

Federal legislatures and Intergovernmental Dynamics: Canada in Comparative Context.

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Paper prepared for presentation at the Annual Conference of the Canadian Political Science Association, University of British Columbia, Vancouver, June 4-6, 2019.

1. Introduction

All federations vary in their intergovernmental dynamics, yet, why do federal countries differ in this regard, often despite exhibiting similar underlying social and cultural cleavages? What accounts for these variances? While in federations like Switzerland, intergovernmental relations and their subsequent agreements can acquire a legally binding character (Bolleyer 2006, 2009, Bolleyer & Borzel 2010, Parker 2010), agreements made in peak intergovernmental forums in Australia or Canada, while not legally enforceable (Reference Re: *Canada Assistance Plan*, Parker 2010), may nevertheless lead to a certain degree of institutionalization in order to ensure their implementation.

To this end, this paper argues that identifying and comparing the overall configuration of federated unit representation within a federation's central legislature—what this paper refers to as intrastate legislative federalism—can act as a better predictor of intergovernmental dynamics in federal countries. The paper compares intrastate representation in the central legislatures of four federations; Australia, Austria, Canada, and Switzerland. A principle contention of this paper is thus that identifying and comparing each federation's intrastate legislative arrangements can help explain why intergovernmental relations have the general dynamic they do in each of the countries under review.

Using a combination of methods, and primarily in dialogue with the Canadian tradition of studying federalism, the case will be demonstrated in three parts; the first part offers an overview of the study of federalism in Canada and the debates that have animated it, and how these debates have aligned with contemporary comparative scholarship on federalism. The focus here is on reviewing what other scholars have said about legislatures and intergovernmental relations in federal countries. The second part will present a comparative overview of intergovernmental dynamics in the four federations, offering a basic benchmark of national legislatures and sub-central representation. The third and final section will offer a concluding discussion about how the comparison contributes to theory building about Canadian federalism.

Before moving on, a word on definitions is in order. Intrastate legislative arrangements are of two varieties, asymmetrical or reciprocal (see appendix for data). Asymmetrical, in its purest sense refers to legislative arrangements where a wide discrepancy in either the size or rules determining sub-central seat allocation exists. Reciprocal arrangements are those where a formally consistent arrangements exist for the determination of seats per sub-central unit, in addition to a relative equality in the proportion of seats allocated to each unit. The first element that assesses the individual apportion of seats in each unit may be referred to as the vertical criteria determining representation, whereas the rules and dynamics affecting the relations between units in the legislature will be called horizontal criteria. In asymmetrically organized legislatures, the differences along both the vertical and horizontal axis will be more exaggerated than in cases of reciprocal legislatures.

Within this context then, intergovernmental dynamics refers to the consistency according to which a particular mode of regulating intergovernmental relations is adhered to. Adapting Karl Loewenstein's (1965) fourfold distinction regarding the kinds of legislative-executive relations that are possible, the relationship between intergovernmental dynamics and federal legislatures can be organized in four possible ways; self-regulation, where the participating governments embed accountability regimes within their intergovernmental agreements; extra-governmentally,

where an arms length institution is charged with regulating the each government's policy commitments; judicially, whereby courts seek to frame the meaning of government commitments, and, lastly, through central government imposition, where the central government has the legitimacy and capacity to impose its preferred option on sub-central units. This paper will primarily focus on the latter two dynamics.

All federations will inevitably exhibit verities of each of these dynamics. One can assess the overall intergovernmental dynamic according to the frequency with which one or more of these forms of regulation take place. On average, the tendency will be to see federal legislatures that are more asymmetrically organized favour self-regulatory intergovernmental dynamics, whereas more reciprocally organized federal legislatures will tend to demonstrate a more judicially coordinated intergovernmental dynamic. In the middle, less exaggerated asymmetric arrangements in federal legislatures will also lead to reliance on extra-governmental institutions in order to regulate intergovernmental commitments as is the case with the Agreement on Internal trade, in Canada, and the Commonwealth grants commission in Australia. Owing to Australia's relatively more symmetrical legislative arrangements however, the Commonwealth Grants Commission has more regulatory teeth than Canada's internal trade secretariat, and, in both cases, self-regulation ultimately rules the day. By contrast, more reciprocally organized legislatures, like those of Austria and Switzerland, will also tend, on average, to rely more on plebiscitary means to resolve intergovernmental policy questions. Thus, a major reason for the referendum model in Switzerland, for example.

2. National Legislatures & Intergovernmental Dynamics: Literature review

The literature on Canadian federalism and comparative federalism is characterized by a distinct entwinement of normative and 'value-neutral' social science. Because much of the federalism literature initially emerged out of specific national contexts, debates were historically—and in many ways continue to be—shaped by normative concerns related to specific national political debates. In Canada these debates often focused on whether Canada's federal structure enhanced social solidarity or heightened differences between regions and provinces. At various periods during the development of political science in Canada, such debates became particularly acute.

Two early debates marked the development of the study of federalism in post-war English-speaking Canada. First was the attempt by central Canada to come to terms with and understand the phenomenon of Western Canadian regionalism and populism. Emerging in the 1950's, notable works in this regard were Macpherson's *Democracy in Alberta* and Mallory's *Social Credit and the Federal power*. Published as part of a series on the Social Credit phenomenon in Alberta and edited by the U of T Sociologist S.D Clark, works in this series exhibited a mixed methodology that ultimately relied on knowledge of the specific historical debates in Canadian politics—debates gradually framed by the dominant perspective and concerns of Central Canada.

By the 1960's and 70's a new generation of political scientists began to emerge in Canada. These academics, often trained in the United States¹, applied concepts developed for the study of American federalism to the Canadian context. Nevertheless, these studies remained within the general normative framework of the previous generation, focused on a commitment to national unity despite regional and cultural differences. Thus, as French-Canadian neo-nationalism in the form of *Québécois* nationalism began to emerge, the normative commitment to understanding regionalism in the context of Canada's federal institutions remained present, yet these issues were increasingly approached through the lens of generally American concepts in order to understand Canada's federal political system.

Within this latter context emerged a debate regarding the nature of the Canadian senate. Inherited as it was from the British tradition, the Canadian senate remains appointed rather than elected, as in the American case. Given this obvious difference between the two countries in the increasingly democratic post-war context, the nature of the Canadian senate became a focal point for the study of Canadian federalism. It was increasingly asked if the appointed and mal-apportioned character of the Canadian senate was inadvertently leading to negative consequences in the operation of Canadian federalism, by not offering provinces a forum at the political centre in which provincial perspectives and interests could be debated (Smith 1984). Two concepts thus gained analytical currency; *interstate federalism* and *intrastate federalism*. These concepts were used in order to try to understand different federal institutional configurations and their potential socio-political consequences.

To this end, *interstate* federalism refers to the distribution of powers and resources, and subsequent relations between, the federal and sub-central orders of government (Smiley & Watts 1985, 4). By contrast, *intrastate* federalism refers to institutional arrangements whereby the interests of the federated units are channelled through and protected by the operations and institutions of the central government (*ibid*). Considered along a continuum then, Canada is often taken as a prime example of interstate federalism, whereas Germany is frequently considered the best exemplar of the opposite tendency (Broshcek 2010).

In many ways, the distinction between interstate and intrastate federalism constitutes insufficient criteria according to which to assess the political tendencies of federal countries, however. For one, all federal countries exhibit varying degrees of *inter* or *intra* state federalism. For instance, although Canada is thought to have an insufficiently representative upper house, Smiley and Watts argue that principles of intrastate federalism are important factors in determining the composition of the federal cabinet in Canada (Smiley & Watts 1985). Likewise, German *Land* do engage in formal policy interaction outside of the upper house, the *Bundesrat*, despite the latter's influence in the federal legislature (Benz 2009). Thus, without denying the analytical import of these concepts, it should be recognized that the methodological application of these concepts has historically tended to develop in Anglosphere countries in order to compare a relatively small number of similar cases implicitly based on the paradigm of American federalism (Steppan 2005, Hueglin 2014). Nevertheless, the principle normative concerns of these studies involved understanding the extent to which a federation's central peak political institutions were necessary for setting national policy standards and frameworks.

¹ Notable examples here are Richard Simeon, who studied at Yale; David E. Smith, at Duke; Donald V. Smiley, at the University of Michigan; Barry Cooper at Duke.

By the 1990's, a shift in Canadian political science and political consciousness toward a more explicitly post-national understanding of Canada's political institutions, combined with political fatigue after intense rounds of constitutional debate over the previous thirty years, increasingly led to calls to study Canadian federalism in a more thoroughly comparative manner. Yet, as comparative approaches to the study of Canadian federalism became more widespread in English speaking Canada, a certain fatalism and inevitability regarding the final institutional form and character of Canadian political institutions also took root. In other words, outside of the possible exception of French language scholarship about Canadian federalism emanating from Quebec, the operation and institutions of Canadian federalism were increasingly taken for granted in comparison to previous generations of scholars who placed much greater scholarly concern and emphasis the overall viability of Canadian political institutions, and the bases of their reproduction in favour of 'value-neutral' comparative studies of Canadian federalism.

Within this broader trajectory then, Wallner (2014, 2017) has argued that sub-central federated jurisdictions can achieve roughly similar policy outcomes while forgoing the leadership of the central federal government. Studying Canadian education policy, Wallner notes that despite being the only OECD country without a federal education minister, Canada has nevertheless managed to achieve something resembling a national education policy, where standards are more or less harmonized across provinces. Wallner attributes this outcome to policy learning and diffusion through horizontal—province to province—intergovernmental cooperation.

In an argument with similar normative implications, Bolleyer (2006, 2009; Bolleyer & Borzel 2010), comparing the Canada, the E.U, Switzerland and the United States, argues that non-hierarchical policy coordination (policy coordination that is not imposed by one level of government on another) is primarily a consequence of the legislative organization of sub-central federated units. Here, Bolleyer makes a distinction between two general types of configurations; power sharing and power concentrating legislatures. Power sharing legislatures are those where either a presidential type separation of power style executive, or a parliamentary coalition government prevails. By contrast, power concentrating legislatures tend to concentrate political power in a single political party or office. Bolleyer argues that power concentrating legislatures are less likely to engage in binding intergovernmental relations with other federated governments because the political costs of doing so are too high. By contrast, where power is shared or diffused, the barriers and costs of partaking in more formally binding intergovernmental agreements are comparatively lower. Bolleyer's argument specifically focuses on the organizational structure of sub-central legislatures, leaving aside the organization of national, federal legislatures.

Focusing on the constitutional allocation of policy jurisdictions in six federation (Australia, Austria, Canada Germany, Switzerland and the United States) in relation to the de facto share of public finances, Lori Thorlakson (2003) argues, similarly to Bolleyer and Wallner, that the greater the share of sub-central finances, the more politically salient will intergovernmental relations and policy decisions become in federations. While the constitutional allocation of power and responsibilities is considered to play a role, according to Thorlakson, they are overdetermined by overall fiscal questions. Nevertheless, Thorlakson does concede that 'the allocation of power and method of representation of constituent units at the centre are important institutional rules that structure politics in a multi-level setting' (Thorlakson 2003, 20).

Comparing the Canadian pattern of intergovernmental policy making to the treaty federalism of the EU, Hueglin (2014) similarly prioritizes the importance of sub-central units in policy making. According to Hueglin, policy making and policy implementation in both the EU and Canada ultimately relies on intergovernmental bargaining rather than a formally prescribed allocation of power. By contrast, Hueglin argues that that federations require strong normative bases in order to remain viable. Most important are commitments to overall social solidarity that combine a degree of economic redistribution between federated units with, at the same time, a respect for constitutional autonomy. As such, Hueglin's approach falls much more in line with a subsidiarist interpretation of federalism, which argues that political decisions should be made by that jurisdiction which will be most directly affected by the policy.

Hueglin contrasts his understanding of federalism to the perceived normative bases of American Federalism that apparently favour the U.S. Federal government in setting and determining national policy norms and priorities in the United States. Unsatisfied with the prevailing tendencies of the American scene, Hueglin, following Steppan (2005) argues that American federalism and its much stricter separation of jurisdictional authority offers an inadequate paradigm according to which to study federations like Canada. Indeed, Steppan, in a criticism of the operation of American federalism, ultimately favours upper chambers that allocate seats on a more individual proportional model than is the case in the United States. Examples of what Steppan has in mind are upper houses determined on a more proportional basis, like those found in Canada and Austria. Here, Steppan argues the U.S. senate is 'demos-constraining' (Steppan 2005. 260) in that it has the ability to veto popular will as small states have the same number of votes as large states. The presumable contrast is that more proportionally allocated upper chambers do a better job representing the position of the majority.

Given this general overview of the trajectory of federalism scholarship within and about Canada, two issues nevertheless arise with the above sketched normative-analytic picture, related to what Peter Hall calls the alignment of ontology and methodology (Hall 2003). By this Hall refers to studies where the normative assumptions of the method used to study a case are out of alignment with the normative research questions animating the study. As a corrective, Hall calls for more patient, in depth historical process-oriented studies of a small number of cases, so as to ensure the normative commitments animating the research questions of scholars do not contradict the ontological and normative presuppositions of the methods used to study particular cases. There is a possibility that a similar issue exists with the above studies; while all share a normative commitment to demonstrating that central government leadership is not necessary for policy making in federations, their methodological approaches nevertheless imply and generate some inconsistent predictions about federal systems.

For instance, instance, Bolleyer (2006, 2009) argues that parliamentary type legislatures, like Canada's, tend to power concentration, and thus a lowest common denominator type intergovernmental dynamic. It would seem to follow, that Australia, with its essentially identical political institutions, would have an essentially similar approach to intergovernmental relations. Nevertheless, Collins (2015) shows that Australian intergovernmental dynamics seem to favour central government dominance to a much greater degree than in Canada. Smith & Mann (2015) also seem to confirm this view, although they argue that Australia's comparatively more homogenous culture (in relation to Canada), and not institutional configurations, are the reason for this outcome. Another federation omitted by Bolleyer's analysis is Austria. Austria, like Canada and Australia, is also a parliamentary federation. Nevertheless, like Australia, though

perhaps to a greater degree, the Austrian central government predominates intergovernmental relations.

Thus, in this long trajectory overviewing the study of federalism in Canada, the hyper presence of the sub-central governments in Canadian intergovernmental dynamics has increasingly been understood as either inevitable, due to Canada's linguistic, national, and regional differences, or the product of an initial constitutional dispensation. In either case, the dynamics of the Canadian politics are overwhelmingly understood to be driven by sub-central governments and societies. By contrast, this paper maintains that intrastate legislative arrangements can better explain why a regionalist dynamic continues to be reinforced in Canadian politics.

3. Case Study: Intergovernmental Dynamics in Comparative context: Australia, Austria, Canada & Switzerland

Core concepts

While not denying the contribution of the above-mentioned studies, this paper seeks to compliment the above noted studies by focusing attention on the comparative configuration of the central legislative institutions of federal countries. I argue that doing so can offer further insights and explanations regarding the nature of patterns of intergovernmental dynamics and the following hypothesis is therefore offered: the more equally diffused the representation of federated units within the central federal legislature, the more likely will it be that intergovernmental dynamics will be more constrained, and favour the federal legislature as the more important. By contrast, the more unequal, or asymmetrical, the representation of federated units within the central federal legislature, the more likely it will be that intergovernmental dynamics will be exaggerated, with a bias toward self-regulation.

To this end, dynamics for the purposes of this paper will refer to one of two possibilities: when federated and or central governments undertake intergovernmental agreements, are the agreements legally enforceable (judiciability)? Second, is the central government able to impose national standards and policies in areas that are generally assumed to be of national importance (trade, transportation, environment, etc.)? While more detailed and specific definitions exist, such a definition has the benefit of simplicity and will suffice for the purposes of this paper which aims to demonstrate that a correlation exists between intrastate arrangements in federal legislatures and the persistent features of intergovernmental relations the federal countries being studied. Once the general pattern of intergovernmental dynamics in each country has been detailed, comparative data regarding the representation of sub-central units in the central legislature will be presented.

Finally, these countries were picked due to their potential to illuminate certain specifics regarding the operation of Canadian federalism, and thus, tend to resemble Canada in some important ways. Like Canada, Switzerland is a relatively de-centralized multi-lingual and multi-national federation. Australia, like Canada shares a political tradition and governmental form. Canada and Australia are also immense, continentally sized federations with relatively small populations. Austria, like Canada, shares a border with a culturally similar and much larger and more influential country—Germany. Like Canada and the United States, the principle economic partner of Austria is Germany and a significant amount of the country's imports and exports are both destined and derived from Germany. Also, like Canada, Austria has a politically weak

upper house that is not adequately able to channel the interests of the sub-central units within the central parliament. The upper house is also, like Canada, composed on a basis of relative state and regional proportionality.

Intergovernmental dynamics in Australia

One of the most significant recent developments in the evolution of intergovernmental relations in Australia has been the Council of Australian Governments (COAG). Presided by the federal prime minister, the COAG is the country's peak intergovernmental body on which sit all of Australia's first ministers. To many, however, the COAG, while operating in some respects as a hybrid of both the European Commission and European Council, remains dominated by the Commonwealth or central government (Nerenberg ed. 2010, 14) and the COAG sits at the pleasure of the Commonwealth government.

While intergovernmental agreements are not considered binding on governments, the country has nevertheless been able to achieve significant progress in the harmonization of national standards in important policy areas, particularly in the area of trade through agreements like the *Intergovernmental Agreement relating to Mutual Recognition*. Business groups appear to be generally satisfied with the progress that has been made in the elimination of trade barriers within the country (Smith & Mann 2015, 9), and the COAG has been working with business groups on initiatives to help eliminate outstanding barriers to internal free trade.

Nevertheless, as intergovernmental agreements are not legally binding or enforceable in Australia, the Commonwealth government is generally expected to take a leadership role in the development of national policies. As Collins notes, the COAG did not necessarily disrupt the dominant pattern of Intergovernmental relations in Australia (Collins 2015, 602) Rather, the COAG in practice reinforced the dominant position of the commonwealth government and its role in policy making.

Intergovernmental dynamics in Austria

Austria has frequently been called a 'federation without federalism' (Erk 2004). While this characterization may not be entirely fair, on the surface it is easy to understand why the country may have come to be characterized as such. Austria is a relatively small country, just a bit bigger than the size of New Brunswick, but with a population of just under 9 million predominantly German speaking people. In many ways however, Austria is a great example of how federalism fundamentally originates in political conflict, rather than as means to accommodate cultural diversity as the Canadian literature frequently emphasizes. This is because, despite its relative homogeneity, Austrian federalism developed as a means through which ensure fascism doesn't come to power in the country. Here, the social-democratic tradition proved influential, and thinkers like Otto Bauer and Karl Renner sought to develop a form of federalism that at once respected individual and group cultural rights, while nevertheless allowing for a strong central government.

Unlike in Australia and Canada however, Austrian *Lander* are constitutionally and *legally* entitled to conclude binding intergovernmental agreements with each other (Nerenberg ed 2010, 17). Moreover, these agreements are also indirectly enforceable through the central government, as non-compliance with the agreements can result in the withholding of budgetary funds from the central, federal, government (Nerenberg ed 2010, 18). As a result of this arrangement, Austrian

Lander have sought to find informal ways through which to cooperate with each other in order to avoid the threat that funds be removed from their budgets.

A further reason for the pursuit of informal relations is what is considered the generally politically weak nature of the upper house. More distinct among the four federations compared, however, is that, in Austria, members of the national parliament are elected at large in a single general election, without any concession to federal representation. This is unlike in Australia, Canada, and Switzerland, which, however proportional seats may be allocated in the national parliament, concessions to sub-central borders in the design of districts and sub-central shares of the population do exist. While such considerations, and the fact that much social and educational policy is controlled by the central, rather than *Land* governments lead scholars like Erk to conclude that Austria is very unitary in practice. Scholars like Karlhoffer and Pallaver (2013) argue that Austria does in fact practice an important range of intergovernmental relations, most important is perhaps the *Conference of State Governors*, which operates at an informal level, much like the COAG in Australia.

Intergovernmental dynamics in Switzerland

Since the E.U.'s Maastricht treaty in 1992, the Swiss Confederation has been undergoing a number of institutional changes in order to better cope with the advent of the E.U. While not itself a member of the E.U., Switzerland has nevertheless had to adopt certain E.U. standards, thus ensuring that Swiss laws are harmonized with most important E.U. laws. As a result of this development, new instruments of intergovernmental coordination have developed in Switzerland which aim to reduce redundancies and duplication of tasks between the cantonal and central government.

To this end, intergovernmental relations in Switzerland may be helpfully characterized as a system of compelled cooperation between the cantons and the central government, as cantons are often formally obligated to cooperate in a variety of policy settings. To this end, Swiss federal parliament has the right to impose an 'obligation to contract' on cantons (Nerenberg ed 2010, 50) and in disputes between the Cantons or between the Cantons and the central government, the central government has the final say (ibid).

Here, Bolleyer confirms this assessment noting that Swiss intergovernmental relations enjoy a very high degree of institutionalization and accountability, especially in comparison to federations like Canada and the United States. Others, like Broschek (2014), describe the Swiss case as one of 'shared decentralized rule'. Nevertheless, for Broschek, the objective of these reforms has been to move from a system of shared rule in Switzerland, to one which more resembles the Canadian model of sub-central autonomy. In many ways, however, the tension between shared and self-rule identified by Broschek is one that has deep roots in Switzerland (Schmid 1983) and the general character of Swiss Federalism—that of binding and accountable intergovernmental relations remains firmly in place.

Intergovernmental dynamics in Canada

Intergovernmental relations in Canada are characterized by their highly opaque and non-binding nature. The non-binding nature of Canadian intergovernmental relations has been affirmed by the country's highest court, on a number of occasions, but importantly in the case of the Canada assistance plan. Here it was maintained that supreme court should not supervise,

under the premise of federalism, the use of the federal government's spending power. What was in question in this case was the revoking of funds to joint federal-provincial social welfare programs.

Perhaps as a result of their non-binding nature then, there is no permanent database of intergovernmental agreements in Canada. The most accessible and up to date database of such agreements is notably maintained by the province of Quebec. To this end, it has often been noted that one of the major political objectives animating Quebec's approach to Canadian federalism has been the attempt to establish a more formal and transparent regime of intergovernmental relations in Canada (Nerenberg 2010, 24). One of the major political reasons for this is that, from the perspective of Quebec, the federal government has historically used its spending power in a unilateral and ad hoc manner. From this perspective, formalizing intergovernmental relations and rendering them more binding would thus potentially offer a check against such unilateralism. From the federal government's perspective, however, such an arrangement would be thoroughly inadequate precisely because it would take away much needed policy flexibility the federal government deems necessary.

Given the extensive jurisdictional autonomy enjoyed by Canadian provinces, and the fact that any interprovincial initiative falls under federal competency, intergovernmental relations between provinces do take place but have not historically been as political explosive as the relations between provinces and the federal government. This perspective is shared by Collins (2015) who, in analyzing the peak intergovernmental institutional forum for horizontal intergovernmental relations in Canada, the Council of the Federation, concludes that horizontal intergovernmental relations, in contrast to vertical intergovernmental relations, have been a relatively low-key feature of Canadian politics (Collins 2015, 601).

A further feature of Canadian intergovernmental relations is the generally meagre elaboration of intergovernmental agreements. When agreements are reached between governments on either a horizontal or vertical basis, often a short press release will be the only document attesting to the existence of any agreement between governments. In cases where more robust formalization and institutionalization does exist, like in the case of Canadian Free Trade Agreement (Formally the Agreement on Internal Trade) oversight bodies have little regulatory control and compliance or enforcement of the agreement in practice tends to occur on a voluntary basis leading to some (Smith & Mann 2015, Doern 1998) to conclude that progress takes place very slowly in the areas outlined by intergovernmental agreements.

Benchmarking intrastate arrangements in federal legislatures.

Having outlined the basic features of each country's intergovernmental dynamics, the comparative data remains to be studied. Beginning from the definition of accountability outlined above, it is possible to make the following basic tabulation:

Figure 1: Intergovernmental dynamics in four federations

| <i>Country</i> | <i>IGA's Judiciable?</i> | <i>Central government able to enforce IGR imperatives</i> |
|------------------|--------------------------|---|
| <i>Australia</i> | No | Yes |
| <i>Austria</i> | Yes | Yes |

| | | |
|--------------------|-----|-----|
| <i>Switzerland</i> | Yes | Yes |
| <i>Canada</i> | No | No |

What can explain the variances outlined in the above table? This paper argues that these variances can be accounted for via each federal legislature's intrastate arrangements.

Of particular note in the above table is the almost totally non-formally enforceable nature of intergovernmental relations in Canada—intergovernmental agreements are not legally enforceable or binding, and the federal government risks extensive political capital in pursuit of imposing national policies through intergovernmental concertation. By contrast, in the Swiss and Austrian cases, intergovernmental agreements are legally binding and enforceable. Likewise, the federal government of each country is permitted to enforce national objectives and is often encouraged to do so. Australia falls somewhere in between.

When comparing the representation of sub-central units within federal legislatures²—the number of seats in the legislature constitutionally allocated to a specific sub-central unit in both the lower and upper house of the legislature combined—it is determined that Canada exhibits the greatest discrepancies between sub-central units, whereas sub-central representation in Austria and Switzerland is much more diffuse and equally distributed. Again, Australia falls in between Canada on the one hand, and Austria and Switzerland on the other.

Figure 2: Horizontal asymmetrical/reciprocal representation of sub-central units within federal legislatures in four federations³

| <i>Country</i> | <i>Top Sub unit % of Seats⁴</i> | <i>Top 2 % of Seats</i> | <i>Smallest Subunit % of Seats</i> | <i>Smallest 2 % of seats</i> | <i>median unit % of seats</i> | <i>average unit % of seats</i> | <i>Number of Subunits</i> |
|----------------------------|--|-------------------------|------------------------------------|------------------------------|-------------------------------|--------------------------------|---------------------------|
| <i>Australia</i> | 26.54 | 48.22 | 1.77 | 3.54 | 11.28 | 12.50 | 8 |
| <i>Austria⁵</i> | 19.67 | 37.77 | 4.92 | 9.84 | 8.2 | 11.1 | 9 |
| <i>Switzerland</i> | 15.04 | 26.02 | 0.81 | 2.03 | 3.05 | 3.85 | 26 |
| <i>Canada</i> | 32.73 | 55.75 | 0.45 | 0.90 | 4.51 | 7.69 | 13 |

Canada is again notable here for the fact that the country's two largest subunits, Ontario and Quebec, together control over half of the representation in the national legislature—an

² These numbers also include Australian and Canadian territories, in addition to the Swiss 'half' Cantons.

³ See appendix for further details.

⁴ Numbers are based each country's most recently available official statistics.

⁵ Since Austria's lower house is elected on an entirely non-federal basis, these numbers apply to the upper house alone.

unfathomably high number that is unmatched by any industrialized federal democracy that counts more than more than three federated subunits.⁶

From the perspective of the relative differences between the units (see figure 3 and 4 below) within the national legislature, Canada again exhibits the largest discrepancies, followed by Switzerland, Australia, then Austria. Nevertheless, Switzerland and Australia remain similar, and Austria has the most even distribution among federated jurisdictions in the central legislature. Confirming the initial hypothesis thus far, Canada appears to exhibit the largest discrepancies between subunits, correlating with the strong emphasis on self-regulation in intergovernmental relations. To this end, the puzzle of general enforceability in intergovernmental relations thus seems to revolve around Austria and Switzerland. This is because despite being relatively more unevenly distributed than Austria, Switzerland and Austria both feature legally enforceable intergovernmental agreements, and a central government with the capacity to enforce and impose national standards.

Figure 3: Relative difference between biggest and smallest units

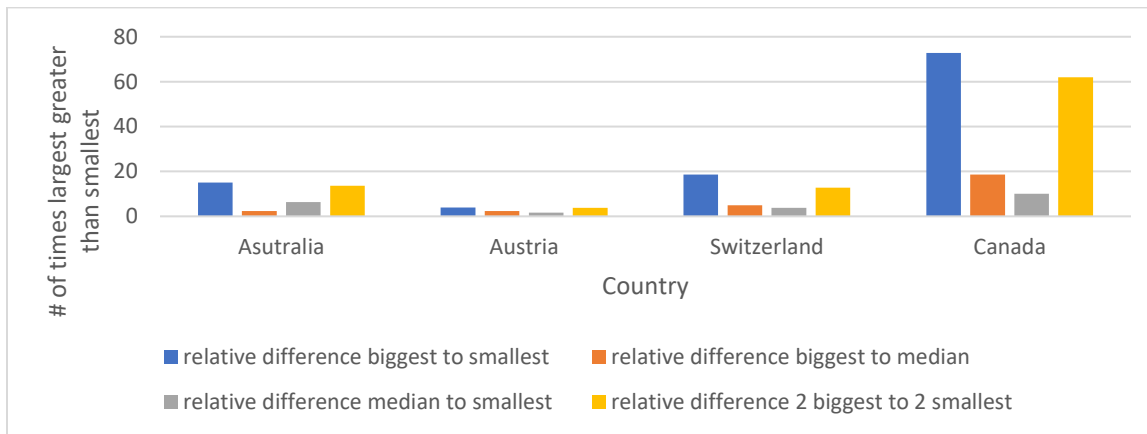
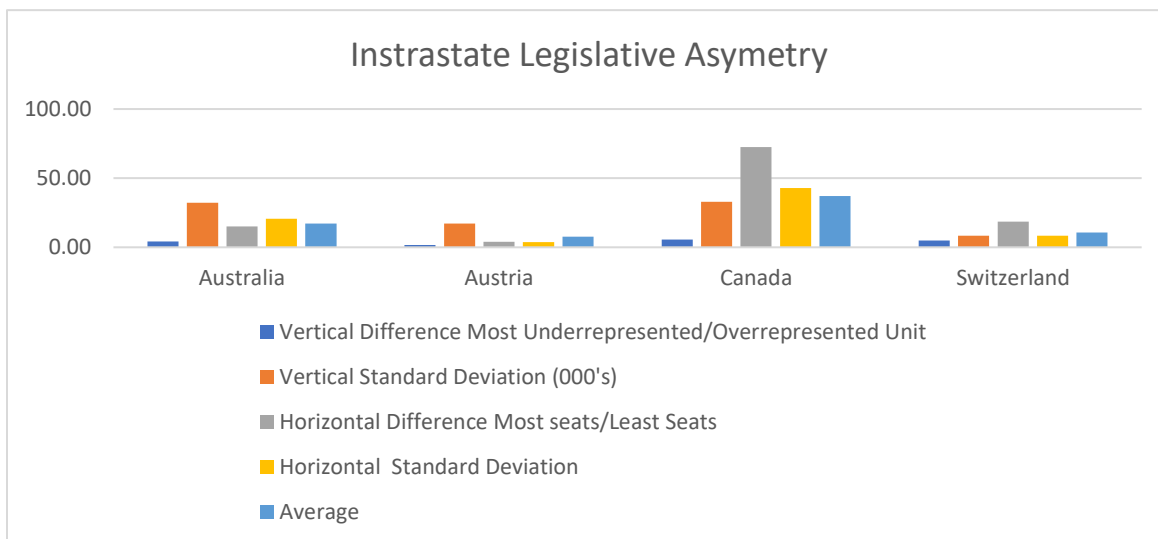


figure 4: Overall asymmetry in federal legislatures



⁶ In Belgium the Flemish community alone comprises over half the country's population, but Belgium only has three subunits (albeit three versions of these subunits; communities, regions, and language areas).

On this last score (see figure 5), a potential explanation inheres in the fact that Austria and Switzerland operate different rules when representing sub-central units in the central legislature. Austria, a relatively homogenous and monolingual country, does not employ a federal principle in the lower house, and its upper house is composed according to the proportion of the population held by the sub-central unit. Like Canada, though not to the same degree, the largest units are slightly underrepresented. Switzerland, a relatively diverse and multi-lingual country, by contrast, practises the more conventional federal form of legislative representation whereby seats are accorded in the lower house according to the proportion of a Canton's population. The upper house accords equal representation, except for the three half Cantons which have half the normally accorded seats.

Australia, by contrast, generally employs the same intrastate legislative principles as Switzerland, yet the federation's intergovernmental agreements are not legally enforceable like Switzerland's. There are two possible explanations for this outcome. One is that Australian federalism remains relatively top heavy compared to Switzerland (see figure 2). The two largest sub-units account for just under half of all the representation in the Commonwealth parliament, whereas in Switzerland the two largest Canton's account for slightly more than a quarter of seats in the central legislature. Presumably such a situation suggests that excessive unilateral action is not viable within the larger context of the federation, the same way it has the potential to be in Canada or Australia.

Figure 5: Federal principles across upper and lower houses in four federations

| <i>Country</i> | <i>Federal principle in lower house?</i> | <i>Upper House primarily Proportional or Equal?</i> |
|--------------------|--|---|
| <i>Australia</i> | Yes | Equal |
| <i>Austria</i> | No | Proportional |
| <i>Switzerland</i> | Yes | Equal |
| <i>Canada</i> | Yes | Proportional |

Finally, Canada is in many ways the outlier in this study. It exhibits the greatest discrepancies between federated units, and its intergovernmental relations generally remain formally unaccountable. Elaborating the reasons for this are beyond the scope of the present study, but a preliminary historical explanation is possible. During this initial period of Canadian federalism beginning in 1867, Ontario and Quebec represented an even greater share of the seats in the federal parliament, initially upwards of 80% of the seats. It was at this time regionalism and the provincial rights movement first emerged in Canada. Yet, contrary to the popular perception prevalent today, it was not Quebec that initiated this movement, but Nova Scotia under the political leadership of Joseph Howe and his Anti-Confederation party.

Nevertheless, it remains the case that the Canadian federal legislature reinforces a kind of *asymmetrical-majoritarianism* as some regions become almost entirely shut out of government, while the representation of other regions becomes exaggerated (see table one, appendix for an example of one sub-central unit in the Canadian context). While it remains beyond the scope of this paper to elaborate on the nature of legislative-executive relations in federal legislatures, the general tendency is also to see greater likelihood of majoritarian (or power concentrating in Bolleyer's terminology) executives in asymmetrically organized federal legislatures than in reciprocally organized ones.

4. Discussion and Conclusion

It should be noted that the present study entirely omits the role of political parties in the intergovernmental process. The reason for this is that, since the post-war period, the general features of intergovernmental dynamics and their overall patterns have appeared to be stable and regular, despite periodic shifts in party systems. Nevertheless, the objective of this paper has been to show that there is a demonstrable relationship between the representation of federated jurisdictions within the central legislatures—intrastate legislative arrangements—of federal countries and the general, almost permanent and longstanding features of intergovernmental relations in the federal countries studied.

Indeed, recognizing there are no monocausal explanations of social and political phenomena, the argument of this paper has been that the overall intergovernmental patterns of federal countries can be explained by the intrastate arrangements in federal legislatures. Where representation between federated jurisdictions is relatively diffuse, as is the case in Austria and Switzerland primarily, and to a lesser extent in Australia, then intergovernmental dynamics are much likely to favour formal accountability and judiciability. Slightly more asymmetric legislative arrangements will favour central government dominance in order to compel compliance. By contrast, in the most asymmetric cases, as in Canada, intergovernmental relations will favour a dynamic of self-regulation in a manner that reinforces the differences between sub-central units.

What kind of implications can be drawn from such analysis? To begin, it does seem that a relationship between the configuration of representation and overall intergovernmental accountability does exist. In this sense, Bolleyer's argument regarding power-sharing vs. power concentrating is of interest here. While applied in the context of sub-central governments, its general premise that more diffuse legislatures are more likely to engage in binding and accountable intergovernmental relations also seems to hold in the context of federal legislatures. In federations where the distribution of representation between sub-central units is more equitably balanced, there are generally greater formal instruments available to ensure the accountability of intergovernmental relations and agreements. Indeed, in so far as in federal states no one government holds a monopoly on the authoritative allocation of resources, understanding what structures the intergovernmental sphere is of paramount importance for political scientists who study federalism.

From the perspective of comparative theory building for Canadian relevance, in so far as the literature on Canadian federalism has tended to fatalistically assume that Canada's federal condition is an inevitable one, the comparison between the three other federations studied

illuminates important features of the Canadian case. Beginning with the Austrian case, it is often assumed that Canada's intergovernmental state is the consequence of an insufficiently representative and weak upper house. To this end, Austria also evolves in the context of what is generally considered a weak and illegitimate upper house (Karlhoffer & Pallaver, 2013) but the federation nevertheless manages to ensure that intergovernmental tools that go beyond self-regulation remain available.

Alternatively, the Australian case also offers another potential avenue for the evolution of Canadian federal reform, albeit from a different institutional starting point. If ever the day comes where Ontario and Quebec represent less than 50% of the seats in the federal parliament, can we still expect Canadian federalism to operate as it historically has? Should we expect it to operate in a manner that resembles more so the practice of Australian federalism? Many may be skeptical due to the Quebec question in Canada, and yet Switzerland is an example of a multi-lingual and multi-national federation that is also relatively de-centralized yet capable of ensuring formal accountability of intergovernmental relations and agreements. Answering any of these questions adequately will require further study. But by setting Canada in less conventional comparative settings, it may be possible to generate new insights into old questions of Canadian politics, while also suggesting and raising new ones.

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Appendix

Table one: asymmetrical-majoritarianism in Canada's federal legislature 1945-2015 (Ontario only)

| Federal Election Year | Seats in Parliament | Seats in Ontario | Governing Party Seats | Ontario Seats in Governing Party | Governing Party % of seats | Ontario % of Seats | Ontario % of Seats in Governing Party | Difference in % Ontario Seats in Governing party vs parliament | Minority of Majority Government |
|-----------------------|---------------------|------------------|-----------------------|----------------------------------|----------------------------|--------------------|---------------------------------------|--|---------------------------------|
| <u>2015</u> | 338 | 121 | 184 | 80 | 54.43786982 | 35.79881657 | 43.47826087 | 7.679444302 | Liberal Majority |
| <u>2011</u> | 308 | 106 | 166 | 73 | 53.8961039 | 34.41558442 | 43.97590361 | 9.560319199 | Conservative Majority |
| <u>2008</u> | 308 | 106 | 143 | 51 | 46.42857143 | 34.41558442 | 35.66433566 | 1.248751249 | Conservative Minority |
| <u>2006</u> | 308 | 106 | 124 | 44 | 40.25974026 | 34.41558442 | 35.48387097 | 1.068286552 | Conservative Minority |
| <u>2004</u> | 308 | 106 | 135 | 75 | 43.83116883 | 34.41558442 | 55.55555556 | 21.13997114 | Liberal minority |
| <u>2000</u> | 301 | 103 | 172 | 100 | 57.14285714 | 34.2192691 | 58.13953488 | 23.92026578 | Liberal majority |
| <u>1997</u> | 301 | 103 | 155 | 101 | 51.49501661 | 34.2192691 | 65.16129032 | 30.94202122 | Liberal majority |
| <u>1993</u> | 295 | 99 | 177 | 98 | 60 | 33.55932203 | 55.36723164 | 21.8079096 | Liberal Majority |
| <u>1988</u> | 295 | 99 | 169 | 46 | 57.28813559 | 33.55932203 | 27.21893491 | -6.340387123 | Conservative Majority |
| <u>1984</u> | 282 | 95 | 211 | 67 | 74.82269504 | 33.68794326 | 31.7535545 | -1.93438876 | Conservative Majority |
| <u>1980</u> | 282 | 95 | 147 | 52 | 52.12765957 | 33.68794326 | 35.37414966 | 1.686206397 | Liberal Majority |
| <u>1979</u> | 282 | 95 | 136 | 57 | 48.22695035 | 33.68794326 | 41.91176471 | 8.223821443 | Conservative Minority |
| <u>1974</u> | 264 | 88 | 141 | 55 | 53.40909091 | 33.33333333 | 39.0070922 | 5.673758865 | Liberal Majority |
| <u>1972</u> | 264 | 88 | 109 | 40 | 41.28787879 | 33.33333333 | 36.69724771 | 3.363914373 | Liberal Minority |
| <u>1968</u> | 264 | 88 | 154 | 63 | 58.33333333 | 33.33333333 | 40.90909091 | 7.575757576 | Liberal Majority |
| <u>1965</u> | 265 | 85 | 131 | 51 | 49.43396226 | 32.0754717 | 38.93129771 | 6.855826012 | Liberal Minority |
| <u>1963</u> | 265 | 85 | 128 | 51 | 48.30188679 | 32.0754717 | 39.84375 | 7.768278302 | Liberal Minority |
| <u>1962</u> | 265 | 85 | 116 | 35 | 43.77358491 | 32.0754717 | 30.17241379 | -1.903057905 | Conservative Minority |
| <u>1958</u> | 265 | 84 | 208 | 67 | 78.49056604 | 31.69811321 | 32.21153846 | 0.513425254 | Conservative Majority |
| <u>1957</u> | 265 | 85 | 112 | 61 | 42.26415094 | 32.0754717 | 54.46428571 | 22.38881402 | Conservative Minority |
| <u>1953</u> | 265 | 85 | 169 | 50 | 63.77358491 | 32.0754717 | 29.58579882 | -2.489672882 | Liberal Majority |
| <u>1949</u> | 262 | 81 | 191 | 55 | 72.90076336 | 30.91603053 | 28.79581152 | -2.120219016 | Liberal Majority |
| <u>1945</u> | 245 | 71 | 118 | 34 | 48.16326531 | 28.97959184 | 28.81355932 | -0.166032515 | Liberal Minority |

Country tables:

Australia

| <u>Country</u> | <u>Population</u> | <u>Size of Lower House</u> | <u>Size of Upper House</u> | <u>Combined</u> | <u>Population/Seat</u> |
|-------------------------------------|--------------------------|-----------------------------------|-----------------------------------|------------------------|-------------------------------|
| <i>Australia</i> | 25,117,300.00 | 150.00 | 76.00 | 226.00 | 111,138.50 |
| <u>Subcentral Unit</u> | <u>Population</u> | <u>Seats Lower House</u> | <u>Seats Upper House</u> | <u>Combined</u> | <u>Population/Seat</u> |
| <i>Tasmania</i> | 518,500.00 | 5.00 | 12.00 | 17.00 | 30,500.00 |
| <i>Northern Territory</i> | 244,000.00 | 2.00 | 2.00 | 4.00 | 61,000.00 |
| <i>South Australia</i> | 1,706,500.00 | 11.00 | 12.00 | 23.00 | 74,195.65 |
| <i>Western Australia</i> | 2,613,700.00 | 16.00 | 12.00 | 28.00 | 93,346.43 |
| <i>Australian Capital Territory</i> | 397,397.00 | 2.00 | 2.00 | 4.00 | 99,349.25 |
| <i>Queensland</i> | 4,827,000.00 | 30.00 | 12.00 | 42.00 | 114,928.57 |
| <i>Victoria</i> | 6,039,100.00 | 37.00 | 12.00 | 49.00 | 123,246.94 |
| <i>New South Wales</i> | 7,704,300.00 | 48.00 | 12.00 | 60.00 | 128,405.00 |

Austria

| <u>Country</u> | <u>Population</u> | <u>Size of Lower House</u> | <u>Size of Upper House</u> | <u>Combined</u> | <u>Population/Seat (upper House)</u> |
|---------------------------------------|--------------------------|-----------------------------------|-----------------------------------|------------------------|---|
| <i>Austria</i> | 8,579,747.00 | 183.00 | 61.00 | 244.00 | 140,651.59 |
| <u>Subcentral Unit</u> | <u>Population</u> | <u>Seats Lower House</u> | <u>Seats Upper House</u> | <u>Combined</u> | <u>Population/Seat</u> |
| <i>Vienna (wien)</i> | 1,794,770.00 | Elected by popular vote | 11.00 | 11.00 | 163,160.91 |
| <i>Niederösterreich</i> | 1,636,287.00 | Elected by popular vote | 12.00 | 12.00 | 136,357.25 |
| <i>Upper Austria (Oberösterreich)</i> | 1,436,791.00 | Elected by popular vote | 10.00 | 10.00 | 143,679.10 |
| <i>Styria (Steiermark)</i> | 1,221,014.00 | Elected by popular vote | 9.00 | 9.00 | 135,668.22 |
| <i>Tyrol (Tirol)</i> | 728,537.00 | Elected by popular vote | 5.00 | 5.00 | 145,707.40 |
| <i>Carinthia (Kärnten)</i> | 557,371.00 | Elected by popular vote | 4.00 | 4.00 | 139,342.75 |
| <i>Salzburg</i> | 538,358.00 | Elected by popular vote | 4.00 | 4.00 | 134,589.50 |
| <i>Vorarlberg</i> | 378,490.00 | Elected by popular vote | 3.00 | 3.00 | 126,163.33 |
| <i>Burgenland</i> | 288,229.00 | Elected by popular vote | 3.00 | 3.00 | 96,076.33 |

Switzerland

| <u>Country</u> | <u>Population</u> | <u>Size of Lower House</u> | <u>Size of Upper House</u> | <u>Combine d</u> | <u>Population/Seat</u> |
|-------------------------------|--------------------------|-----------------------------------|-----------------------------------|-------------------------|-------------------------------|
| <i>Switzerland</i> | 8,001,054.00 | 200.00 | 46.00 | 246.00 | 32,524.61 |
| <u>Subcentral Unit</u> | <u>Population</u> | <u>Seats Lower House</u> | <u>Seats Upper House</u> | <u>Combine d</u> | <u>Population/Seat</u> |
| <i>Appenzell Inner Rhoden</i> | 15,789.00 | 1.00 | 1.00 | 2.00 | 7,894.50 |
| <i>Uri</i> | 35,382.00 | 1.00 | 2.00 | 3.00 | 11,794.00 |
| <i>Glaris</i> | 39,217.00 | 1.00 | 2.00 | 3.00 | 13,072.33 |
| <i>Jura</i> | 70,542.00 | 2.00 | 2.00 | 4.00 | 17,635.50 |
| <i>Obwalden</i> | 35,878.00 | 1.00 | 1.00 | 2.00 | 17,939.00 |
| <i>Schaffhausen</i> | 77,139.00 | 2.00 | 2.00 | 4.00 | 19,284.75 |
| <i>Nidwalden</i> | 41,311.00 | 1.00 | 1.00 | 2.00 | 20,655.50 |
| <i>Zug</i> | 113,597.00 | 3.00 | 2.00 | 5.00 | 22,719.40 |
| <i>Schwyz</i> | 147,904.00 | 4.00 | 2.00 | 6.00 | 24,650.67 |
| <i>Appenzell Outer Rhoden</i> | 53,313.00 | 1.00 | 1.00 | 2.00 | 26,656.50 |
| <i>Grisons</i> | 193,388.00 | 5.00 | 2.00 | 7.00 | 27,626.86 |
| <i>Neuchatel</i> | 173,183.00 | 4.00 | 2.00 | 6.00 | 28,863.83 |
| <i>Fribourg</i> | 284,668.00 | 7.00 | 2.00 | 9.00 | 31,629.78 |
| <i>Valais</i> | 317,022.00 | 8.00 | 2.00 | 10.00 | 31,702.20 |
| <i>Thurgau</i> | 254,528.00 | 6.00 | 2.00 | 8.00 | 31,816.00 |
| <i>Lucerne</i> | 381,966.00 | 10.00 | 2.00 | 12.00 | 31,830.50 |
| <i>Basle-City</i> | 194,090.00 | 5.00 | 1.00 | 6.00 | 32,348.33 |
| <i>Solothurn</i> | 259,836.00 | 6.00 | 2.00 | 8.00 | 32,479.50 |
| <i>Ticino</i> | 336,943.00 | 8.00 | 2.00 | 10.00 | 33,694.30 |
| <i>St. Gall</i> | 483,101.00 | 12.00 | 2.00 | 14.00 | 34,507.21 |
| <i>Aargau</i> | 624,681.00 | 16.00 | 2.00 | 18.00 | 34,704.50 |
| <i>Basle-Country</i> | 277,973.00 | 7.00 | 1.00 | 8.00 | 34,746.63 |
| <i>Vaud</i> | 725,944.00 | 18.00 | 2.00 | 20.00 | 36,297.20 |
| <i>Geneva</i> | 472,530.00 | 11.00 | 2.00 | 13.00 | 36,348.46 |
| <i>Berne</i> | 985,046.00 | 25.00 | 2.00 | 27.00 | 36,483.19 |
| <i>Zurich</i> | 1,406,083.00 | 35.00 | 2.00 | 37.00 | 38,002.24 |

Canada

| <u>Country</u> | <u>Population</u> | <u>Size of Lower House</u> | <u>Size of Upper House</u> | <u>Combined</u> | <u>Combined seats/population</u> |
|-------------------------------|--------------------------|-----------------------------------|-----------------------------------|------------------------|---|
| <i>Canada</i> | 37,067,011.00 | 338.00 | 105.00 | 443.00 | 83,672.71 |
| <u>Subcentral Unit</u> | <u>Population</u> | <u>Seats Lower House</u> | <u>Seats Upper House</u> | <u>Combined</u> | <u>Population/Seat</u> |
| <i>Nunavut</i> | 38,396.00 | 1.00 | 1.00 | 2.00 | 19,198.00 |
| <i>Yukon</i> | 40,476.00 | 1.00 | 1.00 | 2.00 | 20,238.00 |
| <i>North West Territories</i> | 44,541.00 | 1.00 | 1.00 | 2.00 | 22,270.50 |
| <i>Prince Edward Island</i> | 153,244.00 | 4.00 | 4.00 | 8.00 | 19,155.50 |
| <i>Newfoundland</i> | 525,355.00 | 7.00 | 6.00 | 13.00 | 40,411.92 |
| <i>New Brunswick</i> | 770,633.00 | 10.00 | 10.00 | 20.00 | 38,531.65 |
| <i>Nova Scotia</i> | 959,942.00 | 11.00 | 10.00 | 21.00 | 45,711.52 |
| <i>Saskatchewan</i> | 1,162,062.00 | 14.00 | 6.00 | 20.00 | 58,103.10 |
| <i>Manitoba</i> | 1,352,154.00 | 14.00 | 6.00 | 20.00 | 67,607.70 |
| <i>Alberta</i> | 4,307,110.00 | 34.00 | 6.00 | 40.00 | 107,677.75 |
| <i>British Columbia</i> | 4,991,687.00 | 42.00 | 6.00 | 48.00 | 103,993.48 |
| <i>Quebec</i> | 8,390,499.00 | 78.00 | 24.00 | 102.00 | 82,259.79 |
| <i>Ontario</i> | 14,322,757.00 | 121.00 | 24.00 | 145.00 | 98,777.63 |