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A Seat at the Table: Municipalities and Intergovernmental Relations in Canada

Tomas Hachard

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About IMFG

The Institute on Municipal Finance and Governance (IMFG) is an academic research hub and non-partisan think tank based in the Munk School of Global Affairs & Public Policy at the University of Toronto.

IMFG focuses on the fiscal health and governance challenges facing large cities and city-regions. Its objective is to spark and inform public debate, and to engage the academic and policy communities around important issues of municipal finance and governance. The Institute conducts original research on issues facing cities in Canada and around the world; promotes high-level discussion among Canada's government, academic, corporate, and community leaders through conferences and roundtables; and supports graduate and post-graduate students to build Canada's cadre of municipal finance and governance experts. It is the only institute in Canada that focuses solely on municipal finance issues in large cities and city-regions.

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About the Urban Project

The Urban Project is an initiative led by the Federation of Canadian Municipalities (FCM) that brings city leaders together with other levels of government, academia, civil society, and the private sector to identify actionable and scalable solutions to the biggest challenges facing Canada's cities. With generous support from Maytree, Metcalf Foundation, McConnell Foundation, and TD Bank Group, IMFG has commissioned a series of papers focused on municipal legislative and fiscal autonomy, governance, and intergovernmental relations, drawing on discussions convened by the Urban Project.

Author

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A Seat at the Table: Municipalities and Intergovernmental Relations in Canada

Tomas Hachard

Abstract

Municipalities are involved in an increasing number of policy areas, but they remain largely absent from Canada's system of intergovernmental relations. Municipal representatives do not attend First Ministers' meetings. They are largely excluded from intergovernmental councils or committees focused on specific policy areas. And they do not participate in the negotiation of most intergovernmental agreements.

This paper explores how Canada's intergovernmental infrastructure could be reformed to include municipalities. It does so through an analysis of how other countries have made space for municipalities in their intergovernmental processes. The paper looks at models for integrating municipalities, including committees in the executive branch, intergovernmental councils, constitutional provisions, and more.

After drawing five lessons from international experience, the paper lays out goals for intergovernmental relations reform in Canada: municipal inclusion in federal and provincial-territorial policymaking; collaboration on shared priorities; and improved urban, rural, and regional policy. It concludes with four approaches to achieving these goals:

1. **Ensure municipalities have the capacity, voice, and structures to participate effectively in intergovernmental relations.** This can be achieved through investment in staff at the municipal level; investment in municipal associations; increased regional coordination and, ideally, new regional governance structures; and further horizontal coordination across the province among municipalities and municipal associations.
2. **Increase municipal involvement in provincial policymaking.** Potential models include a formal, institutionalized council for provincial-municipal relations, perhaps modelled on South Africa's extended cabinet; a set of intergovernmental councils focused on priority policy issues, supported by dedicated secretariats, and co-governed by the province and municipalities; or enforceable provincial requirements to consult municipalities on matters that affect them.

3. **Eliminate unfunded mandates** through, for example, provincial legislation or provincial-municipal intergovernmental agreements that require consultation on the fiscal impacts of draft legislation or regulation and that allow any disagreements to be taken to court.
4. **Strengthen trilateral relations.** Potential models include new location-specific or policy-specific agreements modelled on previous Urban Development Agreements; sector-specific trilateral intergovernmental councils that avoid top-down governance, meet regularly, and are supported by secretariats; or a general trilateral council, through reform of the structure of First Ministers' Meetings.

Keywords: intergovernmental relations, municipalities, federalism, Canada

JEL codes: H10, H77

A Seat at the Table: Municipalities and Intergovernmental Relations in Canada

I. Introduction

Canada is a highly decentralized federation with a constitution that sets out a strict division of powers between the provinces and the federal government. Over time, however, jurisdictional boundaries have blurred. Today, many of the most prominent areas of public policy – climate change, health care, economic development, immigration, Indigenous reconciliation, and more – require work across, and cooperation among, multiple orders of government.¹

Although this trend is well established in federal-provincial relations, its effect on municipalities is often overlooked. Canadian municipalities are involved in a greater number of policy areas than ever in the past. In some cases, provinces have explicitly downloaded new responsibilities to municipalities. In other cases, cuts by federal or provincial governments have left municipalities to fill in gaps in services.

The particulars differ from province to province. Some municipalities are partners in immigrant settlement through deals with the federal government. In others, municipalities help pay for and directly deliver social housing and long-term care. In some cases, municipal involvement in policy areas is involuntary: for example, some mayors have argued that police responses to mental health crises have increased as provincial funding for mental health services has decreased (Keller 2020). And municipalities now own 60 percent of Canada's public infrastructure, up from 30 percent in the early 1960s (Ness et al. 2021).

Such “mission creep” can leave municipalities acting in policy areas in which they may not have the financial resources, policy levers, or legislative authority to adequately play their role. This state of affairs has also led many to call for greater recognition of the role of municipalities in Canadian policymaking, whether through a clarification of “who does what” or entrenchment in the Constitution (Hachard 2020; IMFG 2020).

Just as important, however, is rethinking the currently subordinated role of municipalities in intergovernmental relations, which are “the lifeblood of federalism in practice” (Poirier and Saunders 2015a, 4). When multiple orders of government are responsible for different aspects of public policy, coordination and cooperation are fundamental to effective policymaking and service delivery. As Davide Vampa puts it, in federal systems, “rather than just looking at how authority is distributed

1. Fenna (2012) and Schnabel (2020) note that dualist federations tend to move toward more intergovernmental cooperation over time, in part because the introduction of income taxes has increased federal spending power. In Canada, however, debates on health care, child care, and the environment highlight the contested nature of federal interventions to this day.

at different levels, what really matters is how different territorial units *interact*” (Vampa 2021, 603).

Robust and respectful relations can bring out the strengths of a federal system, with each order of government acting in the best interest of its residents while avoiding harmful competition or redundancies, and achieving benefits such as policy learning (Schnabel and Hegele 2021). A breakdown in relations can create unclear accountability and gridlock on shared policy challenges, particularly during emergencies such as COVID-19 or the trucker convoy protests in Ottawa in early 2022.²

The greatest policy challenges facing Canada require combining the strengths of all three orders of government. The COVID-19 crisis demonstrated this need around the world (OECD 2021), but it is true in other areas as well. Municipalities help fight climate change through land-use planning and infrastructure, but that work must fit in with actions at the provincial and federal level (Beugin et al. 2020). Similarly, addressing the mental health and addictions crisis requires action on multiple fronts, including homelessness, housing, health care, and policing. None of these issues falls neatly into one order of government’s jurisdiction, and all of them involve municipalities.

While Canadian municipalities may need more powers or financial resources to meet their responsibilities (Kitchen and Slack 2016), ultimately they should not have to act on their own. As Gabriel Eidelman writes, Canada requires “a new intergovernmental infrastructure that enables policy-makers at all levels to better understand the needs of our cities and city-regions, and respond with concerted action” (Eidelman 2020, 1).

This paper explores what this infrastructure could look like by examining examples from countries around the world. Intergovernmental relations can take many forms. They can be categorized by their degree of formality, level of institutionalization, their top-down or bottom-up structure, and other features. Intergovernmental relations also refers to two related but distinct phenomena: vertical relations among different orders of government and horizontal relations within the same order of government. This paper focuses on vertical relations, beginning with the current state of intergovernmental relations in Canada and the municipal role in them. Next, it looks at international examples of intergovernmental structures and processes that create space for municipalities, focusing largely on federal countries. The paper concludes by drawing lessons from these examples for Canada and setting out goals and potential approaches to intergovernmental relations reform.

2. A recent *Maclean’s* article argued that the COVID-19 crisis created “convenient buck-passing opportunities for leaders who didn’t feel like leading over the last year and a half and instead stepped onto the press conference dais each day sporting a rhetorical ‘I’m with stupid’ shirt pointing to the next level of government” (Proudfoot 2021). Similarly, the trucker protests in Ottawa in early 2022 led to finger-pointing among the City of Ottawa, the Province of Ontario, and the federal government.

2. Municipalities and intergovernmental relations in Canada today

Canada's intergovernmental relations occur within the context of its dualist federal structure. Canada's constitution sets out distinct responsibilities for the provinces and federal government, and gives each of these orders of government the power to legislate and deliver on their responsibilities independently of each other.³ Also characterized as "interstate" federalism, this model, in its purest articulation, is characterized by relatively weak intergovernmental relations that focus less on coordination and more on settling disputes between autonomous orders of government.

This structure contrasts with the administrative or cooperative model, seen in countries such as Austria and Germany, where powers are divided by function (who legislates and who delivers) rather than by policy area (Schnabel 2020). In such cases, for instance, national governments adopt legislation and policies, while subnational governments implement them (Gaudreault-Desbiens and Poirier 2017). Countries with this structure need effective intergovernmental relations to ensure coordination between those planning policy and those delivering it. These countries are characterized as "intrastate" federal countries and can have more institutionalized forms of intergovernmental relations in which subnational governments are directly represented in central government structures. For instance, Germany's second chamber of the federal legislature, the *Bundesrat*, is made up of elected leaders from the 16 German *Länder* (states). Many federal laws require approval from the *Bundesrat* (Lhotta and von Blumenthal 2015). This gives the *Länder* significant influence in the development of policies they will then have to implement.

Dualist federations are less likely to have intergovernmental relations so engrained in the legislative process (Fenna 2012). In Canada, intergovernmental relations are characterized by their informality and lack of institutionalization (Adam, Bergeron, and Bonnard 2015). No specific body exists to bring together representatives of the federal government and provinces at regular intervals. There is no formal representation of provincial governments at the federal level, such as through the Senate. Instead, relations are conducted by the provincial and federal executive branches, most prominently through First Ministers' meetings. These meetings, however, are called at the behest of the Prime Minister and do not occur with any regularity.

Despite these seeming restrictions, Canada has a rich practice of intergovernmental relations, one that "collides with the fundamentally dualist nature of the Canadian federal architecture" (Gaudreault-DesBiens and Poirier 2017, 392). Since the second half of the 20th century, particularly with the

3. As Poirier (2020, 90) notes, Canada's dualist structure has been complicated by constitutional interpretations at the Supreme Court that push toward a vision of cooperative federalism. Nevertheless, "the very structure of the federation remains undeniably dualist." See also Karazivan (2020).

development of the welfare state, intergovernmental discussions have consistently increased (Adam, Bergeron, and Bonnard 2015; Gauvin and Papillon 2020).

Johanna Schnabel (2020), for instance, has counted about 35 intergovernmental councils in operation in Canada. She notes that it is hard to be precise about the exact number due to the informal nature of Canadian intergovernmental relations. Some councils are vertical, and bring the federal and provincial-territorial governments together; others are horizontal, and only the provinces participate. They are largely sectoral, meaning they are focused on particular policy areas, such as education or social policy (Gauvin and Papillon 2020). Some, like the Canadian Council of the Ministers of the Environment or the Committee on Internal Trade, are robust organizations with their own administrative structures. Most, however, are low profile and conduct their meetings behind closed doors.

In most cases, vertical councils are chaired or co-chaired by federal government representatives, which gives Ottawa a “dominant role in determining agendas and in the follow-up of most inter-ministerial forums” (Adam, Bergeron, and Bonnard 2015, 150). Exceptions exist among the vertical councils, including the Committee on Internal Trade and the Canadian Council of Ministers of the Environment, both of which have a chair or president position that rotates between the provinces and federal government (Canadian Free Trade Agreement 2021).⁴

Intergovernmental agreements are also common in Canada “as a means of bridging and structuring public action of federal actors” (Gaudreault-DesBiens and Poirier 2017, 399), with the bilateral child care agreements being a recent example of this approach. They also constitute the tool by which federal government uses its spending power to act in areas of provincial jurisdiction (Adam, Bergeron, and Bonnard 2015).

Municipalities are largely absent from the system of intergovernmental relations described above. They do not attend First Ministers’ meetings. They are largely excluded from sector-specific meetings, although they do participate in some forums, such as the Intergovernmental Committee for Economic and Labour Force Development, which focuses on information-sharing and research related to issues in Toronto, and brings together members of the public service (though not senior leaders) from all three orders of government (ICE Committee, n.d.).⁵ Municipalities

4. A review of the website of the Canadian Intergovernmental Conference Secretariat (CICS), which offers administrative and planning support to intergovernmental meetings of first ministers, ministers, and deputy ministers, highlights the extent of sectoral intergovernmental relations. In 2020, the Secretariat’s website included notices for 77 vertical intergovernmental meetings of deputy ministers, and 83 vertical meetings at the ministerial level.⁴ These numbers were much higher than other years because of the COVID-19 crisis. In 2019, the Secretariat included notices for 24 vertical ministerial meetings and 48 deputy ministerial meetings. The 2019 numbers are in line with research by Julie M. Simmons (2017), which finds that from 1997 to 2014, vertical ministerial meetings ranged from just over 15 per year to just under 40. For a deeper analysis of CICS data see Gauvin and Papillon (2020).

5. Individual municipalities and municipal associations are also sometimes invited to meeting with federal-provincial/territorial Ministerial or Deputy Minister tables, at the invitation of the chair.

also do not typically participate in the negotiation of intergovernmental agreements, one exception being a series of trilateral agreements negotiated in the 1990s. Notably, municipalities were not at the table in 2018 for the negotiation of the \$33-billion, 10-year, bilateral agreements for the Investing in Canada Infrastructure Program (ICIP), even though a majority of funding would flow to municipalities and municipalities were a direct funding partner.

This exclusion is typical. Historically and constitutionally, Canadian municipalities are not considered an order of government equal to the federal and provincial governments. Rather, under section 92 of the Constitution, they are created by, and receive their authority exclusively from provincial governments. Provincial power over municipalities is wide-reaching. Provinces can create, dissolve, amalgamate, or otherwise alter municipal structures at will. They can regulate and override all municipal decision-making, and also control how municipalities can raise revenues.

In this sense, municipalities exist in order to execute provincial policy and legislation. This resembles the administrative/cooperative federalism model described above, with an important difference: municipalities implement provincial and federal policy but cannot directly affect provincial and federal decisions. Instead, they meet regularly with their provincial governments, either directly or through municipal associations.⁶ They also regularly pass city council motions calling on provincial action in specific areas, or otherwise publicly advocate for policy changes.

As Zachary Taylor and Alec Dobson (2020) outline, some provinces have commitments to consult municipalities on matters that affect them. Ontario and British Columbia have legislated duties to consult in the *Municipal Act* and *Community Charter*, respectively. In Québec, the “Table Québec-municipalités” advises the Minister of Municipal Affairs and Housing and includes the leaders of Québec’s two municipal associations as well as the mayors of Montréal and Québec City. Some provinces, including Alberta, Québec, and Ontario, have memorandums of understanding with municipal associations that outline consultation procedures.

In practice, however, provinces have the prerogative to act of their own accord, whether or not they have made a commitment to consultation. The Province of Ontario’s unilateral change to the City of Toronto’s ward boundaries in 2018 took place with no consultation and was upheld by the courts. As a result, municipal interventions may resemble stakeholder lobbying more than intergovernmental relations. The 2022 Canadian Municipal Barometer – a survey of elected municipal officials from across the country – found that roughly two-thirds of respondents did not think the provincial and federal governments treated their municipality as an equal partner (Rosalle 2022).

6. The 2022 Canadian Municipal Barometer survey found that municipal representatives interact most regularly with their local federal or provincial representatives (Canadian Municipal Barometer 2022).

Provincial jurisdiction has also meant that, for much of Canada's existence, municipalities have had little or no relationship with the federal government. In the 1970s, Ottawa explicitly embarked on a strategy for urban development, establishing a Ministry of State for Urban Affairs (MSUA) and participating in trilevel meetings on urban affairs and intergovernmental relations (Cameron 2002). These efforts were strongly resisted by the provinces, with Québec, for instance, amending legislation to explicitly block direct relations between municipalities and Ottawa (Turgeon 2009). MSUA was disbanded in 1979, putting an end to this experiment in trilateralism (Graham 2010).

In the 1980s and 1990s, trilateral Urban Development Agreements (UDAs) brought together the municipal, provincial, and federal governments, as well as non-governmental actors, to assist with economic development and neighbourhood revitalization. The first UDA, in Winnipeg, was developed in 1980 “to increase employment opportunities; encourage appropriate industrial, commercial, and residential development; and facilitate the effective social and economic participation of core area residents in development opportunities” (Bradford 2020, 7). Another UDA followed in Vancouver in the 1990s, focused on the Downtown Eastside. A smaller UDA focused on economic development was signed in Edmonton as well, but funding was not committed for several years and progress on it stopped in 2006 with the election of a new federal government (Bradford 2020).

In the early 2000s, the federal government conducted in-depth studies on urban policy and intergovernmental relations, establishing first the Caucus Task Force on Urban Issues and then the External Advisory Committee on Cities and Communities (Berdahl 2006; External Advisory Committee on Cities and Communities 2006). In 2004, it created the Ministry of State for Infrastructure and Communities.

The 2000s also saw the federal government initiate programs to prevent and reduce homelessness. These programs have changed over the years, from the original National Homelessness Initiative established in 1999, to the Homelessness Partnering Strategy to, most recently, Reaching Home. In all cases, however, funds have flowed directly to “community entities,” which, in practice, have often been municipal governments (Graham 2010).

Throughout these shifts, the Federation of Canadian Municipalities (FCM) – a national association representing municipalities at the federal level – played a growing role, including in advocating for and setting up the Gas Tax Fund in 2004, described by Erika Adams and Allan M. Maslove (2014, 102) as “the most significant federal fiscal intervention into urban affairs in more than a quarter of a century.” Now called the Canada Community-Building Fund, the fund provides annual federal funding for local infrastructure projects (Lucas and Smith 2020). The funding flows through a provincial government, municipal association, or, in the case of Toronto, directly to the municipality. The federal government has also partnered directly with FCM to deliver funding to municipalities, including through the Green Municipal Fund, created in 2000.

Most recently, there have been federal-municipal meetings on housing, including an FCM-convened working group involving federal representatives and a February 2022 National Housing Supply Summit hosted by the Canada Mortgage and Housing Corporation (CMHC) and FCM. These meetings may be sign of a changing landscape. The first two rounds of the Rapid Housing Initiative, a federal program run by CMHC to support affordable housing, allocated two-fifths of its funding directly to municipalities, rather than through the provinces and territories. The current government has also signalled that it will negotiate agreements for increased funding with both the provinces and municipalities (Hall 2021).

Independently and through municipal associations, municipalities engage with provincial and federal governments regularly. On the whole, though, municipalities remain largely absent from formalized Canadian intergovernmental relations, even though the issues addressed in intergovernmental forums often impact municipalities profoundly. Municipalities in some provinces, including Ontario and British Columbia, deliver child care services, but were not engaged in bilateral talks on the issues.⁷ Municipalities own a majority of the public infrastructure in Canada but are absent from negotiations on federal-provincial infrastructure agreements. Municipalities were central in the fight against COVID-19 but were not formally included in talks that established the Safe Restart Agreement in 2020, which earmarked dedicated federal funding for transit and non-transit municipal operating revenue shortfalls.

While this situation is influenced by the structure of the Canadian federation, it is not determined by it. Models do exist for incorporating municipalities into intergovernmental relations in a federal system.

3. Models for integrating municipalities into intergovernmental relations

Intergovernmental relations differ across countries because of history, political culture, constitutional arrangements, and the structure of political parties.⁸ Nevertheless, Canada can learn from other countries that have done a better job of integrating municipalities into intergovernmental relations. While no model from any single country will be immediately translatable to the Canadian context, each example offers possible directions for Canada to take to improve its intergovernmental relations.

3.1 Legislative and executive branch models

In some federal countries, subnational (provincial/state and local) governments have a direct line into the legislative process or into executive decision-making

7. Ontario municipalities are mandated to deliver child care services, while Vancouver has willingly entered the policy space (Mahon 2014).

8. In countries in which one political party dominates, for instance, intergovernmental relations often take place within the party structure, rather than through government structures (Poirier and Saunders 2015a; Watts 2008).

structures of other orders of governments. That is, they have a formal say in creating and passing laws and regulations. A comparable level of municipal involvement as that found in the *Bundesrat* for German *Länder*, however, is hard to find in any country.

In South Africa, local government representatives are non-voting members of the second legislative chamber. They are also participants in the country's extended cabinet. The body meets twice a year: first to set priorities for the national executive and then to review progress (Powell and Ntliziywana 2015). Local governments, represented by the head of the South African Local Government Association, participate in this extended cabinet alongside provincial premiers and ministers. Importantly, the body's decisions have the same status as cabinet decisions (Powell 2015).

In Switzerland, a consultation procedure exists, with constitutional backing, that includes the opportunity for cantons (states), political parties, and other interested parties to express their views on legislation and important projects (Federal Constitution of the Swiss Confederation 1999, Art. 147). Local government associations participate in this procedure, and a 2000 amendment to the constitution specifically requires the federal government to consider the consequences of its activities on municipalities, especially large cities (Federal Constitution of the Swiss Confederation 1999, Art. 50; see also Bächtiger and Hitz 2007; Ladner 2009). While this provision gives local governments a voice, it is still generally accepted that “the municipalities are supposed to address the canton, whereas the cantons address the federal government” (Ladner 2009, 350).

Many Swiss cantonal constitutions allow local governments to propose new laws and constitutional amendments. Local governments can also challenge significant decisions taken by cantonal governments. In most cases, these processes require a group of local governments to act together, although certain municipalities may initiate them unilaterally. In all cases, a canton-wide referendum is required as a final step. That is to say, the voters of the canton have final say. There have been only a handful of successful examples of the use of these initiatives (Mueller 2013).

In European countries such as Switzerland, Belgium, and France, local politicians can or have been able to hold office concurrently in another order of government. In 2010, for instance, approximately half of the members of the National Assembly and the Senate in France also headed a local government (Bendlin 2020). The practice was eliminated in France in 2017. In Switzerland, most mayors of cantons also sit in the cantonal parliament (Mueller 2013). While some have argued that this arrangement increases local influence on national affairs (Brunet-Jailly 2007), others have claimed that it subordinates local politics to national priorities (Vampa 2021).

3.2 Intergovernmental councils and committees

More common than direct lines into legislative or executive decision-making is the inclusion of municipalities in vertical intergovernmental councils. These councils

are usually made up of the executives of the federal and subnational governments, with municipalities often represented by the head of a national municipal organization.

In South Africa, the President's Coordination Council includes the president, deputy president, premiers, key national ministers, and the head of the South African Local Government Association. The Council's resolutions are not legally binding. In practice, however, resolutions may be formally tabled in cabinet and implemented. Importantly, similar councils exist at the provincial level, bringing together the premier and executive mayors of metropolitan and district municipalities. Sectoral forums at the national and provincial levels bring together ministers and local governments to discuss specific policy areas (Powell 2015).

South Africa's Coordination Council, and its intergovernmental relations generally, have been criticized for how they centralize power and prioritize national concerns. Because the federal government sets the framework for intergovernmental relations and convenes intergovernmental meetings, it dominates at the table (Powell 2015).⁹

This centralizing tendency was highlighted during the COVID-19 pandemic, when the federal government bypassed the Intergovernmental Committee on Disaster Management (which included representatives from the federal, provincial, and municipal governments) in favour of a newly instituted National Coronavirus Command Council (NCCC). Although representatives from the South African Local Government Association reported to the Command Council and although the President's Coordination Council and other sectoral councils continued to meet, in many cases more regularly than before, "a few weeks into the national state of disaster, it became clear that, in effect, the NCCC was the key decision-maker" (Steytler and de Visser 2022). Reuben Baatjies and Jaap de Visser (2020, 14) note that the creation of the NCCC ultimately meant that "a dedicated, intergovernmental structure bringing together all three spheres of government to advise the Cabinet was replaced by an ad hoc structure comprising exclusively of national government functionaries."

In Australia, the Council of Australian Governments (COAG) – which was disbanded in May 2020 – included the Prime Minister, state leaders, and the head of the Australian Local Government Association. Ministerial councils existed under the umbrella of COAG, including a Council of Local Government that was created in 2008 but ceased to exist a few years later. While some have noted that COAG incentivized collaboration and national thinking (Phillimore and Harwood 2015), others have criticized the body as ineffective, with its meetings described as "infrequent, fleeting, bureaucratized, and often politicized" (Aroney and Boyce 2021, 311). It also was criticized for its centralization. The council met at the will of the prime minister and was seen as being dominated by federal interests

9. Political realities matter here as well. The dominance of the African National Congress as a political party at all orders of governments has a centralizing effect (Parker 2015).

(Phillimore and Fenna 2017). Finally, it was vulnerable because it was not created through legislation or a formal agreement (Phillimore and Harwood 2015). During the COVID-19 crisis, the federal government instituted a National Cabinet that included state premiers but excluded the head of the Australian Local Government Association (Murphy and Arban 2021). COAG was dissolved at the same time. A newly created National Federation Reform Council includes municipalities, but it meets only once a year, while the National Cabinet, which excludes local government, meets monthly (Downey and Myers 2020).

Other councils with municipal involvement have met similar fates. In the United States, the Advisory Commission on Intergovernmental Relations was created by Congress in 1959 and largely funded by the federal government. It convened federal, state, and local officials, and studied and recommended changes to the federal system (Smith 2015). While largely devoted to research and policy recommendations, it had a significant voice that, importantly, reflected all parts of the federal system (Kincaid and Stenberg 2011; Vogel 2007). Seven of its 26 commissioners represented local government (Kincaid and Stenberg 2011). The Commission was disbanded by the federal government in 1996.

In Brazil, a Council of Cities was chaired by the federal minister of cities and made up of representatives from civil society and all orders of government. The Council provided input into policy at the Ministry of Cities, including a national policy for urban development (Arretche 2015; Queiroz Ribeiro and Pinto 2009). The Ministry was closed in 2019 by the federal government and the cities file was shifted to the Ministry of Regional Development (Scruggs 2019). The Council was disbanded in the same year as part of a larger effort to disband dozens of national councils (Walker, Pimental, and Friendly 2021).

Most of the councils discussed here have or had general mandates. Several federal countries also include municipal representatives on councils or committees focused on particular policy areas. In Germany, a Council for Economic Development includes members from the federal government, the *Länder*, and municipal governments. The council is an advisory group on the coordination of economic activity (Auel 2014). The federal government, for instance, notes in its annual economic report that the report was discussed with *Länder* and municipalities through the council (German Federal Ministry for Economic Affairs and Energy 2021).

In Switzerland, the Tripartite Conference of Agglomerations includes representatives from the federal government, the association representing cantons, and two associations representing local governments (one representing larger cities and another the rest of Swiss municipalities). Created in 2001, the conference has increased coordination on urban planning and regional policy, including with the establishment of infrastructure plans and transit payment systems (Pfisterer 2015). However, research also indicates that municipal participation in the Tripartite

Conference has not weakened the position of the cantons over local governments (Ladner 2009; Pfisterer 2015).

In Spain, the central government and autonomous communities (the provincial-level governments in Spain) have several conferences to encourage cooperation between the orders of government (Garcia Morales and Marin 2015). One such conference is focused on issues affecting local government and includes nine local government representatives (Caballero 2009).

The Austrian Conference on Spatial Planning includes the federal government, the *Länder*, the two national municipal associations (the Austrian Association of Cities and Towns and the Austrian Association of Municipalities), as well as business and labour representatives. It focuses on matters related to land-use planning, growth planning, and economic development. The Conference operates on a voluntary basis and has no regulatory authority, but it does create 10-year plans to steer development at the federal, *Länder*, and municipal levels (OECD 2017).

Other examples of sectoral tables include a Brazilian tripartite committee for health that includes five representatives from the National Council of Municipal Health Secretaries (Arretche 2015), and state-level Development Planning Committees in Mexico that bring together the three orders of government, as well as social organizations and the private sector, to create development plans (Graizbord 2009).

3.3 Constitutional provisions

In some countries, national constitutions require or provide incentives for municipal participation in intergovernmental relations.

As previously mentioned, Switzerland's constitution requires that the federal government consider the effects of its activities on municipalities, particularly larger cities. The constitutional change in this case "merely recorded the entrenched status of the municipalities, as the municipalities already had the possibility to express their position, especially through the association of Swiss municipalities, in the consultation process prior to the enactment of new federal laws" (Ladner 2009, 339).

Switzerland's constitution also codifies the principle of subsidiarity, meaning that functions should be assigned to the order of government closest to residents, unless there is an explicit reason why a higher order of government would perform it better (Federal Constitution of the Swiss Confederation, Art. 5a). As a result, the federal government is not able to act on issues for which it can be demonstrated that cantonal action would achieve the public objective, and cantons cannot act in areas of municipal jurisdiction unless they can also demonstrate that such action is required to ensure effective public policy. This principle guides cooperation among the orders of government by guarding against unilateral federal or cantonal intrusion into municipal affairs (Pfisterer 2015).

South Africa's constitution recognizes the local order as one of three spheres of government and also codifies the principles of subsidiarity and cooperation. The latter includes a requirement that spheres of government "[inform] one another of, and [consult] one another on, matters of common interest" (Constitution of the Republic of South Africa 1996, Arts. 41(1h), 151, 156(4)).¹⁰ The constitution also requires the federal government to set out processes for intergovernmental relations in legislation. It also obliges national and provincial parliaments "to consult organized local government on legislation that affects the institutions or functions of local government" (de Visser 2009, 275). As noted above, however, the intergovernmental system is dominated by the federal government (and its dominant party).

In India, the constitution not only recognizes local governments, but also provides for the creation of local and metropolitan planning commissions (Constitution of India 2020, Arts. 243ZD and 243ZE). These commissions were formed to counter the historically top-down approach to planning in the country. Local commissions, which include elected officials and community members, feed metropolitan commissions, which also include members from national and state governments. In this respect, metropolitan commissions not only consolidate local plans but also ensure coordination with national and state priorities (Mathew and Hooja 2009). Even so, local governments are largely missing from intergovernmental tables (Singh and Saxena 2015). Local governments are not represented, for instance, in the country's two main intergovernmental councils, the Inter-State Council and NITI Aayog, the former of which is entrenched in the constitution (Bird et al. 2015; Constitution of India 2020, Art. 263; Singh and Saxena 2015).¹¹

In Austria, the constitution affords municipalities a role on a commission to oversee the pay of members of the two branches of the federal legislature, and recognizes the two national municipal associations as representing the interests of municipalities (Bussjäger 2015; Kiefer and Schausberger 2009).¹² The country has a long history of informal consultation with the associations, particularly on financial matters. The constitutional recognition of the associations in 1998 was part of a formalization of these fiscal relations that continued into the 1990s and 2000s (see section 3.6).

The Brazilian constitution recognizes municipal autonomy and prohibits federal or state governments from intervening in the internal affairs of municipalities

10. The Swiss constitution contains a similar provision that mentions only the cantons (Federal Constitution of the Swiss Confederation 1999, Art. 44).

11. Constitutional recognition in India also has not curtailed state control over municipalities. The constitution outlines 47 policy areas that could be devolved to local governments. However, it is up to the states to decide which powers are transferred (Mathew and Hooja 2009). In this way, the states retain authority over local governance, and they have been largely unwilling to give up power (Hirschl 2020).

12. One association – the Austrian Association of Municipalities – is an umbrella organization for nine state-level organizations. The second – the Association of Cities and Towns – is made up of 255 members, including all towns with more than 10,000 inhabitants.

(Constitution of Brazil 1988, Arts. 1 and 29).¹³ It does not contain any direct provision for intergovernmental relations, but the recognition of municipalities as an order of government has historically encouraged municipalities to deal directly with the federal government, as discussed in section 3.5 (Queiroz Ribeiro and Pinto 2009).

3.4 Intergovernmental agreements

A further way in which governments engage in coordinating their activities is through intergovernmental agreements. Unlike the models already discussed, intergovernmental agreements are generally focused on specific policy areas or issues requiring cooperation across orders of government. The legal status of such agreements varies greatly between federations (Poirier and Saunders 2015b). In most countries, they are negotiated between the federal and provincial governments, although some include the local order.

Austrian municipalities may enter into trilateral agreements with the federal government and *Länder*, and have meaningfully done so with the Stability Pact and an agreement concerning a consultative mechanism (Bussjäger 2015). Both of these relate to fiscal relations and are discussed in more detail in section 3.6.

Vertical intergovernmental agreements are very common in Brazil, particularly in the areas of health and education. Marta Arretche (2015) estimates that federal ministries sign an average of 8,200 agreements per year with states or municipalities.

In 2012, the United Kingdom's central government established "city deals" with eight English municipalities. These deals focused largely on economic development and infrastructure, and gave municipalities greater resources and power to address specific challenges (Carr-West 2021). Later deals expanded to include other parts of England. City Region Deals were also signed in Scotland, Northern Ireland, and Wales, in these cases with the involvement of the respective national governments. In Manchester, the deals ultimately led to more substantive devolutions of powers (Harding 2020).

3.5 Federal-local relations

In some federal countries where provincial or state governments control local governments, municipalities and the federal government have occasionally engaged directly with each other.

In Australia, the creation of the Council of Australian Governments (COAG) was spurred by increasing direct relations between municipalities and the federal government (Sansom 2020). This outcome was largely the result of political

13. Article 182, meanwhile, articulates provisions for urban planning that guarantees the well-being of a city's residents. But Ran Hirschl (2020, 19) writes, "as well-intended as these constitutional and legal initiatives might have been, the political reality in Brazil at both the federal and the intergovernmental levels is such that the actual, on-the-ground effects of these reforms have depended largely on the political alignment of federal, state, and megacity leaders."

circumstances, as different parties were in power at the federal and state levels, providing incentives for the federal government to deliver funding directly to municipalities (Sansom 2009).

In Spain, the central Ministry of Public Administration convenes a national Commission of Local Administration presided over by the minister, which includes 13 representatives chosen by the federal government and 13 representing local government. This forum exists for preliminary, non-binding assessments of central laws that will affect local governments.

In Brazil, the recognition of municipalities in the constitution in 1988 spurred increased federal-local relations, with states often being bypassed (Arretche 2015). The federal government created a Ministry of Cities in 2003 to engage directly on issues of urban development, sanitation, and transportation. A Committee for Federal Articulation was also created that included representatives from the federal government and Brazil's three national municipal associations to promote interaction between the two orders of government (Arretche 2015). The Committee was disbanded by a later government, along with the previously mentioned Council of Cities.

In Germany, the constitution states that local governments have autonomy over local affairs, but it does not provide for any municipal participation in intergovernmental relations. Nevertheless, the rules of procedure for both federal ministries and the federal parliament require that local government associations be consulted on matters that affect municipalities (Ruge and Ritgen 2021). In practice, this takes the form of informal early consultations before a bill is drafted, followed by a second consultation after drafting (OECD 2010). The rules have been criticized for lacking proper enforcement, and some municipalities have suggested a constitutional provision to further formalize the process (OECD 2010).

3.6 Fiscal relations

Finally, the questions of who pays for what and how funds are distributed between orders of government have their own place in intergovernmental relations and create their own challenges. In particular, the issue of “unfunded mandates,” whereby both the federal and provincial or state governments require municipalities to implement a certain policy without providing them with sufficient funding, is prevalent in many federations.

The presence of subsidiarity in South Africa's constitution, for instance, means national and provincial governments are obliged to devolve responsibilities to local governments. However, they have been accused of doing so without adequate funding (de Visser 2009; Powell 2015). Provisions exist to protect municipalities from unfunded mandates, but experts have argued that such provisions are often poorly enforced (Steytler, de Visser, and Williams 2012).

In the United States, some states have taken up “fiscal noting,” which requires them to issue a note stating the fiscal impact of a mandate on local government.

Some also have mandate reimbursements, through which states are expected to cover the full costs incurred by local government for any state-mandated activity. At the federal level, the *Unfunded Mandate Reform Act* of 1995 is meant to limit the imposition of mandates on state and local governments without the necessary funding (Pagano 2009). However, it has not been seen as an effective tool due to political conflicts and disagreements about what costs are included when calculating the effects of a delegation or devolution of responsibilities (Steytler, de Visser, and Williams 2012). Recent legislation has attempted to address these concerns but has not been passed into law (Hadley 2019).

In Germany, the constitution now forbids the federal government from directly transferring responsibilities to local governments, rectifying a situation in which the federal government delegated duties to municipalities without corresponding funding (Basic Law 1949, Art. 84). The constitutions of the *Länder* all include some guarantee that any transfer of responsibilities to local governments will come with appropriate funding (Heinelt and Zimmerman 2016). Municipalities, however, argue that not all *Länder* have set up sufficient processes or regulations to implement these guarantees (Congress of Local and Regional Authorities 2012).

In Austria, a formal agreement between the federal government, the *Länder*, and municipal associations requires consultation “if a draft law or a regulation of one entity imposes financial burdens on the other orders of government” (Bussjäger 2015, 88). Violations of this “consultation mechanism” can be taken to the Constitutional Court, although disputes are usually settled without a court case. Municipalities also participate in the negotiation of stability pacts, which coordinate the budgetary policies of federal, *Länder*, and municipal governments over three- or four-year periods, and are involved in negotiations on financial equalization (Kiefer and Schausberger 2009). The system functions on the principle that each government should finance its own tasks and receive sufficient resources to do so. However, this principle is complicated by exceptions, particularly in health care, that result in “complex and opaque cost-shifting” (Bussjäger 2015, 101). The complexity of the system has been one reason that experts have called for reforms.

In Australia, a 2006 agreement between the federal government, states, territories, and the Australian Local Government Association provides that local governments will be consulted on any devolution of powers and that any financial impacts will be taken into account. The agreement defines cost-shifting narrowly – for instance, excluding increased costs associated with provision of information or reporting – against the wishes of the Association for a broader definition (Steytler, de Visser, and Williams 2012).

4. Reforming intergovernmental relations in Canada

4.1 Five lessons from around the world

As these examples make clear, various models and examples exist for integrating municipalities into a country’s intergovernmental structure. No one model is a

recipe for guaranteed success, but the experience of other federations does suggest five lessons for Canadian governments to consider.

A seat at the table does not end centralization

While intergovernmental councils can support constructive relationships among orders of government, many times the federal partner controls them by chairing the council, deciding when to call meetings, or setting the agenda. In her study of vertical intergovernmental councils in eight countries (most of which do not include local governments), Johanna Schnabel found that just over three-quarters are dominated by the federal government. As she points out, “federal dominance gives the federal government major leverage over ‘joint’ solutions so that they are less collaborative in character” (Schnabel 2017, 12).

South Africa and Australia also offer cautionary tales in this respect. South Africa’s intergovernmental relations offers multiple avenues for municipal involvement, but, as noted previously, it is heavily controlled by the federal government. The same is true of Australia. In a study of the effect of intergovernmental relations on education and fiscal policy, Schnabel (2020, 237), while focused on federal-state relations exclusively, writes that the Australian federal government “imposed the [Intergovernmental Agreement on Federal Financial Relations] on the states by using its leverage on COAG’s [the Council of Australian Governments] agenda and meetings and it used its influence on COAG to make the states accept a national curriculum.” When it comes to municipalities, a similar lesson exists. Despite their (recently diminished) seat at the table, Australian municipalities can still be seen in a similar light to those in Canada: they “play key roles in administering policy and sometimes making policy, but they are entirely creatures of state governments and lack adequate representation in policy processes of other government levels” (Murphy and Arban 2021, 645).

Schnabel (2017) highlights Germany and Switzerland as examples where federal dominance is not the norm. In both cases, her analysis speaks largely to the relationship between the federal government and the *Länder*.¹⁴ The situation can be more complicated for municipalities, who must avoid the dominance of two orders of government; if the federal government doesn’t exert control, the state or provincial one often does, as is the case in Germany and Switzerland.

The design of vertical intergovernmental councils can address centralization (for more see “Trilateral relations” in section 4.3), and Schnabel (2020) notes that external factors can be helpful as well. In Switzerland, for instance, the federal government’s constitutional and legal requirement to consult cantons (and municipalities) on its activities helps prevent federal dominance. Strong horizontal councils and subnational participation in federal decision-making are other safeguards against federal dominance. With respect to municipalities, these

14. The city-states of Berlin, Hamburg, and Bremen in Germany are exceptions.

safeguards can be helpful to consider for relationships with states and provinces (see “Provincial-municipal relations” in section 4.3).

Constitutional recognition is not a panacea

The experience of countries such as India, Brazil, and South Africa also suggests that the entrenchment of municipalities in a constitution does not necessarily resolve problems of municipal representation at the intergovernmental table. Ultimately, there is no guarantee that constitutional recognition will bring respect or overcome political desire to maintain power at a higher order of government. As Ran Hirschl (2020, 3) writes, “whereas many constitutions recognize local government, cities are rarely construed as an equal partner or as an adequate order of government within the national constitutional scheme.”

Fiscal relations need to be addressed explicitly

In most cases, substantive intergovernmental relations do not lead to balanced fiscal relations. Legislation or processes to avoid unfunded mandates also do not guarantee results. In the end, the bulk of the problem resides in a mismatch between the devolution of power and responsibilities, on the one hand, and fiscal resources on the other. Deborah L. Wetzel and Lorena Viñuela’s description of the situation in Brazil (2020, 212) captures the issue perfectly: “The evolution of the Brazilian federal framework has translated into sizable vertical imbalances. While the 1988 Constitution devolved functions and increased transfers from the federal level to states and municipalities and from states to municipalities, it did not fully match expenditure responsibilities and revenues.”

Collaboration goes beyond peak-level organizations

While much of the attention in intergovernmental relations focuses on peak-level organizations such as Canada’s First Ministers’ meetings or South Africa’s Coordination Council, a well-functioning intergovernmental system goes beyond them.

Sectoral councils and committees are also useful, particularly for complex policy areas. It is not surprising to find them, for instance, in health and urban development. They also offer opportunities for municipal involvement in areas of particular impact. Such an approach is seen in Germany and Austria, for example.

Municipal relations with the state/provincial level also should not be ignored. In some federal systems, they are of greater day-to-day importance than relations with the federal government. While German municipalities have some relations with the federal government, their deepest ties are with the *Länder*. Provisions around unfunded mandates, for instance, are contained in *Länd* constitutions, not the federal one.

Successful formal intergovernmental relations are also undergirded by informal collaboration, particularly among public servants. The behind-the-scenes work of

administrators over long periods can increase trust and promote compromise (Lhotta and Blumenthal 2015), while building relationships and a collaborative mentality that can outlive particular governments, and so foster a strong intergovernmental system regardless of political changes.

Municipalities need to be ready

In many countries, the capacity of municipalities and municipal associations was a key factor in their attaining a seat at the intergovernmental table.

In Australia, municipalities increased their role in intergovernmental relations in part due to the Australian Local Government Association’s “complementary efforts in policy development and research – not simply advocacy – across a broad range of issues” (Sansom 2020). By drawing on its network and the knowledge of municipal associations at the state level and municipalities themselves, the Association was able to demonstrate the unique value of municipalities in key policy areas.

Municipal capacity is also required to take advantage of an increased role in intergovernmental relations. In South Africa, “the success of local government’s representation on the national IGR [intergovernmental relations] forums depends... on the quality of organized local government’s input in these structures, which is an uncertain variable at best. Too often, SALGA [the South African Local Government Association] has insufficient resources, capacity, or time to provide adequate input at such IGR forums” (de Visser 2009, 289).

4.2 Three goals for intergovernmental relations reform

These five lessons should inform Canada’s approach to intergovernmental reform. The goals of an intergovernmental relations system may vary, though. For a federation with blurred lines of responsibility, cooperation and transparency may be most important. In federations with clear jurisdictional boundaries, maintaining the independence of subnational units may be a priority. Different groups and governments within a federation can have differing goals for intergovernmental relations.

Given the current state and context of Canadian intergovernmental relations, three goals are of particular importance when considering reforms to clarify and enhance the role of municipalities.

Municipal inclusion in federal and provincial/territorial policymaking processes

A reformed intergovernmental system should give Canadian municipalities greater input into policies that affect them. Incorporating municipalities into intergovernmental relations means more than making space for increased municipal advocacy, though. It entails “full-time involvement in the political and administrative activity of the federal and state governments” (Chapman and Wood as cited in Sansom 2009). Municipalities are not equivalent to other stakeholders

who get consulted on legislation or regulation. They are democratically accountable governments able to implement public policy in their own right, and therefore a different kind of partner compared with hospitals, postsecondary institutions, or businesses.

Collaboration on shared priorities

Canada's constitution delineates the distinct powers and jurisdictions of the provincial and federal governments. However, both constitutional interpretation and historical shifts have loosened the boundaries of these jurisdictions; the country's federal structure is no longer made up of "watertight compartments" (Gaudreault-DesBiens and Poirier 2017). In this context, clarifying "who does what," particularly when it comes to municipal roles, is a process worth undertaking (Eidelman, Hachard, and Slack 2020). However, many of Canada's pressing policy challenges are not suited to a neat division of labour. Intergovernmental collaboration will be required in addressing climate change, as well as decisions on transportation, housing, and health care, to name a few examples. A reformed intergovernmental relations system should facilitate trilateral collaboration on these issues.

Improving urban, rural, and regional policy

The shared nature of 21st-century policy challenges also means that urban, rural, and regional policy is no longer limited to the municipal level. Rather, it includes all issues with an impact on urban areas, some of which fall under federal and provincial jurisdiction (Berdahl 2006; Eidelman 2020). The goal of improved intergovernmental relations should not be merely an increased profile for municipal governments. Its goal should be to improve policymaking for all residents by bringing together the strengths of the three orders of government.

4.3 Four approaches to intergovernmental relations reform

To achieve these goals, the following four areas of focus for intergovernmental relations reform should be considered.

Municipal capacity and coordination

Municipalities are increasingly involved in policy areas that go beyond their traditional remit. While this fact makes them indispensable partners for other orders of government, some reforms could help ensure municipalities have the capacity and structures to participate effectively in intergovernmental relations.

Municipalities, particularly big cities, should continue to invest in intergovernmental capacity in their public services. Many municipalities, including Toronto, Calgary, Vancouver, and Halifax, have done so by creating dedicated departments or assigning staff within departments to intergovernmental relations (Eidelman 2020). By continuing these efforts, and allocating sufficient staff and resources to them, municipalities can engage fully and regularly with other orders of government.

This investment in capacity should also help support greater engagement on the impact of local decisions and actions on national, regional, and provincial challenges. Municipalities correctly argue that national and provincial policy issues often have an impact at the local level, and that municipalities are most connected to local residents. But it is also the case that local issues, such as land-use planning and housing development, have provincial and national implications; for example, where and how a city grows have implications for climate change. Just as national and provincial governments should consider the local impact of their decisions, so should local governments consider how local actions affect efforts to address challenges that cross municipal boundaries.

How can the more than 3,700 municipalities in Canada best be represented at the intergovernmental table? In the countries described above, municipal associations tend to speak for municipalities in intergovernmental discussions. Following that model, it is reasonable to imagine that the Federation of Canadian Municipalities (FCM) would play a significant role at trilateral meetings, while provincial associations would play a role in provincial-municipal relations.¹⁵

Some countries have multiple municipal associations to reflect the differing needs of smaller and larger municipalities, or different orders of local government. The Big City Mayors' Caucus increasingly plays this role in Canada as a part of FCM, rather than being a separate organization. In Ontario, an association called Ontario's Big City Mayors is also increasingly engaging in advocacy. Whatever form these groups take, they allow a smaller segment of municipalities to engage on issues of particular importance to them, such as the funding of public transit for large city-regions.

Increased regional coordination and – ideally – new regional governance structures can also unify the municipal voice and make it easier to engage municipalities in ongoing, formal discussions, particularly in the context of provincial-municipal relations. At the federal level, they can help ensure that a group of large cities represents the views of the economic region, rather than its biggest city only.

Formal two-tier regional governance structures like those in British Columbia are a model to consider (Taylor 2020). In these structures, an “upper-tier” municipality, made up of “lower-tier” local municipalities, is given responsibility for policy areas that cross boundaries or require intermunicipal cooperation in a region. This could include representing the region on intergovernmental bodies. Lower-tier municipalities remain responsible for local matters.

15. The relationship between provincial organizations and national organizations, and ensuring that each feeds into the other, is important to ensure priorities and interests are aligned. In Canada, the presidents of provincial and territorial municipal associations sit on the FCM's national board of directors.

Implementing these structures, however, requires wholesale changes to municipal governance and, in Canada, enactment through provincial legislation. As a result, encouraging intermunicipal cooperation on a more limited scale can be more feasible in the short term. This approach is also potentially more nimble. Intermunicipal organizations that focus on specific functions or goals are prevalent in countries like Switzerland (Bächtiger and Hitz 2007). Austria and Brazil also allow for municipalities to unite for more effective service delivery at a regional scale. In Brazil, these organizations, called consortia, sometimes include states or the federal government as partners as well (de Visser 2009). One might imagine municipalities in a region creating an organization with a mandate to represent them in intergovernmental bodies.

Finally, increasing horizontal coordination among municipalities and municipal associations, not just in a region but across provinces and the country, is important. Committees or councils with a stated aim of sharing best practices and building municipal partnerships, rather than advocating to provincial and federal governments, may be helpful in this regard. As Johanna Schnabel notes, horizontal councils of provinces and states have proven successful at preventing federal incursion into subnational jurisdictions, but that outcome “depends on their ability to make the constituent units coordinate their policy making” (Schnabel 2020, 267).

Provincial-municipal relations

Municipalities and provincial governments are, by necessity, in regular contact. Each province has a ministry dedicated to municipal affairs. Provincial political officials and public servants meet regularly with municipal counterparts and municipal organizations.

Nevertheless, there are two concerns with the current state of municipal-provincial relations. First, there is a power imbalance. Municipalities in some cases require provincial approval for even relatively minor decisions, such as changing speed limits.¹⁶ Provinces can also override municipal decisions or circumvent municipalities, as has been seen with the Ontario government’s unilateral changes to municipal ward boundaries or its use of ministerial zoning orders that bypass municipal planning processes. Municipalities regularly lobby the province for their priorities. Sometimes they even see results from this advocacy. But while provinces can choose whether to listen to their municipal partners, municipalities are obliged to follow provincial directives.

A second issue is the limited scope of municipal involvement in provincial policymaking. The notion that one can delineate the range of issues that impact municipalities and silo them in one ministry is increasingly hard to defend.

16. This is the case in Nova Scotia (Buckmaster 2021).

Increased postsecondary enrolment puts pressure on housing (Moffatt 2021). Climate change plans require municipal implementation and enforcement. Public health policies need to be implemented at the local level. Transit and transportation infrastructure often require joint funding and, at the very least, cooperation to ensure that construction proceeds smoothly. Given the broad scope of what can be considered urban policy, municipal involvement in provincial policymaking should occur both more often *and* more widely than it does now.

Research has found that subnational participation in federal legislation can reduce centralization and prevent instabilities, such as tensions between orders of government, that come from entangled responsibilities (Schnabel 2020).

This participation could take place through a formal, institutionalized council for provincial-municipal relations – one that supplements current issues-based, informal relations. South Africa’s extended cabinet offers a potential model to follow. Meeting twice a year, it allows municipalities an opportunity to participate in strategic planning at the national level. Applied at the provincial level in Canada, such a system would acknowledge the intertwined roles of municipal and provincial governments and the fact that complementary strategies need to address issues like housing, homelessness, mental health, and mobility.

The decisions of South Africa’s extended cabinet have the same force as cabinet decisions. Although such an outcome could be a long-term goal for extended cabinets in Canadian provinces, it is likely too ambitious to start. Instead, extended cabinets could be more consultative in the beginning, producing resolutions for action. They could be an opportunity for regular and formal meetings on the general priorities and challenges of the province, and a chance to practise collaboration. A series of sectoral councils could also be a starting point. In Ontario, a 2022 housing summit between the province and the mayors of Ontario’s larger municipalities could be the beginning of a permanent table on housing policy, supported by a dedicated secretariat (Hachard and Slack 2022).

Switzerland’s example, meanwhile, suggests that a preponderance of vertical councils is not required to foster intergovernmental cooperation. In Swiss federal-cantonal relations, intergovernmental coordination is achieved largely through highly institutionalized horizontal councils at the cantonal level that solidify the cantonal voice (including a general executive council as well as several sectoral ones) and a federal commitment to consultation with cantons as equals (entrenched in the constitution and reinforced by the fact that cantons are in charge of delivering much federal policy).¹⁷

Given the important role Canadian municipalities play in delivering provincial policies, this approach is worth considering. One option is to allow municipalities to propose provincial laws, as is the case in Switzerland; another is a more robust and enforceable provincial requirement than currently exists to consult municipalities

17. For more on Swiss intergovernmental relations during the COVID-19 crisis, see Freiburghaus, Mueller, and Vatter (2022).

on matters that impact them.¹⁸ In these cases, municipal capacity and coordination would be particularly important.

Unfunded mandate reform

Strong intergovernmental collaboration may still result in governments' being tasked with responsibilities they cannot sustainably afford. Intergovernmental tables and councils offer places to mediate these issues. However, the experience of other jurisdictions shows how unfunded mandates can still be a concern even where such systems exist.

In Canada, the situation is complicated by pre-existing imbalances in the responsibilities and financial position of municipalities. These have been created in some cases by explicit downloading of responsibilities to municipalities without requisite funding (this was the case when Ontario downloaded social housing and other social services to municipalities in the late 1990s). Implicit downloading occurs when federally or provincially driven policies create new costs for municipalities. In Ontario, for instance, municipally delivered ambulance services can be significantly affected if hospital wait times force paramedics to stay with patients until they can be admitted (Fox 2022; Laucius 2019). In British Columbia, recent reports from the Union of BC Municipalities and City of Vancouver staff have noted the pressure municipalities face to deliver on areas of provincial responsibility, such as housing and child care, and to fill in gaps in service levels related to challenges such as homelessness and the opioid crisis (City of Vancouver 2021; UBCM 2021).

In other words, municipalities may come into a new intergovernmental relationship with already-constrained fiscal capacity and flexibility (Hachard 2020). Resolving this issue falls largely at the provincial-municipal level. Assurances are needed that, in the future, any new responsibilities taken on by municipalities will be accompanied by sufficient resources. Ideally, this requirement would be codified in legislation or through an intergovernmental agreement like that in Austria, which requires consultation on the fiscal impacts of draft legislation or regulation and allows disagreements, if necessary, to be taken to court.

This process should also go hand-in-hand with a review of whether the current division of responsibilities between provincial and municipal governments includes sufficient fiscal resources for municipalities to fund their responsibilities.¹⁹

18. Good (2019, 25) argues that “in order to be legally effective, a commitment to consult... must be legislated with a clear constraint on the future legislative process, and the process would need to be ‘doubly entrenched.’ In the case of the British Columbia Community Charter, the legislation would need to state that Article 2(2) of its ‘Principles of municipal-provincial relations’ section could not itself be amended without consulting the city.”

19. The 2022 Canadian Municipal Barometer found that, when asked to list their top three options for generating new revenue, municipal officials preferred increased grants from provincial and federal governments by a wide margin over implementing new, municipally controlled taxes (e.g. sales or income) or increasing existing taxes or user fees (Canadian Municipal Barometer 2022). Whatever the reasons behind this choice, the result would further intertwine the orders of government and increase the need for intergovernmental relations reform.

Provinces suffer their own fiscal imbalance with the federal government, one that risks worsening in the coming decades as fiscal pressures arise from an aging population and the energy transition, among other factors (Béland et al. 2020). It is thus important to consider federal-provincial-municipal relations as a whole, even if the scale of the exercise warrants breaking reform into pieces (Hachard 2020).

Trilateral relations

Trilateral relations, unlike provincial-municipal relations, are largely non-existent in Canada with the exception of a handful of agreements negotiated in the 1990s. For the most part, Ottawa deals directly with provinces.

It is true that federal-municipal relations have grown over time. And while this should be encouraged, if only to promote understanding and build relationships between the orders of government, removing provincial governments from the equation is counter-productive in the long run. It is hard to imagine a policy issue that the federal government and municipalities can collaborate on that would not, eventually, require provincial involvement and cooperation – or, in the case of Québec, formal provincial consent.

Strengthening trilateral relations can occur through further site-specific or policy-specific agreements modelled on previous Urban Development Agreements. While considered successful experiments in governance within Canada and internationally, these agreements did not spread, even in Canada. Two attempted agreements in Victoria and Toronto in the 2000s did not materialize due to a change in federal government. As Bradford (2020) argues, new trilateral agreements could be helpful in policy areas such as economic development or mental health and addictions, or for focusing on particular regions or neighbourhoods. A recent revival in interest in place-based policies also lends itself to trilateral agreements (Speer 2019). In many cases, these agreements could be quadrilateral agreements that include Indigenous governments.

The creation or expansion of sector-specific trilateral intergovernmental councils is another potential path forward, and could build on relationships established by municipal associations in their engagement with public officials, as well as their occasional participation at federal-provincial-territorial tables. As with Austria's Conference on Spatial Planning or Switzerland's Tripartite Conference of Agglomerations, these meetings could focus on specific policy areas requiring regular trilateral coordination, such as housing or transit. A robust set of federal-provincial-territorial sectoral tables exist. A useful and practical first step would be to open those to municipalities. Municipal inclusion at the deputy ministers' tables in particular would serve the further function of promoting the kind of informal relationships that exist at the provincial-municipal level, but are less established at the federal-municipal level.

A general trilateral council, meanwhile, would offer an opportunity for all three orders of government to discuss emerging issues and promote, to the extent

possible, coordination on shared challenges. The council could be achieved through a reform of the structure of First Ministers' Meetings. Alternatively, a formal consultative mechanism could be established, by which municipal governments and the provinces could voice input into federal decision-making (Berdahl 2006).²⁰

In all cases regular meetings are essential to normalize collaboration, create a ready-made space for gathering leaders in case of emergency, and move steadily toward greater institutionalization. As Schnabel notes, intergovernmental councils can safeguard a federal system's stability, but they are most effective when they "meet frequently, have a permanent secretariat, follow pre-defined rules of operation, and [are] supported by several committees and working groups" (Schnabel 2020, 5).²¹ Finally, to guard against federal dominance, councils should not be chaired solely by a federal government representative and should be supported by an independent secretariat (Schnabel 2020).

Of course, current federal-provincial intergovernmental relations do not always have the characteristics described above. First Ministers' Meetings occur only at the behest of the federal government, and several years may pass without one being called. Some prime ministers have convened First Ministers' meetings regularly, while others have eschewed them and focused on more limited bilateral relations with individual provinces. The role of Indigenous governments has also changed over the years and requires further attention as part of efforts to establish nation-to-nation relations. In other words, there is more work to be done than simply ensuring the inclusion of municipalities. Experts have recommended that federal-provincial relations be more institutionalized, potentially through annual First Ministers' Meetings with agendas set jointly, rather than in a top-down fashion (Wesley 2020). Any moves in that direction should also establish a role for municipalities.

5. Conclusion: Building a culture of cooperation

Previous research has highlighted the challenges municipalities face in Canada's federal system (Hachard 2020). Many stem from a lack of clarity about municipal roles and responsibilities, which in the 21st century are substantially different from those that existed when the Canadian constitution was written in 1867. Provincial governments also face challenges; experts note that their fiscal health is under threat from a rapidly aging population that could lead to rapidly accelerating health care costs (Intergovernmental Fiscal Relations Commission 2020).

20. Addressing the questions of municipal capacity and coordination would be particularly important to ensure an effective municipal voice at trilateral councils.

21. In times of crisis, like COVID-19, the presence of formal intergovernmental structures like vertical councils was found to lead to better vertical coordination, although countries with weaker councils exhibited equal or greater coordination than those with strong councils (Lecours et al. 2021; Schnabel and Hegele 2021). In Canada, the intergovernmental response was considered effective by many, but opaque as ever: "What one saw were the results, but not the processes or legal mechanisms on which they were built" (Poirier and Michelin 2021).

In this context, a clarification and adjustment of intergovernmental arrangements, including who does what and how they pay for it, should be undertaken. Such an exercise, however, will never result in a perfect division of labour. The need for coordination and partnership on shared challenges will always be there. Intergovernmental relations, and a system that fosters it, will always be required.

In today's world, municipalities should be seen as integral partners in such a system. Incorporating them will not only help reduce intergovernmental conflict. It will also offer spaces to develop complementary solutions and policies on shared priorities.

This paper has shown how intergovernmental relations in other countries incorporate local governments. Switzerland, Austria, and South Africa offer particularly useful ideas for the Canadian context. No model, however, is directly transferable. Federal systems are too distinctive in their history, structure, and culture to allow for easy translation. Switzerland, for example has a culture of collaboration that undergirds the country's intergovernmental structure (Pfisterer 2015), as well as a dedication to bottom-up governance, seen in its prolific use of referenda, through which municipalities exert influence on cantonal legislation and constitutions. Both features are absent in Canada.

Such cultural markers should not be taken as necessary conditions for new models of intergovernmental relations. But they do suggest that new intergovernmental institutions will not, in themselves, create a new way of doing business. They need to go hand-in-hand with a genuine desire for, and willingness to work toward, collaboration. Specific training for civil servants and public officials at all three orders of government can help foster this change, as can building new modes of intergovernmental relations, however small, informal, or narrowly focused they are at first. Ultimately, however, the changes needed are as much political and cultural as they are institutional. With that in mind, the models described in this paper offer starting points for needed reform.

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