

PUBLIC POLICY SOURCES

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Mandate for Leadership for the New Prime Minister

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Executive Summary

On November 14th, the ruling Liberal Party of Canada will elect a new leader, who almost certainly will become Canada's prime minister a short time later. An election will likely follow in the new year. This changing of the guard carries with it a unique opportunity for new approaches to economic policy.

The purpose of this document is to convey to the new prime minister and his government sets of policy recommendations for some of the most important areas of federal jurisdiction. The authors of these recommendations are experts in their fields. This executive summary presents key recommendations in each of the areas examined.

Taxation

- Tax less: Canada's heavy burden of taxation negatively affects job and wealth creation in Canada.
- Tax smarter: Eliminate or reduce particularly destructive taxes by, for example, accelerating the current five-year plan to eliminate the Corporate Capital Tax.
- Maintain fiscal discipline.

Labour

- Increase flexibility in labour market by, for example, introducing worker choice legislation for those covered by federal labour laws.
- Reduce public-sector employment to increase efficiency by the use of markets to provide public services.
- Fix the Employment Insurance system by basing it as much as possible on insurance principles.

Regional Policy

- End regionally extended Employment Insurance, which suppresses job creation in poorer regions.
- Abolish industrial policy: Canadian taxpayers should not be subsidizing business.
- Replace equalization payments with tax points to encourage provinces to reduce taxes, leading to increased economic growth.

Internal Trade

- Harmonize rules and regulations that limit internal trade to create a Canadian common market.
- Streamline process that handles complaints against internal trade barriers to reduce costs to complainants and speed decisions.
- Allow individuals and firms to sue provinces for damages if trade barriers remain in place.

International Trade and Foreign Aid

- Negotiate more effective and timely dispute settlement mechanisms through NAFTA and the World Trade Organization.
- Remove Canadian regulations that restrict free trade (unilaterally if necessary), such as the Wheat Board.
- Tie foreign aid to a nation's level of economic freedom, which has been shown to increase prosperity and promote democracy and other freedoms.

Security and Trade

- Provide more financial resources to strengthen the counter-terrorist forces in the RCMP, CSIS, coast guard and customs agency.
- Create a new overseas intelligence service to coordinate counter-terrorism efforts.
- Develop policies in cooperation with the United States to assure that trade and people can continue to move across the border easily, while it is closed to terrorists and other security threats.

The Bank of Canada and Exchange Rate

- Create a currency union modeled after the European Monetary Union through agreement with the United States and Mexico.
- Or, create a hard fix unilaterally and without the need for international treaties.
- Remove the Bank of Canada's power to set interest rates and leave as its main responsibility the convertibility of Canadian into US dollars at par.

Regulation

- Establish a committee to identify regulations that are obsolete or in conflict with other regulations and repeal them; have 10-year sunset clause for new regulations.
- All proposed (and renewed) regulations should be accompanied by complete cost-benefit analyses, and be subject to question and debate in the House of Commons.
- Make flexible, incentive-based, market-friendly regulatory structures the first resort,

with centralized, command-and-control approaches as the last resort.

Environment

- Except where federal oversight is required to manage international affairs, oversight of fisheries, provincial waterways, and provincial wilderness areas should be transferred to provincial agencies.
- Establish process for prioritizing environmental risks based on magnitude and cost of remediation to maximize net return on investment.
- Withdraw from the Kyoto Protocol and focus on real environmental issues facing Canadians, such as air pollution, water supply problems, water pollution problems, fishery depletion, forest overgrowth, and wildlife management.

Health Policy

- Repeal or change the Canada Health Act to remove limits on provincial autonomy over health care, as recognized by the constitution.
- Allow competition in health-care delivery, including, private insurance, for-profit and non-profit hospitals, and private surgery and other treatment facilities.
- Eliminate lags in the introduction of new drugs by abandoning the Canadian approval agency; accept approvals in other developed countries.

Aboriginal Policies

- Restructure aboriginal policy to empower the individual, not band elites.
- Reform band election procedures to improve accountability of band leadership.

- Strengthen private property rights for personal belongings and residential land claims on mineral, timber and other natural resources.

Defence

- Increase Canadian Forces spending by: \$3 billion in capital expenditures over the next 5 years and \$5 billion spending annually in other areas.
- Replace outmoded policy based on 1994 White Paper and determine the appropriate capabilities for conventional wars, fighting terrorism, and peacekeeping missions.
- Work for inter-operability with NATO and US for air, naval and ground forces.

Immigration and refugee policy

- Assure that real Canadian labour market needs are met by basing acceptance into Canada on the existence of a job offer, similar to the NAFTA work permits.
- Limit sponsorship of relatives to spouses, dependent minor children, parents and grandparents.
- Replace the politically appointed Immigration and Refugee Board with career refugee

officers; detain undocumented claimants until bona fides are established.

Governance

- Adopt a more muscular Freedom of Information Act, covering all government departments, boards, commissions, foundations, and corporations.
- Study alternative electoral rules through process similar to that adopted in BC.
- Reform Parliament by, among other things, allowing more free votes and increasing the power and independence of committees.

Judiciary

- Assert Parliamentary supremacy and the rule of law in place of court-created law.
- Create transparency in Supreme Court appointments through, among other things, a televised question-and-answer session to examine each candidate.
- Abolish the Court Challenges Program to discourage special interest groups from bypassing the political process to obtain special privileges.

Principles of Good Economic Governance

In November, the ruling Liberal Party of Canada will elect a new leader, who a short time later will become the country's prime minister. This will likely be followed by an election in the new year. The changing of the guard in Ottawa carries with it a unique opportunity for new approaches to economic policy.

The purpose of this document is to convey to the new prime minister and his government sets of policy recommendations for some of the most important areas in the federal government's jurisdiction. The authors of these recommendations are researchers who work at independent Canadian think tanks. Although they function separately and their intellectual products are highly diversified, they share a belief in certain principles of good governance. They agree that policies designed to meet the economic needs of Canada's citizens will be most effective if they are both transparent and neutral. Whenever possible, that means a reliance on competitive private markets. When there is no such reliance and a government agency provides a service, it should do so within in a framework of contestability and rigorous performance measurement.

All of the contributors to this in the compendium are experts in the fields in which they make their recommendations. Their presentations consist of two parts. The first contains a one-page statement of the main problems they recommend the government must solve, with policy changes presented in bullet form. The second part provides the rationale for these recommendations in some depth and gives references to existing research that underlies the analysis.

The individual contributions below speak for themselves. The purpose of this brief introduc-

tion is to discuss the principles that underlie the detailed recommendations. The authors recognize that existing laws and institutions often transgress against these principles, and that the process of changing them must be gradual and measured. But they have no doubt that systematic reform is required to enable Canada to regain the ground it has lost economically relative to other nations and to restore Canada's place in the world.

The policy recommendations in this document are also driven by the following considerations. The interests of current and future generations of Canadians will best be served by the application of modern principles of public administration. A federal government can be highly effective and efficient even while it directly commands much fewer of the nations resources. A professional civil service dedicated to defending the personal freedoms of citizens, to ensuring the provision of goods and services that the private sector does not, to assuring equality of opportunity and the protection of individuals from extreme poverty, is possible for Canada at much less cost.

Government policies that protect personal freedoms include definition of and support for the rule of law, and the protection of private property from domestic and foreign violators. The direct provision of goods and services by government should be limited to defence, policing, and some types of economic infrastructure, though even here much of this can and should be contracted out. In all other cases, government can best assure their provision by remaining neutral with regard to the nature of the providers, with a focus on arrangements that can deliver the highest quality of goods and services in the most economical fashion. In cases where the public seeks guarantees

that minimum social goals are met, for services such as education, health and welfare, the best use of government is to finance those activities in a transparent manner and to monitor their performance, while allowing the private sector the full competitive freedom to produce them. To finance the delivery of these services, the government should also employ a tax structure that causes the least distortion of market incentives and maximizes the potential for revenue by encouraging economic growth.

In recent decades the role of the federal government has expanded much beyond the levels suggested by these principles. The federal government redistributes income in ways that lower productivity and reward special interests, unduly influences the pattern of production through discriminatory taxes and subsidies, and protects industries through tariffs and the granting of monopolies. It has turned from financing public goods to producing them, and in the process created groups with a highly concentrated interest in protecting their privileges. The high costs and relative inefficiency of such government activities ultimately reduce the public benefit. In addition, the taxation system relies excessively on taxes that reduce incentives and slow the growth of productivity.

The list of government activities that have violated the principles of good government is extensive. Many existing policies have progressively restricted individual freedoms through taxation, regulation and reduced choice for goods and services. This loss of freedom has been slow and insidious and has diminished the welfare of all

Canadians. Our country should be the most prosperous and harmonious in the world. It is not.

For many Canadians, personal freedom and responsibility have been replaced by dependence on government, and their demand for public services has increased correspondingly. The higher taxation and regulations required to generate the deeply rooted expansion of demand for these government services contributes further to the loss of personal freedoms.

The recommendations by the contributors to this document are driven by the concern that present political institutions and public attitudes will cause government to grow continuously and without limit, to the detriment of future generations. During the last decade, political rhetoric created the impression that taxation and the size of government had been reduced. This rhetoric is not matched by reality. Taxes paid by the average Canadian family (families and unattached individuals) have increased from \$10,941 in 1961 to \$27,640 in 2003 (figures adjusted for inflation). More recently, some taxes were reduced, but others were increased. The net effect has been a largely continuous rise in revenues and spending over the last four decades, without a corresponding increase in either the quality or effectiveness of public services.

Canadian economic policies need to change direction. The presentations that follow show how and what should be done to achieve this objective. If implemented, these policies would enrich our nation beyond measure and make our federal governance a prouder and more successful enterprise.

Taxation

The Problem

Canada's level of taxation is above the optimum and higher than that of the United States. The structure of taxation has been changed haphazardly and does not reflect modern insights into the incentive effects and costs of different taxes. The level and structure of Canada's taxes have been important factors in explaining the country's slow productivity growth in recent times and the poor long-term performance in per-capita incomes compared with the United States.

Solutions

Tax Less

- Reduce the total level of taxes extracted from the economy.
 - Flatten personal income taxes by reducing the applicable rates and the number of brackets as well as increasing the thresholds at which the various rates apply.
 - Aggressively reduce corporate income taxes so as to reduce the overall burden of capital-based taxes.
 - Accelerate the elimination schedule of the federal capital tax.
 - Completely eliminate the taxation of capital gains and dividends.

Tax Smarter

- Shift the burden of taxation away from capital-based taxes to consumption, payroll, and other more efficient taxes.
- Prioritize the immediate elimination of capital taxes and further reductions in corporate income tax rates so as to reduce the tax burden placed on capital.
- Review capital allowances and depreciation in order to simplify and reduce the cost of capital investment.
- Eliminate restrictions on RPPs and RRSPs regarding both contribution limits and foreign investments.

Fiscal Discipline

- Reduce expenditures to ensure continued balanced budgets.
- Implement legislation that precludes increases in real per-capita spending without popular approval.
- Earmark all unexpected surpluses for debt reduction.
- Enact provisions for the return to taxpayers of fiscal surpluses above a prescribed threshold.

Find out more ...

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Taxation Background

Tax Less

There are two sides to fiscal policy: government spending and government revenues. Ultimately, the level of government spending drives taxation. In order to tax less, governments must simultaneously spend less.

The size of government in Canada is much too large. Governments consume nearly 40% of our economy as measured by gross domestic product (GDP). This should be a concern given that historical estimates of the government's optimal size for enhancing growth ranges from 20 to 30 per cent of GDP (Mackness 1999, Grubel 1998). Many empirical studies have found that increased rates of economic growth are achieved through reductions in government spending (Clemens and Veldhuis 2002). In addition, countries with small governments generally do not show worse indicators of social and economic well-being than countries with "big" government—and often they achieve an even better standard (Tanzi and Schuknecht in Grubel, ed. 1998, p. 70.)

High levels of government spending and taxation lower economic growth, reduce productivity, and ultimately provide Canadians with less prosperity.

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Tax Smarter

Taxes create economic distortions by altering incentives and changing the relative prices of certain activities, goods, and services (Aaron and Pechman, 1981). With the above caveat in mind, tax policy should focus on raising sufficient revenue to cover government expenditures in the least distortionary manner in order to maximize economic growth.

Research has shown that different types of taxes result in different types of associated costs or economic distortions. Thus, different types of taxes will have different effects on economic growth. Government can raise revenue through a variety of different taxes: income (both personal and business), payroll, property, sales, licences, fees, capital, etc. A key aspect of tax policy is selecting the appropriate mix of taxes in order to satisfy the traditional evaluative criteria for taxes (efficiency, simplicity, and equity) while raising sufficient revenue.

A number of studies have attempted to document the costs of different taxes. These studies have commonly looked at the marginal efficiency cost (MEC) of taxes. That is, the studies focus on answering the question: what is the additional cost to the economy of raising an additional dollar of revenue from a particular tax? A common finding throughout the MEC of taxation studies is that capital-based taxes (often called business taxes) are much less efficient than those with a labour income or consumption base.

Canada would, therefore, enjoy increased rates of economic growth and prosperity if it were to simply shift the burden of taxation away from high-cost taxes, such as capital-based taxes, to

less costly taxes, such as consumption and payroll taxes.

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Fiscal Discipline

The federal government achieved an enormous first step in fiscal discipline by balancing its budget in 1997. Balancing the budget is not enough, however. The federal government should establish clear spending limitations for the next five years. Increases should be limited to population growth plus the rate of inflation. Such limits would maintain current real per-capita spending while reducing the size of government relative to the economy, assuming GDP growth exceeds population and inflation. Constitutional Tax and expenditure Limitation (TEL) laws are by far a more effective restraint mechanism, however, Canada's rather onerous constitutional system precludes such a measure at this time.

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The Problem

Despite the fact that Canada has averaged real GDP growth of 3.8% from 1998 to 2002 compared with 3.0% in the US and that Canada's job-creation record has out-performed the United States' consistently throughout this period, Canada continues to maintain significantly higher levels of unemployment, more of Canada's unemployed remain so for longer periods of time, and our productivity continues to lag that of the US.

Solutions

Introduce Flexibility in Federal Labour Legislation

- Introduce worker-choice laws (Right-to-Work laws) for federal government employees and those covered by federal labour laws.
- Review federal labour relations laws regarding certification and decertification, successor rights, immediate mandatory arbitration, and the treatment of investment and technology to ensure flexibility is accorded workers and employers.
- Ensure that the Canada Industrial Relations Board is open and transparent with respect to its interpretation and enforcement of federal labour-relations laws.

Reduce Public Sector Employment

- Reduce employment in the public sector by utilizing
 - Competitive bidding
 - Out-sourcing
 - Public-private partnerships (P3s)
 - Privatization
 - Periodic review of existing programs

Fix the Employment Insurance System

- Base the system on insurance principles as much as possible.
 - Implement experience-based fees for employers and workers.
 - Eliminate the regional bias based on seasonal exemptions.
 - Remove non-insurance, social programs from the EI envelope to improve accountability.
- Limit size of Employment Insurance surplus funds.
 - Do not use premiums as general revenue.
 - Lower premiums to reduce cost of labour and increase employment.

Find out more ...

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Labour Background

Flexibility for both employees and employers is a critical characteristic of well-functioning labour markets. Roughly 10% of Canadian workers fall under federal labour legislation: those that work directly for the federal government or in federally-regulated industries. It is essential that greater flexibility be accorded these sectors if we are to improve Canada's national labour-market performance.

Flexibility in Labour Laws

A particular area of concern for the federal government is the rules governing relations between employers and employees, although effectively these cover the relations between employers and unions. A more flexible set of labour-relations laws will facilitate a more dynamic and responsive labour market, resulting in improved performance in areas such as job creation, unemployment, and productivity.

In particular, the federal government should introduce worker-choice laws or what are commonly referred to as Right-to-Work laws in the United States. Worker-choice laws would provide federal government employees and workers in federally-regulated industries a choice of whether to join and/or financially support a union through the payment of dues. Currently, workers have no such choice. In order to secure employment in a unionized firm, workers must join and/or pay union dues. Interestingly, evidence from the United States indicates that when workers are given a choice, fewer choose to join or pay dues to unions.

The federal government should also guarantee that the Canada Industrial Relations Board conducts its activities in a transparent and accountable fashion. All too often, this powerful entity,

charged with not only enforcing the laws but also with interpreting them, lacks both transparency and accountability.

Public Sector Employment

The division between private-and public-sector employment is an important aspect of labour-market performance because the incentives, productivity, and performance of labour activity in the private sector is different from that of the public sector. This is of particular concern, as public sector employment is again on the rise.

Economic analysis has found stark differences between the private sector and public sector. First, the real risk of bankruptcy and failure forces the private sector to react to consumer demands and preferences and to efficiently allocate capital to maximize returns. The public sector faces no such competitive pressure. Second, Megginson and Netter (2001) found that government businesses are more labour intensive than their private-sector counterparts because they tend to develop with less capital. Government businesses often seek to fulfill social goals and objectives rather than pursue economic or business objectives. Finally, the monopolistic environment within which the public sector generally operates results in significantly diminished pressures to serve consumers, react to market demands, and offer competitive prices.

The federal government should decrease the level of people directly employed by the government. It should utilize competitive bidding, outsourcing, and P3s to a much greater extent in order to harness the competitive strengths of the marketplace while still ensuring the provision of certain goods and services. This would increase the productivity of labour and provide a needed

boost in the quality of, cost of, and access to federally provided goods and services.

Fixing the Employment Insurance System

There have been two major reviews of the unemployment insurance system: the Forget Commission Report (1986) and a large stock of studies prepared under then Minister of Employment and Immigration Lloyd Axworthy in 1994-95. There are many academic studies published during the last 30 years since the generosity of the system had been increased under the leadership of Bryce Mackasey, who held the portfolio of Labour Minister and then Minister of Manpower and Immigration from 1968 to 1972.

As a result of these studies, the generosity of the system and its adverse affect on unemployment was reduced. However, the Canada-US gap in unemployment rates still remains high for a number of reasons: the lack of experience rating, which subsidizes and keeps high employment in seasonal industries such as fishing and construction; variations in the length of eligibility due to regional unemployment; and the high level of

premiums that add to the cost of labour and encourages the increased use of capital.

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Regional Policy

The Problem

Canada's regional policy, aimed at slow-growth regions, has failed. It has locked the poorer regions into government dependence, high unemployment, and low investment.

Solutions

- Immediately reform the regionally-extended Employment Insurance program—which mainly affects Atlantic Canada but also areas in other regions—to penalize repeat users, discourage new entrants, and claw back payments to the affluent.
- As discussed in labour section, base the system on insurance principles as much as possible.
 - Implement experience-based fees for employers and workers.
 - Remove non-insurance, social programs from the EI envelop to improve accountability.
- Replace equalization payments with tax points and calculate over a multi-year period to provide fiscal stability.
- Abolish all policies related to “industrial strategy,” particularly regional economic development agencies.
 - In Atlantic Canada, the money saved could be used to virtually eliminate corporate taxes.
- Give jurisdiction over the fisheries to provincial governments.

Find out more ...

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Regional Policy Background

Employment insurance

Prior to the introduction of regionally-enhanced Unemployment Insurance (now Employment Insurance) in 1971, the unemployment rate in Atlantic Canada was converging to the national level, with the gap between national and regional unemployment typically two percentage points or less. All three Maritime Provinces had experienced at least one year with unemployment rates below the national average. The regionally-enhanced program enabled workers to collect UI for most of the year after a few weeks of work, often with no questions asked.

Unemployment rapidly rose to the double digits in Atlantic Canada. Real unemployment was much higher. In some months, nearly twice as many people were collecting UI as were officially unemployed. Yet both Statistics Canada and the Atlantic Provinces Economic Council reported shortages of workers. UI was too remunerative for workers to remain in the workforce during the majority of the year when they qualified for payments. This perverse program has been responsible for weak employment growth and high unemployment throughout Atlantic Canada. If Atlantic Canada is to have a more prosperous future, EI must be reformed and the regional program ended. Social program aspects of EI should be covered under separate programs. Ultimately, EI should be transformed to a true *insurance* system.

Fiscal federalism

The federal government has pumped a huge amount of money into Atlantic Canada. Net federal spending—the amount Ottawa spends in the region, minus the revenue it raises—has typically equalled 20% to 40% of regional GDP over the last

three decades, though it has declined somewhat in recent years. Direct federal transfers to Atlantic provincial governments typically equal one-third to two-thirds of their budgets. This vast flow of money from taxpayers outside the region has broken lines of accountability. The money is spent, or directed, by regional politicians at the federal level and by provincial politicians, none of whom are accountable to those outside the region who foot the bill.

Equalization and other transfers are calculated each year, leaving considerable uncertainty in the budgeting process in the Atlantic Provinces, due to the provincial governments' dependence on federal transfers. Instead, these transfers should be calculated over a multi-year period. This, plus the conversion of transfers to tax points, would help create additional accountability, since electors would be aware that the provincial governments themselves were setting the tax levels with the additional tax points, thus relinking taxes to expenditures.

Industrial/Regional Policy

Industrial policy fails by distorting market incentives and directing resources away from their most efficient uses. This failure is reflected in empirical studies. (See for example, articles in Bradbury, et al.) Moreover, such policy can retard development in two ways. First, high levels of government spending squeeze out other economic activity. Second, lavish subsidies and government contracts can leave businesses dependent on government and unable to compete in the marketplace. One study of Nova Scotian businesses (O'Farrell, 1995) found that they paid their workers less than New England businesses yet had more modern equipment due to

government largesse. Nonetheless, Nova Scotia businesses charged considerably higher prices than their New England counterparts and produced goods of poor quality, unacceptable by international standards. Business resources were devoted to government rent-seeking rather than productive efforts in quality, efficiency and marketing.

Fisheries

Fisheries policy in Atlantic Canada has been used as a political tool. This has led to huge overcapacity in the fisheries, environmental problems, and poor fish quality, since much of the money came not from value-added activities but from government subsidies. Divided federal/provincial jurisdiction has broken lines of accountability. Provinces should be given jurisdiction over the fisheries, though with some provisions to allow Ottawa to negotiate international treaties and deal with migratory fish.

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Internal Trade

The Problem

Canada's Agreement on Internal Trade, in effect since July 1995, has had little impact in freeing interprovincial trade. The complaint process is costly and time-consuming. Victory is unlikely to lead to results since provinces routinely ignore rulings or undertake delaying actions. The Agreement contains no effective enforcement mechanism. It only allows the victorious province to erect trade barriers against the offending province. The outcome may be more, not fewer internal trade barriers.

Solutions

The existing agreement needs to be strengthened in negotiations between the federal and provincial governments. If negotiations fail, the federal government should use its constitutional powers to establish free trade within Canada.

- The federal and provincial governments must renew their commitment to free trade *within* Canada.
 - Ministers responsible for the agreement must be given a clear mandate to:
 - ◆ Identify and remove domestic barriers.
 - ◆ Report annually to the First Ministers meeting about progress.
- Streamline the complaint process.
 - Develop strict guidelines to hear and resolve internal trade disputes.
 - Disputes must be settled within a maximum of 12 months.
- Allow individuals and businesses to launch actions if the province refuses.
 - A deposit may be required in order to avoid frivolous actions.
- Create process for enforcement of rulings.
 - Allow successful complainants to sue offending governments for damages and costs if action is not taken within three months of a ruling.
- Harmonize rules, regulations and administrative practices, including.
 - Standardize company reporting and the Code of Conduct on Incentives.
 - Reconcile transportation standards across Canada.
- Extend scope of the agricultural chapter, as agreed in 1997.
- Develop agreement on energy, as per agreement of 1995.

Find out more ...

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Free Trade in Canada

The Agreement on Internal Trade (AIT) has been almost invisible and equally ineffectual since it came into force in 1995. The Agreement makes it expensive and time-consuming to launch a complaint. A company or individual must first ask the provincial government to sponsor a complaint. It can be difficult to get a province to undertake this expensive process; it may even be difficult to find or interest the appropriate official. Only when this process is exhausted can an individual or business launch a complaint, but only with the approval of an AIT “screener,” who acts under ambiguous and subjective rules. The agreement itself is complex and often ambiguous. Challenges must rely on expensive lawyers and experts. Even a victory in a dispute is unlikely to lead to a successful resolution, however. The AIT contains no strong enforcement mechanism, other than allowing a province to establish its own trade barriers, which provinces often do anyway without the permission of an AIT panel. Many internal trade barriers remain unidentified and unchallenged because of the Agreement’s complexity. Some glaring examples of internal trade barriers within Canada follow.

Agriculture: The Dairy Trade

Three barriers are used in the dairy trade, though none is necessary to protect the consumer or public health and safety. First are measures that prevent the sale of coloured margarine in Quebec. For years, the margarine industry has asked Ontario to use the Agreement to solve this issue with Quebec. In August 2002 Ontario finally started the process to resolve the issue through an internal trade panel. Thirty days later this process came to a dead stop. Quebec decided, unilaterally and with complete disregard for its commitment to the AIT, not to select

a panelist, which stymied the review process. The second case concerns Ontario’s Edible Oils Products Act (EOPA), which prevents the manufacture and sale of imitation dairy products that combine vegetable oil and dairy products. These products are commonplace in the North American market. The EOPA was intended to be repealed by an omnibus food quality and safety act in June 2001. Its repeal was, however, delayed until June 2003, and has been delayed again until June 2004. Finally, there are barriers to fluid milk distribution licensing particularly in the Maritime provinces. Two internal panels, one in PEI and the other in New Brunswick, ruled that their milk distribution regulating regimes constitute unfair trade practices. The New Brunswick government recognizes that its system is protectionist but says the issue needs further study before it can change it.

Construction: Quebec Regulatory Restrictions

Quebec restricts access to construction work for workers and companies from the neighbouring provinces of New Brunswick and Ontario, both of which allow open access to Quebec workers and companies. Efforts by Ontario and New Brunswick to eliminate Quebec’s restrictions have been unsuccessful. In 1999 Ontario lost patience. Rather than try to resolve the issue through the AIT, Ontario passed the Fairness in a Two-Way Street Act that allows it to register contractors, construction workers and aggregate haulers from Quebec in a way that is similar to Quebec’s requirements for workers from Ontario. Quebec started the process to resolve the issue through an internal trade panel in March 2002. This complaint also came to an abrupt end. Ontario arbitrarily refused to appoint a panelist.

Public Sector Procurement

The AIT establishes an electronically-based public-sector procurement market. Its success is qualified however by many exceptions, such as Quebec's exclusion of Hydro-Québec and Société des alcools. The AIT excludes contracts for services and construction below \$100,000. It is hampered by an ineffective bid-protest mechanism that discourages suppliers from complaining.

Cost of Credit Disclosure

According to Chapter Eight of the AIT, Canadian governments agreed to harmonize cost of credit disclosure measures by January 1, 1997. They missed this deadline, as they have missed others, but eventually agreed on an arrangement. Unfortunately, the federal government, without consultation, changed its mind and adopted a different system for chartered banks, abandoning a national system of disclosure applying to all financial institutions in Canada.

Securities Regulation

Canada's fragmented securities regulation has long prevented any kind of national securities

market. The result has been increased costs and complexity for financing that has driven business to use other more efficient markets to meet their needs. This is not possible for small and medium businesses and those looking for venture capital. The financial sector is specifically excluded from the Agreement but the Committee on Internal Trade could and should promote the resolution of this issue which clearly limits the openness and efficiency of the domestic market. This would not necessarily involve a single Canadian regulatory agency, but could instead involve equivalency-type agreements.

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International Trade and Foreign Aid

The Problem

The North American Free Trade Agreement (NAFTA) and the World Trade Organization (WTO) require new initiatives to bring optimal benefits to Canada. The softwood-lumber dispute points to the need to improve the dispute-resolution mechanisms; long border delays suggest the need to develop better customs procedures; trade in agricultural products is far from free; Canadian limits on foreign ownership lower productivity. Canada's foreign aid often goes to corrupt regimes, providing resources to undemocratic governments.

Solutions

Dispute Resolution

- Negotiate more effective dispute settlement mechanism through NAFTA and the WTO.
- Work toward eliminating the need for such a mechanism by removing dumping and subsidies as actionable for trade within NAFTA.

Border problems

- Arrange for pre-clearance of cross-border shipments of goods.
- Make increased use of biotechnological recognition devices for travelers.
- Negotiate a North American Customs Union to eliminate rules of origin filing.

Other Issues

- Remove Canadian regulations that restrict free trade (unilaterally if necessary):

- End compulsory Wheat Board membership.
- Phase out supply management.
- Allow export of water for use in non-irrigation projects.
- Allow cabotage and full integration of markets for air travel and cargo.
- Eliminate content regulations on media.
- Remove limits on the flow of skilled workers within NAFTA:
 - Maintain present visa provisions for professionals.
 - Work towards mutual recognition of professional certifications.
- Remove Canadian restrictions on foreign ownership of banks and other financial institutions; airlines and railroads; newspapers and electronic media; and other cultural institutions.

Foreign Aid

- Tie foreign aid to economic freedom, which is proven to promote growth, poverty reduction, and other freedoms.

Find out more ...

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International Trade Background

Dispute Resolution

Canada brings more actionable complaints about US violation of dumping and subsidy rules than does the United States against Canada. These actions are costly and divisive. Canada should take the initiative in negotiating a more effective and timely dispute settlement mechanism.

In the longer term, dumping and subsidies should be eliminated as actionable. Such trade actions serve no useful role since North American economies are extremely competitive and there is much free trade with the rest of the world. Under these conditions little if any damage is done to national economies as a result of misguided attempts to dump or provide subsidies to industries. The only effective solution to the existing trade disputes is to reach agreement among NAFTA partners that anti-dumping and subsidy complaints are no longer actionable and that all restrictions on free trade based on these complaints are prohibited.

Border Issues

As a result of the threat of terrorism, the United States has increased its enforcement of border controls. The results have been long delays in the shipment of goods from Canada to the United States and increased difficulties for business travelers and tourists moving between the two countries. These problems can be alleviated by the adoption of procedures that reduce the need for and the intensity of border examination. For trade, the proper policy is to arrange for US customs agents to clear goods at the point where they are put onto trucks in Canadian factories, especially those that make regular and large trans-border shipments. To facilitate and speed

up the movement of persons across the border, including the drivers of trucks, biotechnological methods for identification should be employed.

Finally, exporters often complain about the cost of assembling and filing information about the origin of their shipments. These rules are in place to prevent exporters from the rest of the world from shipping goods to Canada, and then re-exporting them to the United States to avoid that country's tariffs in cases where Canadian tariffs are lower than US tariffs. This costly procedure can be eliminated through the creation of a Customs Union under which the three NAFTA countries would adopt a common external tariff.

Fraser Forum, March 2002, contains a number of articles addressing the common theme of "Creating a North American Frontier" that address the issues in this section from the perspective of Canadian, US and Mexican analysts.

Canada has many domestic regulations designed to protect industries for a variety of reasons: the wheat board to assure bargaining power in dealings abroad; supply management for dairy and other products to protect farmers' income; the prohibition of water exports to preserve this resource for Canadians; cabotage restrictions to prevent foreign carriers from transporting passengers within Canada and take business away from domestic carriers; Canadian content requirements for media to foster Canadian culture. None of these regulations are in the interest of all Canadians. Rather, they serve the interests of workers and firms protected by these measures. Removing the regulations would not only increase trade with the rest of the world, it would also increase economic efficiency and fairness within Canada.

The free flow of professionals delivering business services within NAFTA increases efficiency and prosperity in all three countries. The present use of special work visas for such workers is essential and must be retained or strengthened. Remaining restrictions caused by unequal rules of professional certification should be eliminated through a treaty under which the NAFTA countries recognize each other's certification standards.

Existing limits on the foreign ownership of Canadian firms in specific industries like banks, transportation and the media restrict the ability of these firms to operate at maximum size and efficiency in the global economy. The justifications underlying the existence of these limits on foreign ownership are no longer valid in the present, integrated world economy. The removal of these the

restrictions would significantly increase the efficiency of Canadian firms and allow them to participate fully in the world economy.

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Security and Trade

The Problem

In the wake of the global terrorist threat, Canada must strengthen its internal security measures. Terrorism is closely linked to Canada's relationship with the United States, which considers Canada a potential staging point for US attacks. US demands for greater security impact Canadian trade and border procedures and may prove costly unless Canadian policies are changed. In this age of just-in-time delivery and integrated plants on both sides of the border, a change in border procedures related to security concerns about Canada could throw tens of thousands of Canadian out of work virtually overnight. As well, it is in Canada's own interest to take appropriate measures against the terrorist threat.

Solutions

More resources

- Provide more financial resources to strengthen the counter-terrorist forces in the RCMP, CSIS, coast guard and customs agency.
- Create a new overseas intelligence service to coordinate counter-terrorism efforts.

Border issues

- Create policies in cooperation with the United States to assure that trade and people can continue to move across the border easily while it is closed to terrorists and other security threats.
 - Develop new policy towards refugee claimants.
 - Increase comprehensiveness and speed of screening of potential immigrants.
 - Develop customs clearance before trucks and other commercial transport reach the border.
 - Introduce biometric screening of travelers.
 - Share air passenger information with the United States.
 - Make deportation policies more effective.

Other issues

- Enforce the provisions of Bill C-36 to control threat of terrorism within Canada.
- Prepare and publish a realistic list of terrorist groups.
- Make concerted efforts to inform the Canadian public and political leadership of the threat posed by terrorism and the need to combat it domestically.

Find out more ...

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Terrorism Background

The repercussions of the September 11, 2001, terrorist attacks on Canada-US relations are profound. For the Americans, the war against terrorists means a long-term effort to reduce the capability of terrorists to attack the United States. Some of this effort has been military—most notably in Afghanistan and Iraq—but much of it has been directed at securing the US homeland, which necessarily involves Canada because of our shared border and because of the economic integration of the two countries.

Canada, like the US, has a long history of welcoming immigrants with the expectation that immigrants become Canadians or Americans, respectively. Until the last generation there has been no reason to question this assumption. However, as early as the 1985 bombing of an Air India passenger plane over the North Atlantic the problem of importing the political problems from the homelands of immigrants to Canada became obvious. The following decade saw the immigration of a significant Tamil community from Sri Lanka, a large percentage of which are supporters of an ongoing civil war in their former home. The arrest of Ahmed Ressam crossing into the US and intent upon mayhem at the Los Angeles airport came after he had spent six quiet years as a refugee claimant who had entered Canada fraudulently. In short, the days of a naïve expectation that all immigrants seek to be good Canadians are over. Too many new Canadians are more concerned with perpetuating wars in their old homelands than building a peaceful and useful life in their new one.

The strategies of overseas terrorist organizations such as the Tamil Tigers, Sikh Khalistan supporters, or Hezbollah are remarkably similar: they conceal themselves in Canadian society chiefly as charities or cultural support groups, they culti-

vate Canadian politicians, and they join Canadian political parties. In short, terrorist groups take advantage of Canadian tolerance and Canadian pride in cultural diversity in order to use these virtues not just against Canadians but also against these immigrants' offshore enemies. This is clearly both a domestic and an international problem for Canadian security. When Canada is seen as a staging ground for attacks on the US, counter-terrorist initiatives become both more difficult and more serious. However irresponsible it may be, it is easy enough to rationalize the Tamil Tigers as a Sri Lankan problem or Hezbollah as an issue between the Israelis and the Palestinians. But al Qaeda is also a problem for Canada-US relations when the US is the target of Canada-based terrorists such as Ressam. Now, suddenly, Canadian economic prosperity is part of the equation, and may prove to be the best incentive to action.

In order to monitor terrorists and terrorist-front organizations in Canada a significant increase in police and other internal intelligence is needed. For this to happen a new and more realistic perception and appraisal of the threat to Canada posed by terrorists must be made. At the very least this means revising the current procedures of "listing" groups, which can easily change their names, and ensuring that the Solicitor General has reasonable grounds for believing an identified group has engaged in terrorism.

Measures dealing specifically with Canada-U.S. border security need to include biometric data or identification papers to ensure the holder of the ID is the person to whom it was issued. A review of current refugee determination is long overdue, including realistic safe-third country agreements, new visa requirements, shared information on airline passengers with US authorities, joint depor-

tation agreements and so on. Many of these measures are likely to encounter resistance and litigation; thus, strong political support is necessary.

In terms of a robust organizational response, Canada must enhance the ability of CSIS, the RCMP, Customs and Immigration, and the coast guard, including perhaps a joint anti-terrorism task force. Canada needs an overseas intelligence service, and it must be created more or less from scratch.

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The Bank of Canada and the Exchange Rate

The Problems

Since the early 1990s the Bank of Canada has pursued policies that resulted in stable prices, even though some observers saw dangers of inflation. At the same time, the value of the Canadian dollar against the US dollar fell from 86 cents in 1992 to a low near 62 cents in 2002, though the value has rebounded in recent months. This long-term currency decline lowered the purchasing power of Canadians abroad and invited the purchase of cheap Canadian assets by Americans. It reduced productivity gains by providing subsidies to declining industries and imposing extra costs on machinery imports. The fluctuations of the value of the Canadian dollar around the secular downward trend—such as the spike upwards in around 1990 and the current upwards spike—have been detrimental for trade and productivity by adding costs and creating uncertainty.

Solutions

Link the Canadian to the US dollar through a hard fix through either of two methods.

- Create a currency union modeled after the European Monetary Union through agreement with the United States and Mexico.
 - Create a new currency—the amero—and a North American Central Bank for Canada, Mexico and the United States.
 - Convert existing dollars into ameros.
 - Use Canadian amero notes and coins, convertible at par into US and Mexican amero notes and coins.
- Or, create a hard fix unilaterally.
 - Retain Canadian national symbols on notes and coins.
 - Earn seigniorage from Canadian production of Canadian amero currency.
 - Create a New Canadian dollar, make it equal to one US dollar and have the Bank of Canada guarantee its conversion into the US currency at par.
 - Change all present Canadian currency and book assets into the New Canadian dollar at a rate that preserves the country's international competitiveness, say two New Canadian for three Old Canadian dollars.
 - Remove the Bank of Canada's power to set interest rates and leave as its main responsibility the maintenance of convertibility of the New Canadian into US dollars at par.
 - Ask for permission to send Bank of Canada observers to the open market committee meetings of the US Federal reserve.
 - Work with US and Mexican policy makers on the creation of a genuine North American Monetary Union modeled after the European Monetary Union.

Find out more ...

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The Bank of Canada and the Exchange Rate

Background: The New Canadian Dollar

The recent creation of the euro, its initial success and the prospect for an expansion of the euro zone in the next few years have created strong interest among academics and the public in the possible creation of a North American Monetary Union modeled after the European system. The prospect that the United States at this time is most likely unwilling to join such a union has made several analysts propose the second approach suggested in Part I above: create a New Canadian dollar and have the Government of Canada guarantee its convertibility into one US dollar. The New Canadian dollar would be exchanged against the Old Canadian dollar at a rate of two for three, the precise conversion rate depending on judgments about the rate that preserve Canada's international competitiveness.

The proposed system would require that the Bank of Canada surrender its right to set interest rates and require it to control the stock of New Canadian dollar notes to assure that parity with the US dollar is maintained. Under these conditions, the currency notes would still carry Canadian symbols and profits from issuing them would accrue to the Government of Canada. Thereafter, transactions costs in the foreign exchange market would drop and encourage more trade and capital flows. The traditional one-point premium on Canadian over US interest rates would narrow substantially. These and other benefits would increase the prosperity of all Canadians.

The proposed system has been used successfully by Austria and the Netherlands, which had fixed their exchange rate to the German mark since the 1980s until the creation of the euro. While they

did not create a new currency at par with the German mark, their central banks' official commitment to a fixed exchange rate and the official surrender of the right to set interest rates different from the German rates, caused the exchange rate to remain fixed for a long time and interest-rate gaps to virtually disappear.

Some academically respectable studies have been made of the performance of smaller countries that had fixed their exchange rates to those of a large trading partner and surrendered the right to set their own interest rates. The results of these studies applied to Canada-US circumstances suggest that in 20 years, Canada's national income would be 30% higher than it would be without the adoption of the proposed system.

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Regulation

The Problem

The federal government continues to be largely unaccountable for the costs of their regulatory activity, which results in high compliance costs to the business sector and increased prices and decreased consumer choice. Unlike the obvious barriers imposed by high taxation, regulation is arguably a more insidious form of government intervention in the economy and individual lives.

Solutions

Eliminate Obsolete Regulations

- Establish a committee to examine all regulations presently on the books to identify regulations that are obsolete or in conflict with other regulations and repeal them.
- New regulations should contain a 10-year sunset review to ensure that obsolete regulations do not remain in force.

Mandate Regulatory Impact Assessment Statements

- All proposed (and renewed) regulations should be accompanied by complete cost-benefit analyses of their impact on Canadians, and be subject to question and debate in the House of Commons and Senate.

Optimize Regulatory Focus and Flexibility

- Ensure that regulations are outcome-based, and investment-ranked to ensure maximum return on social investment.
- Make flexible, incentive-based, market-friendly regulatory forms the first resort, with centralized, command-and-control approaches held as a last resort.

Find out more ...

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Regulation Background

Eliminate Obsolete Regulations

Regulations are often permitted to outlive their usefulness. As technology changes and society advances, our requirements and expectations evolve, yet outdated regulations often continue to be in force. A committee should be set up under the Treasury Board Secretariat to review and eliminate unnecessary and indefensible regulations (see British Columbia Ministry of Deregulation, Law and Mihlar 1996). Further, each new regulation passed by the federal government should include a “sunset clause” repealing the regulation in ten years unless the committee specifically approves its extension for another decade. This will ensure that all regulations continue to be reviewed for relevance, and that no regulations remain in force beyond an appropriate scope of time. For example, Ontario has established a pattern of consolidating and replacing its existing regulations every ten years (see Ontario Ministry of the Attorney General, Jones and Graf 2001).

Enforce Regulatory-Impact Assessment Statements

Although the Regulatory Affairs Directorate (RAD) at the Treasury Board Secretariat (TBS) has prescribed the inclusion of a detailed Regulatory Impact Assessment Statement (RIAS) for each new federal regulation passed since 1986, an analysis of the regulations passed by the federal government in 1995 demonstrated that many of the analyses were incomplete, and that 17% of the regulations passed failed to include a RIAS at all (Mihlar 1997). Without accurately quantifying the costs and benefits expected to result from a given regulation, the government places an undue economic burden on the business community and the public without being held directly accountable (see Weidenbaum and DeFina 1976, and

Stanbury and Thompson 1980). A recent study estimated the private-sector cost of compliance with federal and provincial government regulation in Canada in fiscal year 1997-1998 at \$103 billion (Jones and Graf 2001).

Optimize Regulatory Focus and Flexibility

Ensure that regulations are outcome-based, not process-based, and, based on Regulatory Impact Assessments, ensure maximum net return on social investment via regulation. Avoid prescriptive regulations that detail the means by which to achieve desired outcomes, as these hamper innovation and efficiency in the market. Economic incentives, performance standards, flexible regulatory approaches and information techniques should be considered as first resorts, with centralized, command-and-control type regulations considered last resorts (see Mannix 1994; Jones 2000).

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Environment

The Problem

Canadian environmental policies are shaped by an unfortunate lack of understanding of the true causes and extent of environmental degradation and the efficacy of regulatory approaches to environmental protection. The present adversarial, and frequently dysfunctional, regulatory framework misdirects scarce public resources toward what are often phantom menaces or low-level risks. These problems are associated in particular with the Kyoto Protocol, which has been justified by the flawed use of science, offers no environmental benefit, and will consume scarce resources that have superior uses elsewhere in the environment, or in other areas such as in health care or education. This section deals with suggested changes to environmental policy at the federal level.

Policies

Provide accurate information to the public on the state of the environment

- Remove disinformation from Environment Canada website regarding global warming, air pollution, species endangerment, and other environmental risk issues.

Prioritize for best return on investment

- Establish process for prioritizing environmental risks based on magnitude and cost of remediation to maximize net return on investment.

Focus on problem solving, not punishment

- Rather than using all-or-none regulatory approaches to protect wilderness areas and species diversity, use innovative and market-friendly incentives that balance stewardship of the environment and control of environmental risks with economic productivity.

Decentralize decision making

- Transfer federal oversight of fisheries, provincial waterways, and provincial wilderness areas to provincial agencies.

Withdraw from the Kyoto Protocol

- Focus on the real, remaining environmental issues facing Canadians, such as air pollution, water supply problems, water pollution problems, fishery depletion, forest overgrowth, and wildlife management.

Find out more ...

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Environment Background

Re-educate the public as to the true state of the environment

The Environment Canada website, as well as the numerous pronouncements of Environment Minister David Anderson, conform to a vision of environmental degradation best described by Bjorn Lomborg, in *The Skeptical Environmentalist*: our air and water are being increasingly degraded, species are being driven to extinction in high numbers, our use of fossil fuels is causing climate disruption; in essence, economic and technological development are destroying the planet. But the Environment Canada litany has been thoroughly debunked (Lomborg 2002). Though studies have shown that any manmade climate change is likely to be small and benign, Environment Canada describes climate change as “one of the most significant environmental challenges the world has ever faced.” Although studies have shown clearly that the linkage between low-level air pollution and mortality is weak, Environment Canada portrays air pollution as a problem causing thousands of premature deaths each year. (Koenig, *et al* 2003). With few exceptions, most trends of environmental quality in developed countries have been strongly positive for decades, while economic freedom has been found to be the driver of environmental improvement, not environmental degradation (Jones *et al.*, 2001; Lomborg 2002; Gwartney *et al.* 2002).

Prioritize for best return on investment

Establish processes for prioritizing environmental risks based on magnitude and cost of remediation to maximize net return on investment. Such a risk management framework is far

superior to the “precautionary principle”- based approaches frequently enshrined in Canadian federal environmental policy (Jones 2000; Green 1999). The \$3.7 billion that the federal government has “invested” in controlling greenhouse gases could be spent in far more productive ways. Provinces would certainly welcome such resources for use in managing their natural resources, and controlling the environmental hazards that are demonstrable harmful, such as air pollution, water pollution, pest-borne diseases, and fishery depletion (Green 2003).

Focus on problem solving, not punishment

The Environment Canada website talks a lot about enforcement, but little about enablement. The top bullet point under “what we do” on the Environment Canada website refers to a policing approach to environmental protection: Making more than 20,000 inspections and nearly 600 prosecutions for offences against Canada’s environmental laws over five years.” But enforcement-based approaches have been shown to function poorly when compared with flexible and cooperation-based approaches to environmental protection (Volokh *et al.* 1998; DeAlessi 2003).

Decentralize decision making

Unless federal oversight is absolutely required to manage international affairs, federal oversight of fisheries, provincial waterways, and provincial wilderness areas should be transferred to provincial agencies. The near-collapse of the Atlantic Cod fishery demonstrates that traditional regulatory approaches to fishery management as conducted by the federal government have failed. (Jones and Walker 1997). Federalized approaches

to species protection have a solid track record of failure in the United States, and the parallel approach embodied by the Species at Risk Act is likely to fail, and fail expensively (Jones 1999). Parks Canada management of national parks has been shown to be highly flawed with regard to scientific methodology and the identification of endangered or threatened species (Cooper *et al.* 2002).

Withdraw from the Kyoto Protocol

Focus on the real, remaining environmental issues facing Canadians, such as air pollution, water supply problems, water pollution problems, fishery depletion, forest overgrowth, and wildlife management. The scientific case for the Kyoto Protocol on Climate Change has been shown to be greatly exaggerated by numerous scientists around the world (Essex and McKittrick 2003; Lomborg 2003; Green 2000). Greenhouse gas emission reduction measures, by contrast, have been shown to offer no environmental or health benefit, but rather, to inflict net reductions in health and welfare through economic and employment impacts (Green 2003; McKittrick 2003; Lomborg 2003).

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The Problems

The Canadian health care system is not performing satisfactorily. In spite of relatively high spending, health outcomes are poor in comparison with other developed countries committed to universal health care. There are well-documented problems affecting patients directly: long waiting lists for surgery and diagnosis; the stock of high-tech medical equipment is inadequate; the introduction of new medicines takes longer than in other developed countries; the illegal cross-border trade in prescription drugs from Canada to the United States threatens to deprive this country of widely used medicines; and low-income Canadians rate their health care worse than high-income Canadians do.

Solutions

Repeal or change the Canada Health Act to remove all limits on provincial autonomy over health care, as recognized by the constitution, and allow provinces flexibility to:

- Allow competition in health care delivery.
 - Private insurance
 - Private for-profit and non-profit hospitals
 - Private surgery and other facilities
 - Experiment with innovative delivery and treatment procedures and institutions
 - Reform the Canada Health and Social Transfer system
 - ◆ Reduce level of federal transfers and give tax points.

- ◆ Allow provinces to experiment with medical savings accounts, multi-payer health insurance to finance medical care.

Change Policies on Pharmaceuticals

- Eliminate lag in introduction of new drugs approved in other countries
 - Use US and European countries' approval process to speed up and lower cost of Canadian process.
 - Abandon the Canadian approval agency, simply accept on approvals by other developed countries.
- Solve the problem that will arise from the continued and growing purchases of Canadian drugs by US consumers, which will eventually induce drug companies to stop sales in Canada or raise prices to US levels.
- Enforce private contracts between drug makers, wholesalers, and pharmacies that prevent re-export of pharmaceuticals from Canada to the United States.

Find out more ...

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Health Policy Background

Canadian Health Care Under Government Monopoly

Compared with other OECD countries that commit to universal healthcare, Canada had the highest health expenditures in 1999, measured as a share of GDP, when adjusted for relative ages of the countries' populations. However, Canada ranked 10th in terms of disability-adjusted life expectancy, 6th in terms of mortality caused by diseases and medical complications, 7th in terms of potential years of life lost, and 6th in terms of mortality from breast cancer (Esmail and Walker 2002). This overall poor performance of the Canadian health care system is reflected in long waiting times for surgery, which in 2003 were just under 18 weeks on average (Esmail and Walker 2003).

Of 23 members of the OECD in 2000, per million residents, Canada ranked 18th in the number of magnetic resonance imaging (MRI) machines, 17th of 22 in the number of computerized tomography (CT) scanners, 8th of 22 in the number of radiation therapy machines, and 13th of 14 in the number of lithotripter machines (Esmail and Walker 2002).

Canada Health Act

The Act puts forward five principles to which provinces must adhere in order to receive full health transfers. The Act has prevented provinces from experimenting with the use of private health care delivery and other methods to make health care more humane and patient-directed, such as user-fees, bonuses for doctors for superior service and competition from private insurers.

There is international evidence that these choices improve health outcomes and value for money (Esmail and Walker 2002). The Act needs to be reviewed with the goal of allowing more competition in the health care sector within and between provinces.

Canada Health and Social Transfer

Because provincial governments decide how much of the Canada Health and Social Transfer to allocate to healthcare, it is not known how much money the federal government contributes. In February 2003, the First Ministers negotiated a \$35 billion; five-year deal whereby the Canadian government will transfer more money to provinces.

This alone will do nothing to relieve pressure on the system. More government spending on Canadian healthcare has not had any measurable result on better health outcomes (Esmail 2003). Needed are the reforms involving the private sector outlined above. In addition, it would be more efficient if federal taxes were reduced, to allow the provinces increased tax room to raise the funds needed to finance their health systems according to their own needs and circumstances. We would then expect more provincial experimentation with user fees and medical savings accounts (MSAs). Through MSAs, the government transfers money into individuals' accounts, and gives them choice in shopping for health insurance. This improves quality because competition makes the costs of health care more apparent to both producers and consumers. MSAs also allow the government to subsidize high-risk individuals (Ramsay 1998).

Food and Drug Act

From 1999 through 2001, the Canadian government took a median 39 weeks longer than the US did to approve prescription drugs for sale (Rawson 2003). This undesirable condition can be remedied by a range of policies, including one which would allow Canadians to buy properly labelled medicines once they are approved by regulators in the US or Europe (Jones 2002). Patients' and doctors' willingness to use these medicines would indicate how much they valued Health Canada's approval process. The results might be used to justify more fundamental reforms of the approval process, possibly including a complete end to the Canadian system of approval.

Illegal Cross-Border Medicine Trade

The Food and Drug Act, the Import Permits Act, and other laws and contracts between suppliers and distributors govern the Canadian supply of prescription drugs from abroad. Individuals who undertake the re-export of foreign drugs in spite of private contracts that prohibit this activity are now breaking these lawful contracts. This practice threatens the existence of the global system for international trade of new pharmaceuticals.

Drug makers may stop supplying Canada. The government must ensure that Canadian law enforces contracts made between pharmaceutical manufacturers and distributors (Graham 2003).

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Aboriginal Policy

The Problem

Canada's First Nations experience unacceptably high rates of economic and social distress. Government policy typically directs resources not to individuals but to band elites, which can use these resources to reinforce their own power and limit individual freedoms, ingenuity and drive. The solution to these problems will not be found in more spending or access to more resources. It is found in effective self-government, private property rights and the rule of law.

Solutions

Aboriginal policy should be restructured to empower the individual, not band elites.

Governance

- Reform band election procedures.
- Improve accountability of band leadership.
- Develop community-staffed bureaucracies.
- Improve policing and increase hiring of natives in police forces.

Economies

- Strengthen private property rights for
 - personal belongings and residential land.
 - claims on mineral, timber and other natural resources.
- Pay federal subsidies directly to natives.
- Harmonize contract law with the mainstream of Canadian practices.

Social Policies

- Reform welfare policies to strengthen families.
- Encourage aboriginal spiritual institutions for social renewal.
- Provide better education at the elementary and secondary level.
- Provide better aboriginal health care.
- Use vouchers for education and health care.

Find out more ...

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Aboriginal Policies Background

Despite a massive increase in budgets directed towards aboriginals in the last thirty years, Canada's First Nations still experience unacceptably high rates of economic and social distress. Although recent court rulings have strengthened native access to natural resources, weak protocols for security of possession sap productive energy from aboriginal economies, as do the inability to enforce contracts and to access normal routes of commercial credit. While favourable in principle, the move towards self-government is undercut by a lack of normal democratic accountability and the presumption that small populations can competently sustain the entire range of governance issues.

Governance

Research from the Harvard Project on American Indian Economic Development establishes a clear link between effective aboriginal self-government and positive economic progress. (Stephen Cornell and Joseph Kalt, *Sovereignty and Nation-Building: The Development Challenge in Indian Country Today*, 1998, available at <http://www.ksg.harvard.edu/hpaied/docs/PRS98-25.pdf>.) This research raises an important question: What principles and rules will make self-government effective? Under the provisions of the proposed First Nations Governance Act, Bill C-7, Indian bands are allowed an extraordinary degree of latitude in designing their own governance systems. But the new law requires bands adhere to standards to ensure basic fairness in the election of leaders and to strengthen financial accountability, and it contains default provisions should bands fail to meet minimum standards. (For a summary, see: http://www.fng-gpn.gc.ca/fctsh_t_e.html.)

Decades of paternalistic administration of Indian bands by the Department of Indian and Northern Affairs have left many tribes without a self-generating mechanism to create the skill-sets necessary for the wide range of self-governing activities. If the transfer of powers to the bands is to have any chance for success, it is important to empower them with the tools of self-government. In a 1991 paper also published by the Harvard Project, Manley A. Begay, Jr. describes the need for the transmission of such knowledge and discusses many grassroots efforts to accomplish it. (*Designing Native Management and Leadership Training: Past Efforts, Present Endeavors, and Future Options*, at <http://www.ksg.harvard.edu/hpaied/docs/PRS91-3.pdf>.)

A necessary condition of productive living, the administration of justice on Indian reserves, has had an inconsistent history, at best. A wealth of media reports and court transcripts confirms that many reservations are essentially lawless. Although the transfer of policing power to indigenous parties is not entirely a sufficient response—in practice it has often been problematic and unsatisfactory to both aboriginals and outside authorities—it has shown promise in other jurisdictions. In 2001, the National Institute of Justice, of the U.S. Department of Justice, published *Policing on American Indian Reservations*, a strong starting point for a discussion of the issues involved and a review of current practices. “The challenge,” it reports, “is to create workable, nation-specific policing institutions and approaches informed by traditional customs—because they lay the best foundation for improving safety, preventing crime, and promoting the practice of effective policing in Indian Country” (<http://www.ncjrs.org/pdffiles1/nij/188095.pdf>).

Economies

The importance of strong property rights as a pre-condition for functioning economies and the weakness of these fundamentals in the current Indian Act are arguably the most neglected of research fields. Although it does not deal with North American aboriginals, the work of Peruvian economist Hernando de Soto, most specifically his groundbreaking book *The Other Path*, published in 1989, discusses the effect of weak or non-existent property rights on the capitalization. The Frontier Centre's policy paper, *The Search for Aboriginal Property Rights* (http://fcpp.org/publication_detail.php?PubID=321) identifies the provisions of the Indian Act that cripples aboriginal capitalization and suggests the Act is a primary cause of entrenched aboriginal poverty. A shorter piece by Owen Lippert in the November 2000, *Fraser Forum* ("Property & Poverty: An International Perspective on Canada's Aboriginal Title") provides a link between de Soto's work and the property rights issue. "Individual Property Rights on Canadian Indian Reserves," by Tom Flanagan and Christopher Alcantara and published in the August 2002 *Fraser Forum*, provides detail on the effectiveness of such property rights that do exist on reservations.

Given that aboriginal economies are hampered by such fundamentals, the provisions of the Indian Act that exempt natives from certain forms of taxation could provide a mechanism for economic development. But expansion of these provisions presents a challenge to non-native enterprises that compete with neighbouring aboriginal businesses. The development of the idea of urban reserves, with treaty Indians importing tax exemptions to cities, may codify this sort of

stimulus, despite the objections of other commercial actors. A March 2002, decision by the Supreme Court of Canada limited the use of these exemptions. A general discussion of native tax exemptions is available at <http://www.cle.bc.ca/CLE/Practice+Desk/Practice+Articles/Collection/02-app-aboriginaltaxplanning.htm>. A reconfiguration of federal financial transfers that pays more to individuals and less to collective entities is another idea that deserves consideration. Developed by former Manitoba MLA Jean Allard, the Treaty Annuity Group suggests taking about half of current transfers and redirecting them into expanded treaty payments. The arguments for this reform were published in 2002 by the journal *Inroads* (http://www.inroadsjournal.ca/pdfs/Inroads_11_Allard.pdf) and summarized by the Frontier Centre in a backgrounder, *Deconstructing the Aboriginal Problem* (http://fcpp.org/publication_detail.php?PubID=170).

Social policies

Much statistical evidence supports the claim that aboriginal families are under considerable stress, with much higher rates of single parenthood, incarceration, seizure of children by welfare authorities and substance abuse. In *The Dilemma of Aboriginal Welfare Dependency*, (November 2000, *Fraser Forum*) Tom Flanagan cites an increase in welfare rates among aboriginals despite a decade of marginal improvements in living standards and decades of large increases in transfer payments. These indicators are especially negative in the Prairie Provinces. The work of Jean Allard cited above claims that many aboriginals are reconnecting with their spiritual heritage. Allard sees that movement as the best chance for strengthening of the aboriginal family.

The Problem

The Canadian Forces are underpaid, under-manned, under-equipped and over-committed. Their role in the world is unclear and their geostrategic significance in North America is in decline.

Solutions

Finance

- Increase Canadian Forces spending:
 - \$3 billion in capital expenditures over the next 5 years,
 - \$5 billion spending annually in other areas.

Strategy

- Replace outmoded policy based on 1994 White Paper with a new one.

- Determine the appropriate capabilities of the Canadian Forces for

- ✦ Fighting in conventional wars
- ✦ Fighting terrorism in Canada and abroad
- ✦ Peacekeeping missions

- Define criteria for involvement.
- Define criteria for size, duration of involvement.

- Clarify relationship with US forces and defense strategies.

- Work for full inter-operability with US and NATO forces.

- ✦ Enhance maritime interoperability with the United States Navy.
- ✦ Develop greater light infantry /special forces capabilities, including medium helicopter and attack helicopter support.
- ✦ Create adequate airlift and sealift capabilities.

Find out more ...

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Defence Background

A 30% decline in constant dollar funding during the 1990s has enormously reduced the effectiveness of the Canadian Forces (CF), not only because the CF are smaller but because they have not kept pace technologically with the only Canadian ally that counts, the United States. Money, time, and a thoughtful defence review can fix what is clearly broke.

Every civilian defence review over the past five years (and there have been about a dozen of them) has identified a nearly identical mix of problems. There is consensus that these problems have a political origin and require a political solution. Money alone will not fix the CF, but without money—in large amounts—the CF cannot be fixed. Time, by some estimates five years, will be needed to restore the CF to the capability they had a short decade ago.

During the 1990s Canada cashed in its post-Cold War “peace dividend,” uttered noble words about “human security” and “soft power” and allowed the CF to deteriorate to the point where they could not even approximate the capabilities assumed necessary to carry out the missions outlined in the 1994 White Paper on Defence. That means the CF are incapable of carrying out official government policy.

A full-scale defence review aimed at a new White Paper, a new and official definition of Canada’s military policy, is thus urgently needed. Moreover, because military policy is tributary to foreign policy, a joint effort is, in fact, needed. This broad review must address the following topics:

- Canada-US relations. The United States is Canada’s greatest trading partner and constitutes the only military ally worth thinking about. A lot of fences have to be mended be-

cause the US has explicitly linked trade and security policies.

- Canada has (with minor exceptions) missed out on an entire generation of the “revolution in military affairs” (RMA) which combines very high-tech weaponry with novel and innovative war-fighting doctrine. Canada must catch up to the Americans so that we can fight alongside them.
- Canada must determine its internal military priorities: for over 50 years innovative military planners in Canada have argued in favour of a force structure resembling the US Marines: light, mobile, highly trained, and lethal. That is the direction Canada must go.
- Canada’s geo-strategic importance to the United States in terms of continental defence has all but vanished. When Canada did not agree to take part in the US ballistic missile defence (BMD) program, the US worked around it, locating the necessary radars in Alaska and Greenland. Space-based assets have made Canada’s geographic position less important than that of Poland or Rumania.

All of these issues (and there are many others) must be addressed in the very near future. They all point in the same direction: Canada can preserve its sovereignty and its prosperity only by a closer relationship, particularly in military and security policy, with the United States.

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Immigration and Refugee Policy

The Problem

Immigration is desirable and important for Canada. Immigrants should be selected primarily for the economic benefit they bring to Canadians. Canadian immigration policy, however, has become increasingly divorced from the interests of Canadians and to some extent from those of the immigrants themselves, as many who are well qualified struggle to find suitable employment in Canada. To retain public confidence as well as the support of provinces and municipalities, major changes need to be made in this area. Canadian refugee policy, which is based on humanitarian considerations, is becoming known more for the extent to which it is being abused and for the costly and inefficient manner in which it is delivered rather than for its success in helping those who are genuinely fleeing persecution.

Solutions

Immigration

- Assure that real Canadian labour market needs are met.
 - Base acceptance into Canada on the existence of a job offer in Canada, similar to the NAFTA work permits.

- ♦ The work permit and permission to remain in Canada would expire once the job was no longer in place.
- ♦ Certify job offers are legitimate and impose significant penalties for fraud.
- ♦ As with NAFTA, successfully maintained work permits could lead to permanent status.

- Provide limited alternative avenues for immigration including, for example, for entrepreneurs.
- Limit sponsorship of relatives to the spouses, dependent minor children, parents and grandparents.
 - Require that the relatives of sponsored immigrants, including the children of sponsored parents and grandparents, qualify on their own merits.

Refugees

- Replace the politically appointed Immigration and Refugee Board with trained career refugee officers.
- Detain undocumented claimants until their bona fides are established.
- Implement safe country of origin and safe third country concepts.

Find out more ...

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Immigration and Refugee Policy Background

Immigration policy

Canada's current high levels of immigration are frequently justified on the grounds that Canada will be short a million skilled workers in a few years time. There is, however, no evidence to support such a claim. Some researchers, indeed, have concluded that we have a labour surplus due to youth unemployment, the unused stockpile of accumulated formal education, and the large number of workers forced into part-time rather than full-time employment (Schetagne, 2001, p. 19). While immigration can be used to fill specific gaps in the workforce, cases where it has been successfully used to fill such shortages are rare. (*Economic and Social Impacts*, 1991, p. 31).

In the event, many educated immigrants are having great difficulty finding suitable employment when they arrive in Canada. Requiring that those arriving in Canada have certified job offers is fairer to the potential immigrant and ensures that immigration is matched to Canadian economic requirements.

Another rationale used to justify large-scale immigration is that Canada's fertility rate is below the long-term replacement level and that therefore the population will eventually decline without an influx of newcomers. While these facts are correct as far as they go, it must also be noted that our population continues to grow due to natural increase (an excess of births over deaths) and that birth rates have fluctuated historically and may well return to higher levels in the future. In any event, even without net immigration, the population will not fall below current levels for nearly a quarter of a century.

Refugee policy

While Canada has a proud record of accepting genuine refugees in accordance with our humanitarian traditions, the system has become eroded to the point where it is now clogged with claims of questionable merit and is the target of international criminal organizations specializing in the smuggling of people. Canada has become a magnet for such operations because of Canada's propensity for stretching the definition of who is a refugee, because of our particularly generous system of benefits for claimants and because of an appeals system that makes it difficult to remove those who fail to get accepted.

The situation is further complicated by the fact that almost all claimants are released into Canadian society long before we know whether they have a criminal or terrorist background. As the Americans gradually tighten their procedures for screening and tracking of foreigners entering their territory, our failure to rectify this situation could have serious implications for the movement of goods and people across our common border.

It is also essential that Canada follow the example of other refugee-receiving countries in refusing to process claims from nationals of safe countries of origin, i.e. democratic countries that have signed the UN Convention on Refugees and other human rights conventions. Canada, for example, last year considered claims from nationals of many countries who would not be permitted to apply for refugee status anywhere else in the world. In 2001 Canada received applications from nationals of 170 countries, including 487 Americans, as well as smaller numbers of citizens of such countries as the United Kingdom, Australian, Japan, Sweden and the Netherlands.

We must also refuse to consider claims from people who have traveled through safe third countries, where they could have asked for asylum but continued on to Canada in what is known as “asylum shopping” (i.e. seeking the most generous range of benefits rather than immediate safety—which should be the primary objective of those fleeing persecution).

Canada should continue to take its fair share of refugees but should do so by selecting them overseas, wherever possible with the help of the Office of the United Nations High Commissioner for Refugees. In this way we can not only ensure that those we select are genuine refugees but, with the savings made from not having to process tens of thousands of questionable claims made in Canada, we will have additional funds available to assist the millions of refugees in UNHCR camps in various parts of the world. In this regard it is estimated that we currently spend tens of thousands of dollars a year on each claimant in Canada but less than a dollar a year on each refugee in camps.

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The Problem

There is much cynicism about Canadian politics. A declining number of citizens vote in federal elections. Among other reasons are the first-past-the-post system, an unelected Senate, the power of the Prime minister's Office and the insignificance of ordinary Members of Parliament, the lack of transparency and integrity and the existing division of power between the federal and provincial governments. The following policy changes would not require constitutional change.

Solutions

Transparency and Integrity

- Adopt a muscular Freedom of Information Act, covering all government departments, boards, commissions, foundations, and corporations, with fewer subject matter exemptions.
- Create a truly independent Ethics Commissioner, responsible to Parliament.
- Broaden the mandate of the Auditor General, allowing evaluation of program effectiveness, not just proper administration of programs.

Electoral Reform

- Study alternative rules through process adopted in BC.

Parliamentary Reform

- More free votes, especially on non-budgetary and tax matters.

- More power to parliamentary committees.
- Free election of committee chairs.
- Allow more private members bills.
- Permanency of Committee membership to build expertise.
- Funding of expert committee staff to assist members in oversight role.

Senate Reform

- The Senate's role in Canada may become less important if other recommended policies are adopted, in which case abolition would be appropriate. (Note: If other remedial policies are not adopted, consider an amendment to the constitution to create "Triple E" Senate based on 5 equal regions.)

Federal—Provincial Division of Power

- Prepare study of proper division of powers.
- Increase provincial cooperation and power by creating a Council of the Federation.

Find out more ...

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Governance Background

Improved access to central government information in a timely fashion is essential, not just for citizens but also for parliamentarians and other governments. The current culture of secrecy and cover-up must be broken. The very best time to do this—indeed the *only* realistic time—is right at the beginning of a new mandate when there are no old “skeletons” to hide. A wise government would be honest with the people, and be rewarded in return with trust and good advice.

The “six points” proposed by Paul Martin on Parliamentary reform (the “three-line whip,” “referral after first reading,” more opportunity for Private Members’ bills, strengthening committees through better Member continuity and research resources, advance review of senior appointments and an independent Ethics Commissioner reporting to Parliament) set forth laudable objectives. The promises need more detail and time lines. The promises tend to focus most on the legislative side of MP activity, when in fact what most needs strengthening is the oversight process. Strengthened committees could do this, but they are after all mere creatures of the House. A new independence and (in particular) strong research and staffing budgets are essential.

On electoral reform, several provinces are in motion, but the need is nowhere so great as on the federal scene. In particular, regional representation is grossly skewed under the present system. This undermines the federation.

British Columbia has set the model for how to proceed in this area. There are two essential components:

- Constitute a truly independent study group (in B.C.’s case, by random selection, but there are other models) and give them the resources

to study all relevant systems of translating votes into seats; and

- Have that group *report to the people* by way of a referendum on their proposed system (assuming change is advised) at the time of the next federal election.

Electoral reform is central to government credibility, and nothing short of a process with a guaranteed delivery will do.

The “What should government do?” project is really a study of subsidiarity. This is a two-fold discussion:

- For any given activity, is this a job for government?; and if so, which government?
- The issue is complicated by the fact that in our complex society there are many interrelationships that need to be recognized. It is not unusual, for example, for a public policy area to be funded (at least in part) by one level, regulated by another, with service delivery (at least in part) by the private sector.

Much of the citizen frustration with government arises from the fact that decisions are made too far away from problems on the ground. Much waste and duplication arises from competition for turf. A study of this area by a blue ribbon panel (which would have to include politicians since there is much about such matters wherein academics and business people lack experience), studying experience elsewhere in the world as well, would be tremendously valuable. This panel should be led by a senior business person with one member each with broad experience from the federal, provincial and local levels.

It is desirable that the provincial governments would participate, as they should, as subsidiarity properly applied in Canada, while by no means a one-way street, is likely to be decentralist in effect.

The recommendation on improved Intergovernmental Relations is obvious.

Senate reform is a strong and urgent demand from many in the West. The reasons for this do not stem from any particular love of a second chamber, but rather utter frustration with the workings of the lower house. The two major goals sought by Senate reform are control of the executive branch, and decent regional representation.

Parliamentary reform and electoral reform are simpler ways to the same ends, achievable without opening up the Constitution. (The Constitution would have to be amended for any acceptable Senate reform, as it would have to be based on a five-region view of Canada. A ten province view of Canada, for the purpose of equality of Senate representation, might itself

need a constitutional amendment and would be unacceptable to the four large provinces, as it would lead to domination of the upper chamber by the six small, poor, client-state provinces which have in the past been so routinely bought off by the executive branch, thus frustrating a central purpose of the upper house.)

Senate reform is not to be dismissed out of hand, but easier routes to the desired goals should be tried first. If they are successful, the Senate can simply be abolished. It is an embarrassment in its present form.

If Senate reform is required, that fact should be acknowledged within two years and the dialogue opened.

References

For further details, see *Fixing Canadian Democracy*, Fraser Institute, 2003, and *A Report on the Constitution of a Citizens' Assembly on Electoral Reform*, BC Government Documents, 2003.

Judiciary

The Problem

The public, according to recent polls, holds individual judges in high regard but believes the Supreme Court has used the Charter of Rights and Freedoms to hijack the public policy process from Parliament, especially so during the recent decisions on equality-rights jurisprudence. As a result, the public's respect for both the justice system and Parliament has been lowered. The public demand greater accountability from non-elected judges while accepting the need for the independence of the judiciary. They want the judiciary returned to its traditional role of interpreting and enforcing existing laws.

Solutions

Assert Parliamentary Supremacy and the Rule of Law

- Encourage more resort to the "notwithstanding clause."
 - Model after the disbanded Constitutional Referendum Amendment Act in Alberta.
 - Pass legislation to enable Parliament to hold a national referendum on court rulings, which, if successful, would lead to use of the notwithstanding clause.

- Consider other referendum trigger-mechanisms: for example, a significant minority of MPs or majority of the provinces.

Create Transparency in Supreme Court Appointments

- Use a short list of candidates prepared by each province with help from provincial bar associations.
- Create a joint committee of the House and Senate to filter the candidates.
- Use televised question-and-answer sessions to examine each candidate.
- Leave final selection with the Governor-in-Council.

Limit New Economic Rights for Special Interests

- Have Parliament adopt a resolution limiting the use of the Charter of Rights to grant new rights to welfare and other new economic privileges especially with respect to
 - Section 7 (life and liberty)
 - Section 15 (equality provisions)

Abolish the Court Challenges Program to discourage special interest groups from bypassing the political process

Find out more ...

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Judiciary Background

Empirical Evidence of the Accountability Gap

In an August 2003 Ipsos-Reid poll, 54% of respondents agreed with the notion that “judges in Canada have too much power”; 71% agreed that “it should be up to Parliament and provincial legislatures, not the courts, to make laws in Canada.” See also comments by Michael Robert, Chief Justice of Quebec in Schmitz, in Cristin (2003, “Selection of Top Jurists Too Secretive, Judge Says,” *National Post* (August 30), p. A2). “They [i.e., judges] really are the third branch of government and... taking decisions affecting the country as a whole. Even though I still believe that the appointments are very good...but still the system does not inspire credibility and confidence in the general public and in the media—I think that’s the problem which has to be addressed.”

The problem is *not judicial activism but a lack of accountability for that activism.*

Trends in Support for the Charter and the Judiciary

EnviroNics, 2002, Poll re: Charter Support/Reforming the System, Feb. 11-17; Ipsos-Reid (July 2001). Digital document available at: http://www.ipsos-reid.com/search/pdf/media/mr010704_5.pdf; Ipsos-Reid, 1998, Polling Data, October 27-November 1. See also Joseph F. Fletcher and Paul Howe, 2000, *Public Opinion and the Courts*, Montreal. Digital document available at: www.irpp.org/choices/archive/vol6no3/pdf.

Statistical Trends of Increasing Judicial Activism

The judiciary is “activist” in two ways: by choosing which cases to hear (thereby setting policy priorities), and by striking down or recrafting government laws, policies, and actions. In 2002, the Supreme Court heard only 10% of the appeal applications it considered. The success rate for Charter of Rights claimants was 63% in 2002, the highest rate in the previous 10 years. (See Patrick Monahan, 2003, “The Supreme Court of Canada in 2002: The Year in Review,” Constitutional Cases Conference, Osgoode Hall Law School, April 4; data culled from Supreme Court decisions (via the Canadian Legal Information Institute).)

Lower Voter Turnout, Higher Apathy as a Result of Judicial Activism

Elections Canada, 2002, *Electoral Law & Policy: Explaining the Turnout Decline in Canadian Federal Elections* (April). Digital document available at: <http://www.elections.ca/content.asp?section=loi&document=index&dir=tur/tud&lang=e&textonly=false>.

Democratize the “Notwithstanding Clause” (Recommendation #1)

There is no need for constitutional reform since s. 33 is integral to the Charter, although the clause is a dead letter politically. (See F.L. Morton, 2003, “Can Judicial Supremacy be Stopped? Reconsidering the Notwithstanding Power,” *Fraser Forum* (August): 30-32; Scott Reid, 1996,

"Penumbra for the People: Placing Judicial Supremacy under Popular Control," in Anthony Peacock, ed., *Rethinking the Constitution: Perspectives on Canadian Constitutional Reform, Interpretation and Theory*, Oxford Univ. Press: 186-213. See also J.D. Whyte, 1991, "On Not Standing for Notwithstanding," *Alberta Law Review* 29: 293.)

Make Appointments Transparent and Inclusive (Recommendation 2)

Invite the bar associations to restrict candidates to those with 10 years experience in a provincial bar. Create a joint committee of the House and Senate to filter the candidates, and to suggest a list of final nominees to Parliament. Rest final selection with the Governor-in-Council—thereby obviating the need for constitutional reform—but insist that each final nominee submit himself or herself to a televised, open hearing to field questions from members of the joint, bipartisan Committee. (For a variation on this proposal, see Jacob Ziegel, 1999, "Merit Selection and Democratization of Appointments to the Supreme Court of Canada," *Choices* 15:2; Owen Lippert, 1998, "It's Time Parliament Reviewed Supreme Court Appointments," *Fraser Forum* (March): 24-25.)

We restrict ourselves here to appointments to the Supreme Court; reform must be context-specific in relation to lower courts. Appointments should be merit-based appointments, eliminating statutes mandating that courts represent the diversity of society. (See *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 43(3), 43(9), as am. by S.O. 1994, c. 12, s. 16.)

Limit Economic "Rights" for Special Interests (Recommendation 3)

Such a resolution would reinforce both the original intent of these Charter sections and a long history of case law. (See Chris Schafer, 2003, "Gosselin Decision Forewarns of Right to Welfare," *Fraser Forum* (February): 22-23; Neil Seeman, 2002, "The UN's Right to Welfare," *Fraser Forum* (October): 11-12; Sylvia LeRoy, 2003, "Equality: the Leviathan of Rights," *Fraser Forum* (August): 20-29.)

So far, courts have been reluctant to "read in" social condition or receipt of welfare as a defining personal characteristic justifying remedial treatment. *Gosselin* dealt with the question of a constitutional right to welfare. In *Silano v. British Columbia* [1987], the court found it contrary to section 15 to give welfare recipients under 26 years of age \$25 less per month than older welfare recipients. In *Dartmouth/Halifax County Regional Housing Authority v. Sparks* [1993], the Nova Scotia Court of Appeal concluded that public housing tenants constitute a protected class analogous to those enumerated in section 15, prompting them to strike down sections of the Residential Tenancies Act that treated public housing tenants differently than others. Health care rationing and other fiscal realities mean that this sort of economic decision-making and balancing will likely figure more prominently in future court decisions. (See Donna Greschner 2002, "How will the Charter of Rights and Freedoms and Evolving Jurisprudence Affect Health Care Costs?" *Commission on the Future of Health Care in Canada*, Discussion Paper No. 20, Saskatoon: Health Canada (Sept). Available online at: http://www.hc-sc.gc.ca/english/pdf/romanow/pdfs/20_Greschner_E.pdf.)

Abolish the Court Challenges Program (Recommendation 4)

Academic support for this proposal may be found in F.L. Morton and Avril Allen, 2001, "Feminists and the Courts: Measuring Success in Interest Group Litigation in Canada," *Canadian Journal of Political Science* 34 (March): 55-84; F.L. Morton, 1992, "The Charter Revolution and the Court Party," *Osgoode Hall Law Journal* 30: 627-52.

The Court Challenges Program was established by Prime Minister Trudeau in 1977 to fund language rights litigation by anglophones in Quebec and francophones elsewhere. In 1985, the year the Charter's section 15 equality provisions came into effect, the Mulroney government expanded the CCP to include section 15 claims. The Canadian Council for Social Development, which had responsibility for managing the CCP, began involving the fund's client groups to help run the

program. The funding was renewed for \$9 million over five years, up from its annual budget of \$200,000. The CCP was temporarily cancelled in 1992, but was reinstated the next year. The CCP no longer publishes the names of the groups that it funds, and its files are no longer available under the Access to Information Act, making it impossible to determine which groups are privileged, and what cases are supported by the federal gov-

ernment with these public monies. (See Ian Brodie, 2001, "Interest Group Litigation an the Embedded State: Canada's Court Challenges Program," *Canadian Journal of Political Science*. 34(2): 357-376; F.L. Morton and Rainer Knopff, 2000, *The Charter Revolution and the Court Party*. Peterborough, ON: Broadview Press; Ian Brodie, 2002, *Friends of the Court: The Privileging of Interest Group Litigation in Canada*, New York: State University Press; Ian Brodie, 2002, "The Court Challenges Program," *Fraser Forum*. Vancouver, BC: The Fraser Institute (October).)

Endorsements for *Mandate for Leadership*

“Solutions offered by politicians to deal with public policy problems are too often shallow and driven by a desire to score short-term political gains. What the Fraser Institute is offering us here is, in contrast, based on sound economics and real scholarship. I think anybody interested in solutions improving Canada’s economic growth and social progress should read this document carefully. It should henceforth serve as a reference document when discussing the various challenges facing this country.”

—*Michel Kelly-Gagnon*

Executive Director, Montreal Economic Institute

“The Frontier Centre salutes the Fraser Institute for this ambitious project, an attempt to codify solutions for the many policy challenges the next prime minister will face. We were gratified to have the opportunity to contribute our overview of needed reforms to aboriginal policy, arguably the thorniest of dilemmas facing the Prairies. It is no coincidence that the remedies we offer strike the same themes as the Fraser’s comprehensive document. The formula for prosperity is universal: empowerment of the individual, the family and the community. A better, more prosperous nation awaits its application.”

—*Peter Holle*

President, Frontier Centre for Public Policy, Winnipeg