switzerland (Kukucha, 2010). Charest was interested in pursuing this initiative because Quebec “had several offices in Europe where the province openly lobbied EU officials on economic and cultural issues. In addition, Quebec faced a shortage of medical practitioners and was in the process of negotiating an agreement with France on the recognition of professional credentials” (Kukucha, 2011, p.132).

The negotiations on the EU agreement officially started on October, 19 2009, and the premiers welcomed the federal government’s invitation to take part in the EU negotiations in areas under their jurisdiction (Council of the Federation, 2009). “Premiers agree on the importance of improving trade relations between Canada and the European Union and believe the Comprehensive Economic Trade Agreement (CETA) between Canada and the

⁶⁹ The only province to not comply was Newfoundland and Labrador, which was fighting Ottawa on oil and gas royalties and protesting an expected EU ban on all seal products, including oil and pelts. Macdonald (2009). Newfoundland and Labrador, whose economy is dependent on the seal harvest, still has substantive issues with the content and process of CETA and does not acknowledge any consensus position arising from the discussions of the premiers.

EU has the potential to benefit all parties by creating substantial and reciprocal economic gains, more cooperation in a range of sectors, and an opportunity to address outstanding trade irritants” (Council of the Federation, 2010, p.1).

In short, all premiers are engaged in the development and implementation of joint activities and the provision of services under the mandate of the Council. Whether the activities and provision of services dimension of the Council of Federation falls under interprovincial collaboration, however, depends on the issue at stake. On some less contentious policy issues such as education or transportation, the provincial and territorial leaders were able to reach results while recognizing their different needs in these policy fields. In other areas, such as social or health policy, that touch the identities dimension, it was difficult for the premiers to compromise. On the issue of international trade, the premiers were able to create a united front regarding the need for a formal mechanism for provincial participation in international trade deals. Although the federal government did not officially commit to this mechanism, it increased the role of premiers in interprovincial negotiations and is working collaboratively with premiers on the resolutions of any international trade disputes.

It is also very important to emphasize the leadership role of the premiers in advancing public policy agenda in the federation. Even if they do not come to a detailed agreement among themselves and, as a result, have to address the issues on the surface, they do raise awareness and try to draw the attention of the prime minister and his cabinet to many policy issues that otherwise would have been left unnoticed or addressed unilaterally by the federal government, which would, in turn, exacerbate the interprovincial conflict even further.

6.3.4. Information Sharing: Structuring Political Forum

In terms of institutional developments, the Council of the Federation rests on a founding agreement and has a mandate to exchange information, knowledge and experiences. The Council resembles a political forum where premiers can share and exchange viewpoints and best practices, as well as coordinate their approaches to federal-provincial/territorial relations. In particular, the Council: i) develops a common vision of how intergovernmental relations should be conducted, and ii) addresses any common issues that require provincial and territorial dialogue (Council of the Federation, 2003). The

Council is structured around a Chair, Steering Committee, ad hoc ministerial committees and the Secretariat.

Chair

As the Council does not have an independent or permanent head, the premiers take turns chairing the Council for a one-year period. The Chair does not have any formal powers and is meant only to facilitate Council meetings and act on the behalf of the Council according to the mandates it approves. The political implication of this, however, is that the agenda of the Council's meetings is sometimes shaped or influenced by the interests of the elite of the hosting province and the Chair (Bolleyer, 2009).

Committee of ministers

From time to time, the Council creates ad hoc committees of ministers to address certain policy issues. Usually, these committees are composed of ministers responsible for intergovernmental relations or their representatives; an example of one such committee is the 1996 Ministerial Council on Social Policy Renewal. In addition, the Premiers' Council on Canadian Health Awareness and the Secretariat for Information and Co-operation on Fiscal Imbalance are under the responsibility of the Council of the Federation. The provinces and territories have also been working since 1967 to pool their expertise via the Council of Ministers on Education (CMEC). CMEC provides leadership in education at the pan-Canadian and international levels and contributes to the fulfilment of the constitutional responsibility for education conferred on provinces and territories. In particular, CMEC serves as: i) a forum to discuss policy issues; ii) a mechanism through which to undertake activities, projects, and initiatives in areas of mutual interest; iii) a means by which to consult and cooperate with national education organizations; and iv) the federal government instrument for representing the education interests of the provinces and territories internationally. This Council allowed the premiers to jointly exchange views and information, develop a sustainable and long-term strategy for post-secondary education and skill training in 2006, and release an international education marketing plan for the provinces and territories in 2011.

Steering committee

The Steering Committee of the Council consists of provincial deputy ministers responsible for intergovernmental relations. Its role is to assist the Council and support the committee of Ministers in the performance of their respective mandates (founding agreement reference). In particular, the Committee prepares the meetings of the Council and implements research and analysis of the various policy issues. The Steering Committee is chaired by the deputy minister of the province chairing the Council. The Steering Committee reports back to the Council.

Secretariat

The role of the Secretariat is to assist the Steering Committee in the preparation of meetings of the Council and in any other task assigned to it by the Steering Committee. The head of the Secretariat is appointed by and reports to the Steering Committee. The Secretariat is currently located in Ottawa. With a permanent Secretariat and a Steering Committee headed by senior public servants, an institutional organization has been put into place that could prepare ministers' meetings more pragmatically on an ongoing basis (Hueglin, 2006).

In short, federal and provincial political elites regard the Council of the Federation as a provincial-territorial institution that remains highly dependent on particular arrangements and on the attitudes and interests of the elite actors: the premiers. This is especially the case of the Chair of the Council, who rotates every year and has an impact on the nature of collaborative processes. The Chair, on behalf of the premiers, communicates with the federal decision makers and discusses the premiers' positions on various policy issues. "The dominance of personality over structure clearly indicates that the Canadian system of intergovernmental relations has not developed a life of its own. It clearly lacks the capacity to steer actors' behaviour substantially and is unable to shape the ways actors pursue their interests" (Bolleyer, 2005, p.78).

Regarding the information sharing dimension, it can be stated that collaboration is the dominant interaction mode in the Council of the Federation. As the Council is meant to act more as a forum, the dispute resolution mechanism is not mentioned in its founding agreement and, therefore, is not subject here to analysis. The premiers, however, provide each other with information through the networks and structures of routine information

exchange and discussions. They demonstrate interdependency in addressing various policy problems and are engaged in frequent communication on the issues of national importance. For these purposes, the premiers created a new intergovernmental institution – the Council of the Federation - and continue to channel their communication, efforts and ideas through the existing intergovernmental mechanisms.

Keeping up with the Quebec premier's commitment to actively contribute to the renewal of the intergovernmental relations in the Canadian federation, provincial and territorial elites created the Council of the Federation that manifests interprovincialism in the development of joint interprovincial approaches to public policy issues. Premiers represent not only the interests of their constituents but also their own self-interests, which are necessarily politicized and can be viewed generally as concerned with autonomy and influence. If policy issues within their territories can no longer be resolved through autonomous policy choices, premiers would try to delegate competencies to new or existing institutions while trying to maintain as much influence as possible over the exercise of these competencies. In order to prevent decisions going against their own preferences, elites would insist on unanimity voting even though the results are likely to be inefficient from a problem-solving perspective (Scharpf, 2006). Taking into consideration the consensus decision-making process, collaboration may succeed in areas where the national interest and the policy preferences of premiers converge. Under the constraints of the joint-decision trap, the problem-solving capacity however, represents a challenging area for premiers. The Council's problem-solving capacity could be increased if premiers decided to switch from unanimous to majority voting.

The Council of the Federation is widely represented in the literature as an example of collaborative federalism. In reality, however, it is impossible to conclude that collaboration is in fact the dominant interaction mode in the Council. While it is true that all provincial leaders have an equal say in the decision-making process and share resources and information, which is an important dimension of collaboration, the nature of the issues at stake determines the interactive mode. The premiers were able to collaborate on the less controversial issues and acknowledge different needs of the provinces and were engaged in coordination of more controversial issues. The premiers also played a significant role in

facilitating debates on policy issues, raising awareness and sharing knowledge and expertise among the provincial and territorial governments.

Premiers are less effective in facilitating collective action and promoting an equal relationship between the different levels of government. The capacity to arrive at a collective position has important implications for both the potential of premiers to influence the federal government decision makers and to coordinate policy horizontally (Bolleyer, 2009). The Council of the Federation, however, is more preoccupied with the former and has been quite successful in establishing a shared position on the matters related to obtaining the funds from the federal government. When it comes to the coordination of policy measures to arrive at concerted action, the ideological differences among premiers often prevent the achievement of shared results. As a result, the policy-making capacity diminishes and innovation and long-term planning are replaced by short-term political needs.

In other words, premiers are more focused on processes and supporting their governments than on results, fostering innovation or creative policy solutions. The consensus decision making in the Council partially contributes to the inability of premiers to effectively address policy issues, as it creates a potential for the joint-decision trap. “The weakness of horizontal policy coordination becomes also evident in the functional profile of the Council of the Federation which is directed more towards position taking in the federal-provincial negotiations as opposed to being preoccupied with coordination of policy measures to arrive at concerted action to address cross-jurisdictional problems” (Bolleyer, 2009, p.77). Despite operating within a weakly institutionalized Council of the Federation, the premiers are not interested in pursuing the establishment of a stronger intergovernmental infrastructure to achieve their goals and shared results because this infrastructure would restrict their individual flexibility and autonomy.

Table 6.2. The Council of the Federation meetings timeline.

Date and place	Subject	Outcome
December 4-5, 2003 Charlottetown	- the creation of the Council of the Federation - the Founding Agreement	- established and announced the creation of the Council of the Federation. - identified initial working priority areas for the Council: a) improving health care for Canadians, and b) strengthening the economic union. - developed the Founding Agreement of the Council.
February 23-24, 2004 Vancouver (the first meeting of the Council)	- First Minister's Health Summit - internal trade - fiscal imbalance - Award for Literacy - Beef Strike Force	Health care - hold discussions with the federal government regarding the sustainability and reform of health care in Canada. - directed provincial/territorial Health and Finance Ministers to identify opportunities and challenges related to health care reform and sustainability. Fiscal imbalance - agreed to establish the Secretariat on Information and Cooperation on Fiscal Imbalance. Trade - released a work plan to reduce barriers to trade among provinces and territories. Literacy - announced the creation of a Council of the Federation Award for Literacy. Beef Strike Force - initiated the establishment of a Beef Strike Force.
July 28-30, 2004 Niagara-on-the-Lake	- health care - literacy and youth development - national diamond strategy	Health care - developed the action plan for better health care, including funding for health care services. Literacy - discussed initiatives promoting literacy. National diamond strategy - developed the action plan for the national diamond strategy. Youth - organized Youth Forum.
September 1-2, 2004 Toronto	- agenda for the First Minister's Meeting	- released agenda on health care reform for the First Ministers Meeting held on September 13-15, 2004.
September 12, 2004 Ottawa	- health care funding	- met at Paul Martin's house day before the FMM to preliminary discuss health care funding
October 25, 2004 Ottawa	- agenda for the FMM meeting	- met to discuss agenda for the F/P/T FMM on new equalization and territorial funding formula framework (held on October 26, 2004).
August 10-12, 2005 Banff	- literacy award - skills training and post-secondary education - pharmaceuticals, prevention and treatment of drug addiction	- announced Literacy Award winners Education - directed Advanced Education and Labour Market Ministers to meet with provincial/territorial Finance Ministers in early October to discuss funding issues related to post-secondary education and skills training. - discussed the organization of a Summit on Post-Secondary Education and Skills.

	- fiscal imbalance - energy, transportation and infrastructure needs - energy - international trade - meeting with U.S. Ambassador	- called on the Prime Minister to restore immediately the federal funding through the Canada Social Transfer to 1994 -1995 levels. Pharmaceuticals - called on the federal government to take steps to ensure that all Canadians have access to the drugs they need. - directed Health Ministers to develop and implement a national pharmaceuticals strategy, with an understanding that Québec will maintain its own Pharmacare Program. - developed strategies to better manage the sale of products containing the key ingredients in crystal meth to reduce the use of these products in its production. Fiscal imbalance - established an Advisory Panel on Fiscal Imbalance. Transportation - announced the development of a comprehensive national transportation strategy. Energy - agreed to develop a pan-Canadian, Council of the Federation Energy Strategy. International trade - encouraged the federal government to allocate federal resources to move more aggressively to strengthen Canada's trade relations with Asia and other emerging markets. Canada-US relations - met with U.S. Ambassador David Wilkins to discuss Canada-U.S. relations.
October 6, 2005 Québec City	- education, labour market and finance	- held a working meeting of provincial-territorial education, labour market and finance ministers in order to discuss funding issues related to post-secondary education and skills training.
February 24, 2006 Ottawa	- postsecondary education and skills training	- organized Summit on post secondary education and skills training.
April 11-12, 2006 Montreal	- meeting with Australian Premiers - fiscal imbalance	Canadian and Australian meeting - agreed to explore bilateral exchanges between Canadian and Australian provincial, state and territory officials to facilitate policy and program information exchange and share best practices between the two countries. - suggested to establish offices and ease visa requirements in both countries. Fiscal imbalance - reiterated that equalization is broken and needs to be fixed. - reiterated that there is fiscal imbalance and that the funding arrangements must ensure the provinces and territories have sufficient revenues to provide citizens with reasonably comparable levels of public services.
June 8, 2006 Edmonton	- equalization	- met with members of the Federal Expert Panel on Equalization and Territorial Formula Financing.
July 26-28, 2006	- postsecondary education and skills	Education - presented a strategy for post secondary education and

St. John's	- training - equalization - literacy award	skills training. Equalization - reinforced their support for moving immediately to implement the recommendations of the Federal Expert Panel on Territorial Formula Financing. -pledged to revitalizing the federation by tackling fiscal imbalance - announced literacy winners.
May 1, 2007 Toronto	- energy and climate change	- shared provincial/territorial best practices on climate change and reviewed progress on the development of a COF energy strategy.
August 8-10, 2007 Moncton	- greenhouses gas emission, climate change and energy - international trade	Energy - released energy strategy Internal trade - reaffirmed the critical importance of a stronger and more effective national Agreement on Internal Trade (AIT) and endorsed a five-point plan to strengthen domestic trade between the provinces and territories. International trade - endorsed a plan to refocus Canada's international trade priorities, based on provincial-territorial objectives by improving North American and Caribbean commerce, enhancing trade with Asia-Pacific including the conclusion of the Foreign Investment Protection and Promotion Agreement with China and "Open Skies" air service agreements, and undertaking a review of economic opportunities with the European Union and India.
January 11, 2008 Ottawa	- Agenda for the FMM	- met to discuss the agenda items for the FMM on economy scheduled that day.
January 28-29, 2008 Vancouver	- Internal trade - forum on climate change	Internal trade - agreed on measures to strengthen Canada's economy through enhanced domestic and international trade. - reported on progress on their five-point plan to strengthen domestic trade between the provinces and territories. Forum on climate change - British Columbia Premier Gordon Campbell hosted a Forum on Climate Change Adaptation, under the aegis of the Council of the Federation.
July 16-18, 2008 Québec	- Internal trade - labour market - housing - climate change - literacy award	Internal trade - agreed to amend the Agreement on Internal Trade (AIT) by January 1, 2009 on labour mobility. - announced an enhanced and effective dispute resolution mechanism, effective January 1, 2009. The mechanism includes the use of monetary penalties to a maximum of \$5 million. Labour market - announced a symposium in Newfoundland and Labrador to improve labour market participation. Housing - stressed the importance of renewing several cost-shared funding agreements and continuing the federal funding programs for housing due to terminate in 2009. International trade - underlined the importance of transforming the relationship between Canada and the European Union into

		a stronger partnership, and stressed the importance of concluding free trade agreements with other important trading partners in the Asia-Pacific region. Environment - assessed the progress accomplished and released a report on progress made since the Council's summer meeting in Moncton last year. - in the context of rising energy prices, committed to achieving a 20% increase in energy efficiency by 2020 in their respective jurisdiction. Quebec's anniversary - celebrated Québec City's 400th anniversary and took this historic opportunity to celebrate the vitality of Canada's Francophone communities and to note the contribution of the Canadian Francophonie to enriching the Canadian reality. - announced literacy award winners.
October 20, 2008 Montreal	- economy and the financial system	- met to enhance and coordinate their actions to limit the impacts of the slowdown of the U.S. economy and to minimize the effect on Canada of the current turbulence in world capital markets.
November 10, 2008 Ottawa	- Agenda for FMM	- met to discuss the agenda for the FMM meeting on economy scheduled that day.
January 15, 2009 Ottawa	- First Ministers Meeting - internal trade	- had a preparatory discussion prior to the First Ministers' Meeting. - approved modifications to the Agreement on Internal Trade (AIT) that were proposed by their ministers to ensure full labour mobility in Canada and to put in place an enhanced AIT-related dispute mechanism, as was requested by Premiers at the July 2008 Council of the Federation Meeting in Québec City.
August 5-7, 2009 Regina	- international trade - climate change and energy security - innovation - Canada-US relations - trade - EI reform - H1N1 preparations - Literacy award	International trade - discussed the importance of enhancing international relationships, particularly with the European Union (EU) and Asia-Pacific. - welcomed the federal government's invitation to provinces and territories to take part directly in the EU negotiations in areas under their jurisdiction. Climate change and energy security - agreed that Canada would be well served to work with the United States on a continental approach to climate change and energy security. - accepted Environment Minister Jim Prentice's invitation to join him in Copenhagen and to participate in the development of the Canadian position in advance of the COP 15 meeting in December. - agreed to implement a Canada-wide water efficiency labelling program. This program will reduce water consumption by informing consumers of the most efficient products on the market. - agreed to create a Council of the Federation Water Stewardship Council based on the already existing Council in Western Canada. - called on the federal government to modernize <i>Canadian Environmental Assessment Act</i>. Innovation - called on the federal government to ensure its Scientific

		Research and Experimental Development tax incentive works in a complementary fashion with provincial and territorial tax incentives. - called on the federal government to remove unnecessary barriers to foreign capital and research and development investment. Canada-US relations (advocacy role) - conducted a mission to Washington, DC, during the winter National Governors Association Meeting to promote the advantages of the Canada-US trade and energy relationship. Internal trade - agreed on a new Agriculture Chapter for the Agreement on Internal Trade. - agreed to the new Dispute Resolution Chapter. El (read more) - agreed on the urgent need to modernize the Employment Insurance system to support a modern workforce in a modern economy and called for a national summit on retirement income. H1N1 - discussed the extensive preparations that provinces and territories have made to limit the spread of the H1N1 virus.
August 4-6, 2010 Winnipeg	- health care - international trade - water charter - housing - economic recovery - literacy award - immigration policy - innovation - internal trade	Health care - agreed to establish a pan-Canadian purchasing alliance to consolidate public sector procurement of common drugs and medical supplies and equipment, where appropriate. - discussed innovative health care practices underway in each jurisdiction. - directed Health ministers to work with Finance ministers on a critical path in the review of transfers, notably the Canada Health Transfer. International trade - stressed the importance of establishing a formal federal-provincial-territorial agreement on the role of provinces and territories in international negotiations, agreements and forums. - agreed to develop a framework for provincial-territorial involvement in international negotiations for discussion with the federal government. - pledged to work together to promote Canada's expertise in clean energy technologies and advocate for the recognition of Canadian hydroelectric power and tidal energy as renewable energy sources in U.S. legislation. Water and environment - endorsed the Council of the Federation Water Charter. - announced the establishment of an online community of practice on climate change adaptation. - expressed support for the conclusion of their work with the federal government towards a National Polar Bear Conservation Strategy. Housing - directed their Housing Ministers to identify solutions to support affordable, adequate and suitable housing for all Canadians and to report back to Premiers by December 31, 2010. Transfers - encouraged the federal government to work with the provinces and territories in renewing the existing transfer arrangement which are due to expire in 2014. Immigration

		- underscored the need for governments to work together to enhance training and settlement programs that support the integration of immigrants. - agreed that provinces and territories need to have a greater role in decisions regarding immigration policy and planning, including the selection and settlement of immigrants. - stressed that the federal government should plan immigration levels on a multi-year basis with greater provincial/territorial involvement. - directed Ministers of Education to work with provincial and territorial Ministers of Immigration to further develop an international education marketing action plan by March 2011 which identifies areas for investment and opportunities for federal-provincial collaboration on marketing. Innovation - directed Ministers responsible for Innovation, in consultation with relevant Ministers, to explore access to financial capital, the effectiveness of tax credits linked to innovative practices, regulatory measures to increase competitiveness, how federal-provincial and territorial programs can be made more complementary, fostering greater collaboration between industry and academia, the development of priority sectors and industry clusters; and the development of sound economic data to guide investment. - directed PT Labour Market Ministers to identify potential labour market gaps and opportunities in Canada's green labour market; evaluate training capacity to meet the needs of the green economy. Internal Trade - welcomed the agreement by ministers responsible to achieve full labour mobility for financial services and directed that this work be completed by July 1, 2011. - directed ministers responsible for Internal Trade to reconcile extraprovincial corporate registration and reporting requirements by December 31, 2010 and to consider the AIT's Person-to-Government Dispute Resolution Mechanism.
July 20-22, 2011 Vancouver	- international trade - education - health care - national disaster - family	International trade - released strategy on the global economy. - planned trade mission to Asia with the federal government to advance an ambitious trade agenda for Canada in 2012. Education - released an international education marketing plan for provinces and territories. Health care - acknowledged the 6% escalator on CHT that should not be financed by reducing other major transfers. - directed their departments to work together to support their discussion in early 2012 on innovations to modernize health care system. National disaster - supported national disaster mitigation funding program. Family - released backgrounder demonstrating some of the initiatives the provinces have, including opportunities for youth, healthy and active families, and the role of community development to address the ageing issues.

July 25-27, 2012 Halifax	- economy - fiscal arrangements - health care	<i>Economy</i> - pledged to develop a stronger relationship with the federal government in order to address various economic issues. <i>Fiscal arrangements</i> - produced a report of the Council of the Federation Working Group on fiscal arrangements. <i>Health care</i> - produced a report of the Council of the Federation the Health Care Innovation Group
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Source: the Council of the Federation (2012).

Conclusion

Canada has experienced a proliferation of collaborative approaches to the management of the federation. In the quest for collaboration, federal and provincial elites attempted to take initiative in their own hands and experiment with the collaborative menu in the intergovernmental arena. While the collaborative efforts of federal and provincial elites did not go unnoticed, little has been known about intergovernmental collaboration, and the results of elites' collaborative activities have been rather mixed. The primary objective of this dissertation was to improve an understanding of the complex notion of collaborative federalism. In particular, this dissertation attempted to shed light on two fundamental questions: (i) how collaboration in Canadian federalism has been defined and understood by academia and among practitioners, and (ii) how the processes of collaborative federalism have been shaped.

With respect to the definition and understanding of collaboration, this dissertation argued that, despite the strong emphasis on collaboration for the past fifteen years, collaboration has been usually defined and understood very broadly both in the literature on collaborative federalism and from the perspective of the federal government. Collaboration has been considered in terms of the ability of the federal and provincial/territorial elites to 'work together' or 'act collectively' on various policy issues or in terms of the ability of the federal and provincial elites to reach and sign a 'collective' agreement, in which 'collective' is seen more in terms of the particular group of signatories to the agreement as opposed to particular results.

In addition, the definitions of collaboration found in the literature on collaborative federalism often refer to the ability of elites to work together without hierarchy. This conception, however, refers more to the absence of a conventional chain of command as opposed to having an equal say in the decision-making process. Moreover, it is surprising that the terms 'collaboration,' 'cooperation' and 'coordination' are often confused and used interchangeably in the literature on collaborative federalism. There has been a tendency to use positive and negative connotations to label various periods of federalism in the literature. Thus, the 1960s were labelled as the era of cooperative federalism, the Trudeau era was described as the era of competitive federalism, and the Mulroney administration was associated with the emergence of the era of collaborative federalism. The ease with which

the various labels have been applied to Canadian federalism suggests a lack of a common understanding of the applied terms and stresses the need to analyze and explain the notion of collaboration in Canadian federalism.

This dissertation also demonstrated that the absence of a robust theoretical foundation in earlier studies on collaborative federalism has contributed to the fragmentation of the comprehensive research on collaborative federalism, often resulting in studies that examine the same or a similar issue from diverse disciplinary perspectives while ignoring others. This absence has also resulted in the normative and ideological assessment of how the notion of collaborative federalism has led to intuitive and speculative conclusions. A limited number of studies tried to systematically identify and model collaboration in a well-defined context. In other words, the looseness of the vocabulary and the broadness of the understanding of what constitutes the complex notion of collaboration have, in the absence of a robust theoretical framework, resulted in the inability of researchers to explain the collaborative processes and identify the underlying factors and the causal mechanisms through which these factors shape collaborative results.

To address these knowledge gaps, this dissertation first applied a political approach to the analysis of collaborative federalism as opposed to a structural one. Collaborative federalism is mainly a political phenomenon. It is a form of politics, which means that it is primarily about power. From the normative point of view, this dissertation gave a meaning to the notion of collaboration, conceptualized and placed it in context. It was demonstrated that collaboration is not a neutral term. By developing a typology of intergovernmental relations, collaboration was shown to be distinct from other types of intergovernmental relations, such as communication, cooperation or coordination. It entails much more than just the mere ability of the federal and provincial elites to work together and conclude a collective agreement. At the core of intergovernmental collaboration are four underlying interconnected factors: shared authority and power, shared resources, joint activities and provision of services, and information sharing. Power sharing and the equality of elites are the key elements of any collaborative arrangements whose goal is for elites to jointly act or decide on a particular policy issue through an interactive process using formal or informal means and shared power, together with rules, norms and structures.

Second, this dissertation developed a theoretical framework to analyze collaborative federalism and explain its nature. This framework established the causal mechanism and explored how the processes and results of collaborative federalism are shaped by incorporating the elite analysis and historical institutionalism. Full understanding of the complex notion of collaboration arises from the analysis of elites and institutional structures that interact to produce collaborative results. Federal and provincial elites politicize and mobilize the meaning of collaboration. In other words, elites structure, transform and politicize collaboration by giving it subjective meaning through symbolic manipulation. These elites, who operate in a larger historical and institutional environment, define their place in the political community and achieve collaboration through the control, mobilization and use of power, resources and information. Particularly, federal and provincial elites' struggle for power is one of the main sources of collaborative results. The most important variables in shaping elites' relationships are political institutions, such as state structures, the territorial division of power and constitutional and other legal provisions, and party systems. Institutions shape the way elites interact, the powers they hold, the actions or inactions they take and the way their preferences are reflected in policy results. For these reasons, this study applied elite analysis and historical institutionalism to build a theoretical framework for the analysis of collaborative federalism. As a result, this dissertation was able to give theoretical importance to political institutions while at the same time taking agency into consideration.

Third, at the epistemological level, the dissertation has argued that collaborative federalism is an incremental process. History is part of causation and gaining insight into collaborative federalism requires a historical perspective. The transformation of the roles of the provincial and federal governments in the political community since the 1960s was essential for the processes and results of collaborative federalism. The ideas, interactions and negotiating strategies of the elite actors involved with the Agreement on Internal Trade, the Social Union Framework Agreement and the Council of the Federation were based on the events and decisions made at that time. The federal and provincial elites construct and mobilize national identity, Quebec identity and Western identity and then use the concept to shape the processes of collaboration and to frame and pursue their own agenda.

More specifically, in the 1960s, the construction of the Quebec identity based on language was driven by the patterns of elite interaction, notably by the competition between

federal and provincial elites. This dynamic was reinforced by a conflict between Quebec's French-speaking elite, who articulated claims for increased provincial powers in the context of modernization, and the federal elite, who attempted to promote national unity and reshape the Canadian identity in order to reinforce its own power and strengthen the role of the federal government in the Canadian federation. The rise of a new nationalism in Quebec forced the federal political elites to search for ways to accommodate the nationalist demands for a new relationship and consider an asymmetrical view of Canadian federalism.

The political elite of the Western provinces, particularly the Reform Party leader, strongly adhered to the principle of the equality of individuals and provinces that would avoid the Western provinces' political marginalization and ensure their greater influence and participation in federal politics. These claims led to the articulation of the Western identity and allowed the Reform Party to build legitimacy for its power. The political actions during the constitutional negotiations of the 1980s and 1990s further strengthened the Quebec and Western identities. The Canadian identity shaped and promoted by the federal elites still coexists with the Quebec identity developed in the context of the Quiet Revolution.

Fourth, the term collaborative federalism was supposed to describe a new way of conducting federal-provincial relations. Characterized less by unilateralism, this approach was supposed to establish collectively the definition of public policies, be determined by the equality of the two orders of government, and be translated into results. The Agreement on Internal Trade, the Social Union Framework Agreement and the Council of the Federation have been portrayed as the examples of collaborative federalism. This dissertation established the link between theory and practice and applied the theoretical framework to examine whether these cases can in reality be considered as examples of collaborative federalism. In each case, the goal was to discover circumstances in the history of the particular event that are causally relevant — that is, those circumstances that had a direct effect on the development of collaborative federalism. Methodologically, the attainment of this goal depended on identifying definite causal links among historical events and circumstances.

The detailed analysis of these three case studies on collaborative federalism leads to the conclusion that collaboration is a very complex phenomenon. In reality, it is very difficult but not impossible to achieve collaboration. For this to happen, there should be

power sharing in the decision making among provincial and territorial elites and respect for jurisdictional boundaries. There are, in addition, three other requirements: federal and provincial decision makers should be involved in the joint provision of activities and services and achieve shared results; there should be an interdependency and sharing of resources; and a formal structure should exist for information exchange and dispute resolution. The comparison of these case studies through the application of the theoretical framework allowed this dissertation to demonstrate why these case studies fall under various types of intergovernmental relations as opposed to being examples of collaboration.

In particular, the case study on the Agreement on Internal Trade demonstrated that the origins of the Agreement are historically rooted, on one hand, in basic ideological conceptions about how Canada should be organized politically and economically and, on the other, in the comprehensive debates about the role of governments in the political community. The more immediate causes of the Agreement on Internal Trade can be traced back to the recent constitutional negotiations and Canada's integration into the continental economy. By approaching the negotiations with new and old institutions and agreed-upon rules of the game, federal and provincial decision makers were able to reach compromises on a national scale through trade-offs across a large number of policy fields. Even if the premiers were trying to safeguard their provincial autonomy, they justified their positions in terms not so much of the normative views of federalisms but rather of the need to continue to protect vulnerable regional economic sectors. The provincial elites were mobilizing their grievances by highlighting different regional issues related to internal trade and then transforming their regional grievances into intergovernmental issues, which to some extent exacerbated the conflict and affected the dynamics of intergovernmental interaction during the negotiating process.

The liberalization of internal trade, the improvement and development of the Canadian economic integration, and the signature of the AIT called upon the provincial elites to favour an approach to internal trade that does not increase federal power or change the balance of power in the federation but rather maintains the status quo. In order to address regional and global integration through the economic union, elites attempted to transform the goals and strategies of established institutions and tilt the balance between efficiency, equity and autonomy in favour of efficiency as defined in neo-liberal policy prescriptions. As a result,

the very nature of federalism was put aside, including its concerns with diversity and the different needs of provinces, which, in turn, looked to the bilateral or the so-called trade enhancement agreements to address their specific needs.

The prime minister and the premiers were able to avoid intrusion into other jurisdictions and conclude the Agreement on Internal Trade. The elites were also dependent on the resources of each other, and they shared and mobilized electoral and technical resources in the process of negotiations. However, the participation of the elites in this process was not entirely equal. It was the result of the complex technical nature of the Agreement itself and, accordingly, the unequal distribution of the expertise, experience and capacities of the elites during the negotiations of the technical chapters of the Agreement. The current capabilities of the dispute resolution mechanism also remain weak, and it is too early to assess the effect of the recent attempts at improvement to this mechanism. In addition, it was demonstrated that federal and provincial elites were engaged in joint activities through shared, transformed and jointly created new rules, structures, procedures and institutions. But their joint activities were not able to completely produce the intended results and fulfil the emerging needs of the provinces.

In particular, before 2003 the AIT neither produced the intended results nor met the objectives of intensive negotiations, which were not only to oversee trade disputes but also to promote the reduction and elimination of trade barriers through intergovernmental cooperation. The fact that the premiers had to establish the Council of the Federation in 2003 to give a new dynamic to the Agreement also speaks for the inability of the federal-provincial agreements to address the individual needs of the provinces. It seems as if the dynamic of collaboration has been replaced by the dynamic of bilateralism in the Internal Trade Agreement. Even if the agreements between the provinces are concluded under the jurisdiction of the AIT, these initiatives are established more in the hope of finding concrete and tailored solutions to specific problems. The fact that federal and provincial elites succeed in agreeing on how to manage internal trade issues can certainly be considered as a positive development, but this dynamic moves away from collaboration. For these reasons, it can be argued that the Agreement on Internal Trade to a large extent represents coordination.

The case study on the Social Union Framework Agreement highlighted that the construction of the Agreement involves the definition, protection, promotion and

mobilization of the elites' interests. Federal and provincial elites refer to their fundamental interests almost as much as they do to the matter of identity. They speak, among other things, of the imperatives of cultural preservation, economic development and political empowerment or a combination of these. They denounce policies and/or institutions that they consider to be detrimental to these objectives. Self-interest features prominently in the discourse and actions of national and provincial decision makers.

The definition of Quebec's political interests during the SUFA negotiations incorporated the ideas of decentralization and asymmetry of the federal model and required that the provinces have a right to opt out with financial compensation when the federal government wanted to intervene in Quebec's provincial jurisdiction. In this case, the decentralization of social programs serves as a means of accommodating the cultural and linguistic diversity of the country. The Social Union Framework Agreement does not respond to Quebec's position, as all provinces must work toward objectives and invest the funds in a way that is compatible with the national objectives expressed in the Agreement.

At the center of the definition of federal elites' interests during the SUFA negotiations was the rise to power of Jean Chrétien. Chrétien strongly opposed Quebec's separation. His vision for a federation was shaped by the concept of individual liberal rights and by the principle of the equality of citizens, along with a vision for a strong central state able to redistribute wealth. Based on a nationalizing vision of federalism promoted by the federal government elites, the Agreement recognizes federal spending power in areas of provincial jurisdiction. The SUFA demonstrates the nationalizing vision of Canadian federalism established through the administrative agreement as opposed to the means of constitutional change.

At the centre of the definition of the Western provinces' interests were a restructuring and decentralization of the Canadian federation on the basis of equality of the provinces that was required in order to offset the Western provinces' perceived lack of power in the federal institutions. Economic disparities among the provinces significantly reduced the bargaining power of the provinces and made it easier for the federal government to obtain the consent of the provinces to sign the SUFA in exchange for the federal transfers for health care. Autonomy was seen of less importance, especially for smaller, poorer provinces, than ensuring the continued flow of federal funding for social programs.

Thus, the SUFA failed to accommodate the divergent conceptions of the Canadian political community. All attempts to reach consensus during the SUFA negotiations failed because of the great difficulty in reaching a compromise on issues and interests that had come to be defined as affecting one's core political identity. That is why the negotiations on SUFA turned into an endless struggle from which no winner could emerge. Unlike the jurisdictional conflict, political identity is not divisible, and it is therefore inherently difficult, if not impossible, to negotiate, bargain or compromise.

The case study of the SUFA also demonstrated that it does not fall under the example of collaborative federalism. Rather than collaboration, the SUFA demonstrates blame shifting and jurisdictional wrangling, inequality of federal and provincial elites, exclusion of Quebec, the federal government's unilateralism in the use of the spending power, and, hence, cooperation in the field of social policy. The resource-sharing dimension of the SUFA also falls under cooperation because during the negotiation process the federal and provincial decision makers were actively engaged in resource sharing, but the agenda was largely set and dominated by the federal elites, and the economic disparities of the provinces exacerbated the conflict even further.

While the implementation of the 2004 CHST split, the National Wait Time Reduction Strategy, and the Universal Child Care Benefit remains to be desired, these three examples reveal that the SUFA's provision were ignored in the design and implementation of these programs. These joint activities were implemented without any reference to the SUFA and therefore did not comply with the SUFA provisions that were supposed to serve as guidance in their development and implementation. The information-sharing dimension of the SUFA falls under coordination because elites were able to establish a very weak dispute resolution mechanism and a new institution for information exchange. The unilateralism of the federal government and the absence of power sharing in decision making pertinent to the use of the spending power prompted the premiers to consider the establishment of a counterforce to federal decision makers in order to change the power imbalance in the federation and in the dynamic of intergovernmental relations. This counterforce is the Council of the Federation.

The case study of the Council of the Federation showed that keeping up with Quebec's premier renewed the commitment to actively contribute to the renewal of the intergovernmental relations in the Canadian federation, provincial and territorial elites

created the Council of the Federation. The elites' vision of the Council, a provincial-territorial institution, is defined by increased interprovincialism in the development of joint interprovincial approaches to public policy issues. The Council remains highly dependent on the attitudes and interests of the elite actors — the premiers and especially the Chair who rotates every year. To a large extent, this arrangement speaks for the dominance of personality over structure. The premiers represent not only the interests of their constituents but also their own institutional self-interest, which, in the present context, can be interpreted as a concern for autonomy and influence. Thus, elite actors operate within weakly institutionalized Council of the Federation. They are not much interested in creating a stronger infrastructure to achieve shared results, because a stronger infrastructure would restrict the provincial flexibility that is especially important for provinces striving for autonomy. One implication of this situation is that the agreements reached between elites often address various policy issues on the surface.

The Council of the Federation is widely represented in the literature as an example of collaborative federalism. In reality, however, it is impossible to conclude that the dominant interaction mode in the Council is collaboration. While it is true that all provincial leaders have an equal say in the decision-making process, are involved in the provision of joint activities, and share resources and information that are important dimensions of collaboration, the nature of the issues at stake determines the interactive mode. The premiers were able to collaborate on less controversial issues, such as education or international trade, and acknowledge different needs of the provinces. On the other more controversial issues, such as fiscal imbalance that touched on the identities of provincial leaders, the premiers demonstrated coordination and cooperation. When it comes to a concerted action between different jurisdictions, the ideological differences among premiers often prevent the achievement of shared results. As a result, policy capacity diminishes and innovation and long-term planning are replaced by power relations and short-term political needs.

The Council is less effective on promoting an equal relationship between and among the different levels of government by facilitating collective action on the part of the provinces and territories in their relations with Ottawa. The capacity to arrive at collective agreements has important implications for the potential of lower-level governments to influence the federal government and to coordinate policy horizontally. The Council of the

Federation, however, is more preoccupied with the former, and it has been quite successful in establishing a shared position on the matters related to obtaining funds from the federal government.

Fifth, this dissertation maintained that, in collaborative arrangements, joint activities and provision of services should deliver results. In other words, the signature of an agreement by elites cannot alone serve as a manifestation of collaboration. It is necessary to consider what actually happens after the signature of the agreement, namely: whether the signed arrangement served as a point of reference for the development of policies and programs that fall under the agreement in question; whether the intended results were achieved; and whether the agreement delivered on its promises. In practice, unfortunately, this aspect of collaboration is almost always overlooked. One possible explanation for this is that research on collaborative arrangements has been mainly conducted before the signature of the agreements or in the first two years after the agreements were signed. After that time, agreements attract very little interest, especially if they no longer have any significant public profile. However, in order to explain the results of these agreements, they must be analyzed after they have been in force for some time.

For example, the literature on collaborative federalism does not pay attention to the fact that the SUFA, ten years after its signature, neither produced the intended results nor served as a point of reference for the implementation of the various policies that fall under its jurisdiction. The literature on collaborative federalism also ignored the fact that the Agreement on Internal Trade did not produce the intended results until 2003 and was not able to address the individual needs of provincial elites. As a result, these elites looked to find a way out in bilateral agreements and created the Council of the Federation to be able to address their needs.

A word of caution is necessary, as elites are committed to the development of collaborative arrangements. In reality, if collaboration does not produce the intended results, the process can be characterized by rivalry, competition and mistrust. In other words, the conclusion of an agreement is usually considered as a more preferable option than disagreement, even if it forces elites to defend their interests in a given context. From the point of view of political analysis, this bias profoundly characterizes the elites' judgment, their interests, their strategies and their actions or inactions, and it suggests that collaborative

arrangements are not remedies for all intergovernmental problems. In reality, intergovernmental issues are subject to policy trade-offs, rather than policy solutions. Considering the fact that regulatory agencies and policy institutions, such as markets, are not absolutely perfect in their functions, the dissertation concludes that the ‘solution’ to this potential problem may not be always feasible or easily found by entering into a collaborative arrangement.

Taking into consideration that Canada is a multi-level polity, the future challenges for research should rather focus on two particular areas: i) identifying the impact and role of Aboriginal and local governments in collaborative arrangements, and ii) conducting an international comparative analysis. Aboriginal participation, largely marginalized in the 1990s, started to play a more prominent role in Canadian collaborative federalism. For example, First Nations play an active role in the Council of the Federation. The SUFA’s provisions directly committed governments to work with First Nations. However, the National Aboriginal Organizations (NAOs) had no direct role in either the first ministers’ discussions leading to the SUFA’s formulation or the signature of the agreement. The NAOs expected that the SUFA would establish the precedent that they would be involved in all intergovernmental committees that developed sectoral policies (Dacks, 2001). “Aboriginal and treaty rights are pillars of Canada’s constitutional order” (Abele & Prince, 2003, p.1). Thus, their roles need to be considered in the functioning of collaborative federalism. Some jurisdictions in Canada developed a unique system of local governance that stresses “the empowerment, fiscal independence, accountability, and collaboration of local governments – elements of which may be replicable in other jurisdictions” (Ministry of Community Services, 2006, p.3). It would be useful to learn about these systems and compare how the term collaboration has been defined and understood in their operation.

As for the international comparison, it would be useful to conduct an international comparative analysis and consider, for example, whether the causal relationship explored in the case studies of Canadian federalism will hold in other countries with similar political structures (e.g., Australia or United Kingdom). The findings would help to refine the hypothesized relation and the theoretical framework constructed and used in this dissertation.

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