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**The Prime Minister's To-Do List  
for Canadian Federalism:**

## **How Is He Doing a Year Later?**

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**During the 2015 federal election campaign, l'Idée fédérale published a newsletter discussing the tasks awaiting the next Prime Minister on federalism. The present newsletter examines the state of these tasks, a little over year after the election that saw Justin Trudeau become Prime Minister.**

In the Fall of 2015, we called for a re-invigoration of intergovernmental relations. Having campaigned on a promise to renew intergovernmental relations, the new Prime Minister wasted little time and hit the ground running. The first face-to-face meeting among Canadian First Ministers in more than six years was held on November 23 2015, barely two weeks after the new government was sworn in. While the main agenda item centered on Canada's plan to address climate change, the meeting was also used to give the federal, provincial, and territorial leaders the opportunity to discuss the pressing issue of the resettlement of 25,000 Syrian refugees. This was followed up four months later with an official First Ministers' Conference on clean growth and climate change on March 3 2016. Another First Ministers meeting was held on December 9<sup>th</sup> 2016, which continued the discussions on climate change and also addressed Canada-U.S. relations with the outgoing U.S. Vice President Joe Biden. Direct contact among all the First Ministers has thus clearly been re-engaged by the federal Liberal government. While a positive step, further work nevertheless needs to be done to rejuvenate Canada's intergovernmental machinery. One of the most pressing issues

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continues to be the democratic deficit that clouds the system. It is an understatement to say that it is a challenge to get clear information on the number of meetings held among federal and provincial-territorial officials and the substance of the discussions that take place. Aside from brief communiqués that are not always released, documents are only made available at the discretion of the conference chairs. To address the deficit, federal, provincial and territorial governments could all introduce concrete measures to increase the openness and transparency of their meetings. Such action would not only enhance citizen engagement and awareness of the work being done by their respective governments but also strengthen the intergovernmental system, furthering a real commitment to collaboration and cooperation.

We also argued that the new Prime Minister should make sure the federal government respects provincial jurisdiction. As we have just mentioned, under Prime Minister Trudeau, federal-provincial relations have resumed after a halt of several years under Harper governments. The halt slowed the development of federal-provincial strategies to meet important policy objectives. Prime Minister Harper was not keen on federal-provincial relations partly because he believed that the provincial governments should be able to make policies in their areas of jurisdictions free of federal interference, an attitude that reduced tensions with the provinces—particularly with Quebec—which were high in the 1990s when the Liberals made some unilateral decisions in areas of provincial jurisdiction. Has the intergovernmental approach of the current government helped in developing federal-provincial policy strategies without renewing tensions with the provinces? Yes and no. On the one hand, recent interactions on climate change are proofs that the federal government can be proactive on issues that encroach on provincial jurisdictions while keeping tensions at manageable levels. On the other hand, intergovernmental relations on health recall the 1990s. The difference between the two sectors is due almost entirely to the attitude of the federal government. The federal government is committed to pricing carbon emissions, but it largely leaves it to the provinces to decide which approach is best. The federal government has made it clear; it will tax carbon only in provinces that refuse to act (and give them back the revenues). In other words, the federal government stands firm on the necessity to do something to curb carbon emissions, but it has refrained from a paternalistic attitude toward provinces on how to go about it. The same cannot be said about health. While the federal government has legitimate concerns about large increases in health spending year after year, it does not belong to the federal government to tell the provinces how they should manage health care resources. Provinces have considerable expertise on health care provision, while the federal government has next to none. Tying federal health spending to types of care can be rightfully interpreted by provinces as a paternalistic attitude on the part of the federal government.

Since the election, the Trudeau government has not yet found a way to re-assess the policy purpose of the largest federal transfers to the provinces – the Canada Health Transfer (CHT), the Canada Social Transfer (CST) and equalization, as we recommended in our 2015 newsletter. Both the Prime Minister and his health minister, Jane Philpott, have notified the provinces that the federal government is going to stick with the CHT pure per capita formula – and the 3% escalator phased in as of 2017 – as modified by the Stephen Harper Conservatives. The opposition of most provincial governments to Prime Minister Harper's changes offered the Trudeau government the opportunity to tweak the formula so that it could, for example, at least take into consideration differing age structures and the inherently higher cost of delivering Medicare services in some provinces as a result of having relatively older populations. However, the federal government has opened the door to the possibility of bilateral health agreements with individual provincial governments, which could facilitate innovative reforms similar to the Primary Health Care Transition Fund transfer agreements of 2000-06, a laudable objective as long as the federal government does not use such an instrument to dictate the design of such reforms or its administrative detail – these should be left to the discretion of provincial and territorial governments. At the same time, Equalization and the CST both would benefit from an evaluation to determine whether they are designed in the best way possible to achieve their stated policy purposes. In particular, the Trudeau government should ask itself whether Equalization could better reflect the revenue-generating capacity of provincial governments to better allow them to provide public services of comparable quality.

In our 2015 newsletter, we also suggested that the new Prime Minister act to smooth inter-provincial tensions over energy questions by acting as a facilitator and with impartiality. These tensions still exist but, to be fair to the current government, decisions over pipelines were bound to make some provinces unhappy. Whether we agree or not with the decision, the federal government is at least exercising its leadership in this complex policy area. Approving *Trans Mountain* and *Line 3*, with a series of conditions, and rejecting *Northern Gateway* was a shrewd political compromise in a policy area where provinces have competing interests that are not easily reconcilable.

Expectations were also sky high on the Trudeau government regarding relations with Indigenous peoples. The Liberals promised to reset the relationship on a nation-to-nation basis, establish a national inquiry into missing and murdered Indigenous women, reinvest in education and implement both the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and all 94 calls to action of the Truth and Reconciliation Commission. With such an ambitious agenda, the government was bound to disappoint. A year on, critics are not surprisingly denouncing the lack of concrete change. In some cases, the critiques are warranted. While a significant reinvestment in Indigenous education, housing and infrastructure



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was announced in the government's first budget (\$8.4 billion in total over five years), most of it is back-ended until after the next election. UNDRIP implementation is another area where the government raised expectations, only to deflate them. Canada formally committed to fully implement the UN Declaration in May of 2016, but a few weeks later, the Minister of Justice appeared to backtrack. The recent decision to authorize Kinder Morgan's *Trans Mountain* Pipeline expansion despite strong opposition from Indigenous communities feeds into a growing cynicism concerning the government's true commitment to Indigenous rights. That being said, the transformative agenda set forth by the Liberals is extremely ambitious and it would be unfair to conclude they have already failed. The Trudeau government has set in motion some significant elements of its program. Initiatives like the National Inquiry into Missing and Murdered Indigenous Women are ongoing. Other potentially significant processes are shaping up under the radar. For example, we learned that the government is engaged in discussions with Indigenous organizations on new approaches to treaty negotiation and treaty revitalization, as well as on the very thorny issue of Indian Act reform. The previous government was criticized for its tendency to act unilaterally in its relations with Indigenous peoples. At least, the Liberals are trying a different, more collaborative approach. The tone has changed and the approach is different. Let's wait a little longer to pass judgment on the results.

Finally, in our previous newsletter on the six tasks of the new Prime Minister on federalism, we argued that the federal government needed to cooperate closely with the provinces and territories to insure a successful implementation of the Comprehensive Economic and Trade Agreement (CETA). This recommendation still stands. Now that CETA has been signed by Canada and the European Union, it must be ratified by the European Parliament at the beginning of February if the agreement is to come into force provisionally sometime around the middle of 2017. Given that CETA contains many provisions that aim to reduce "beyond-the-border" barriers to trade and investment, which are the result of different rules, standards, and procedures being applied on both side of the Atlantic, a lot of work remains to be done to fully implement the agreement. The federal government must therefore work closely with Canadian provinces and territories as well as with our European counterparts to use CETA's provisions on such elements as regulatory cooperation and labour mobility to reduce these particular economic barriers, which have become more important than tariffs and quotas (the so-called at-the-border barriers). Otherwise, a large part of CETA will remain *lettre morte*, which will mean that the agreement may not deliver its expected benefits.