Inside Policy

The Magazine of the Macdonald-Laurier Institute

NOVEMBER, 2013

Who polices the police?

Guy Giorno calls for consequences when public servants fail to respect Canada's Access to Information law

Photo: Information Commissioner Suzanne Legault

Also in this issue: Stanley Hartt on the national security implications of foreign investment in key sectors • Tom Axworthy examines competing visions of the North • Mary-Jane Bennett on how to end the cross-border airfare discrepancy • Massimo Bergamini on the municipalities' struggle to stay on the federal political agenda • and evaluating the provinces' efforts to save money on brand name drug purchases

INSIDE POLICY
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Cover photo: Information Commissioner Suzanne Legault recently gave failing grades to several federal agencies and departments. Photo by Matthew Usherwood.

Correction: An editing error resulted in the publication of an incorrect statement in the June 2013 printed version of Inside Policy. *National Chief Shawn Atleo has not decided on a re-election bid and will not discuss the possibility of a third term yet. We regret the error and have apologized to the National Chief.*

Editor's message

Greetings. I suspect you'll be relieved to learn there is no article about Senate expenses or suspensions in this issue. Instead, we've opted to examine some of Canada's more intriguing and challenging public policy issues.

Stanley Hartt kicks it off with a look at recent takeover bids in key sectors as he examines the intersection of national security interests and foreign investment. Canada needs investment and we like to describe ourselves as open for business but, when takeover bids emerge for companies in strategic sectors, the federal government has to put on a different set of glasses. Potential investors seek a clear understanding of the hurdles they must overcome but more often than not unique circumstances have led to an ad hoc approach. Hartt points out that part of the challenge is that it's not just who the potential investors are but also who they may be connected to in international circles that can affect whether a bid is accepted or rejected.

Tom Axworthy examines four contending visions of the North: military frontier, treasure trove, wilderness and homeland, noting that only the fourth was conceived by northerners themselves. Axworthy suggests it is those who actually live North of 60 that should have the real say in determining their fate.

With drug costs the key factor behind ever-increasing provincial expenditures on health care, William Dempster, Adrienne Blanchard and Johanne Chambers examine the progress of the Pan-Canadian Pricing Alliance, an initiative that involves provincial governments collaborating to negotiate lower prices for brand name pharmaceuticals.

The Information Commissioner isn't the only one giving failing grades to government departments and agencies. Guy Giorno notes that while on paper the Government is committed to compliance with the access law, the real values of an organization are demonstrated by its conduct, rather than its written policies. Giorno wonders why public servants who preside over organizations who fail to comply with the *Access to Information Act* don't seem to face any career consequences. Giorno relates his own frustrations trying to access information from the RCMP.

Massimo Bergamini suggests that the competition to serve the needs of evolving urban centres was a boon to municipalities under the Chrétien, Martin and Harper governments (until now) but finds that municipalities are facing a tougher time getting the attention of federal politicians these days as politicians rush to address issues affecting the middle class.

In other articles, Mary-Jane Bennett has some recommendations for how the federal government can deliver on its Speech from the Throne commitment regarding cross-border airfare discrimination and Philip Cross explains why determining where oil refining should take place should be left to the global market, not local forces.

James Anderson

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Assessing the national security implications of foreign investment in key sectors

It is clear that security interests must be assessed when considering foreign investment proposals in strategic sectors. In recent years, we have witnessed governments contort themselves as they sought to balance the benefits of foreign investment against the potential security risks associated with increased foreign control of key assets in strategic sectors. Potential investors seek a clear understanding of the hurdles they must overcome but more often than not we have followed an ad hoc approach. Stanley Hartt points out that part of the challenge is that it's not just who the potential investors are but also who they may be connected to in international circles that can affect whether a bid is accepted or rejected.

Stanley H. Hartt

When China Minmetals Corp. tried to acquire Noranda Inc. in 2004, the transaction produced an uproar among all political parties. Conservatives said that the bidder's labour practices needed to be scrutinized, the Bloc Québecois worried that the acquirer would move ore processing to China, and even MPs from the governing Liberals asked, "What's the business of a government in operating a natural resources company?"

The bid was withdrawn in 2005, but the issue didn't die.

On June 17, 2005, then Industry Minister David Emerson announced that amendments would be forthcoming to update Canada's foreign investment regime to permit screening of foreign investments for reasons of national security.

That initiative didn't proceed, but a further scare, the attempt by US company Alliant Techsystems to buy MacDonald Dettwiler & Associates, Canada's largest space equipment company and the developer and operator of the Radarsat-2 satellite, prompted more policy debate. Because no legislation had resulted from the Emerson initiative, the government used

the "net benefit" test to reject the MDA takeover in April, 2008, but it was clear that a more robust review on national security grounds was missing from the *Investment Canada Act.*

On December 7, 2008, the Government announced special guidelines for the review of Canadian investments by state-owned enterprises (SOE). On March 12, 2009, Parliament passed legislation, to amend the *Investment Canada Act* by, amongst other things, introducing a national security review mechanism.

When the SOE guidelines emerged, requiring adherence to Canadian standards of corporate governance and that the business be operated according to commercial principles, it appeared that the two greatest concerns raised by the Minmetals bid had been met. That lasted until CNOOC appeared with its bid for Nexen on July 23, 2012, using a vehicle that was a public company, listed in New York and Hong Kong, (which would automatically seem to provide adequate governance transparency and commercial business constraints), except that the bid was for a major player in the oil-sands. The government was faced with a dilemma: the CNOOC bid seemed to meet the rules as expressed in the guidelines, but clearly would represent a precedent that could open the floodgates to multiple bids by SOEs to control oil-sands operations. They opted to allow the CNOOC bid (along with another by Petronas, the Malaysian State-Owned Enterprise, for Progress Energy) but announced that no further acquisitions of control by SOEs in the oil-sands sector would be allowed, except in "exceptional circumstances," which were not defined.

Until recently, national security concerns about bids in the telecoms sector were not an issue, since foreign control of businesses in this field were off limits. But on April 26, 2012, the Government introduced legislation to amend the *Telecommunications Act* in order to permit non-Canadian-owned entities to start up or acquire telecommunications carriers that hold less than 10 percent of the total Canadian market share by revenue.

The events that led to this initiative may have had their origins in the related field of broadcasting.

In January, 2007, CanWest Global Communications Corp. purchased Alliance Atlantis Communications Inc. in a complex deal that involved massive financial assistance from US investment bank Goldman Sachs. The deal was done in pieces to make it bite-sized for CanWest, but Goldman's financial clout was everywhere. The investment bank bought the 50 percent interest which Alliance Atlantis had in the hit TV series CSI and its spinoffs (the other 50 percent was already owned by CBS) and put up 83 percent of the money for the purchase of the vendor's specialty TV channels. CanWest paid $132 million for the other 17 percent but had the right to build up its stake over time, including by folding in its conventional TV channels in 2011, in order to own more than 50 percent of the new broadcasting entity established as part of the transaction's engineering.

The regulators chose to see this as a Canadian-controlled business. If Alliance Atlantis had to be sold to a Canadian, this was the only way to do it without creating challenges under other legislation, for example, the *Competition Act*.

This precedent was undoubtedly on the minds of the planners who put together the bid in the spectrum auction of July, 2008 on behalf of Globalive Communications. Globalive bid $442 million to secure wireless spectrum to launch a start-up mobile telephony business under the banner "Wind Mobile." The operation was primarily financed by an Egyptian corporation, Orascom Telecom Holding which contributed almost all of the debt and also held 65 percent of the equity through non-voting shares, a $100 million services contract and control of the Wind Mobile brand.

The federal government accepted the bid, but on October 29 2009, the Canadian Radio-television and Telecommunications Commission found that Globalive did not meet the law's Canadian ownership and control requirements, denying the company its right to launch operations.

Until recently, national security concerns about bids in the telecoms sector were not an issue, since foreign control of businesses in this field were off limits. (In 2012) the Government introduced legislation to... to permit non-Canadian-owned entities to start up or acquire telecommunications carriers that hold less than 10 percent of the total Canadian market share by revenue.

On December 11, 2009, Cabinet overruled the CRTC and issued a directive permitting the commencement of Wind's service, based on the ownership by Canadians of 66 percent of the voting shares. After some continued skirmishing in the courts, the issue appeared to have been settled.

The plot thickened when, in October, 2010, Vimpelcom Ltd., a Dutch-based multinational mobile network operator, agreed to acquire 51.7 percent of Orascom and 100 percent of Wind Italy. Orascom's operations in Egypt and North Korea were excluded from the transaction as was Wind Hellas in Greece. The transaction was completed on April 15, 2011.

On the basis of the new legislation permitting foreign ownership of carriers accounting for less than 10 percent market share by revenue, VimpelCom proposed, in October 2012, to convert Orascom's block of non-voting shares into voting shares as the first step in a plan to take 99.3 percent ownership of Wind Mobile. The second step was a deal to buy out Wind Mobile founder Tony Lacavera and transfer his shares to Orascom.

But on June 19, 2013, VimpelCom withdrew its bid to own and control Wind Mobile. No reason was given, but the *Globe and Mail* reported that the federal government was concerned about national security. "Specifically, Ottawa was worried about giving a Russian entity control of Wind's network infrastructure, which was built by Chinese telecom gear maker Huawei Technologies Ltd. according to multiple sources. Although VimpelCom is based in Amsterdam, its major shareholder is a firm controlled by Russian billionaire Mikhail Fridman. Huawei… continues to fight allegations that its equipment enables espionage or security breaches… But the government was just as concerned about whom VimpelCom wanted to sell Wind to as it was with VimpelCom itself…The government wanted to vet the ultimate buyer and, at some stage of the process, VimpelCom balked at this request."

WIND president Tony Lacavera speaks at the Toronto launch event

Now all of the threads of the story come together: On May 24, 2013, a London-based private equity firm known as Accelero Capital announced that it had signed a binding agreement with Manitoba Telecom Services Inc. to acquire Allstream. Accelero's major shareholder is none other than Naguib Sawiris, the former owner of Orascom. On October 7, 2013, Federal Industry Minister James Moore rejected the bid on unspecified national security grounds.

The reaction from Accelero and MTS was, as expected, profound disappointment. Because national security issues are, by their nature, not subject to public debate, both buyer and seller were at a loss to explain what exactly had motivated the rejection.

If foreigners can own carriers which have less than 10 percent market share and Sawiris' Orascom had been an acceptable investor in Wind, what was it that could have motivated this rejection?

The problem is that, if the government believed that Wind was in fact, and in law, controlled by Canadians, they would not have applied the criteria of the *Investment Canada Act* to Orascom's various indicia of control. The fact that the Wind Mobile case unfolded as it did would not, in effect, represent a carte blanche approval of whatever Mr. Sawiris later chose to undertake in Canada. Much of the comment about the process from the proponents centered around the fact that at no time did any government official inform them that there were national security concerns.

"Insiders who participated in the Investment Canada review process… say the government asked many questions about the buyer's connections to North Korea and China, but never hinted that the deal would eventually be spiked," reported the *Globe and Mail*, going on to say that, "While the two sides of the deal say there was no direct indication things weren't going well, questions about the world's most dangerous Hermit Kingdom can't be an indicator of certain success."

So should we conclude that the government is rethinking its recent legislation to open ownership of small carriers to foreign buyers? It appears that the more likely take-away is that the identity of the specific foreign buyer and that buyer's foreign connections are far more crucial. It is also certain that the nature of the asset plays a large role. Minister Moore said, "MTS Allstream operates a national fibre optic network that provides critical telecommunications services to businesses and governments, including the Government of Canada."

A Reuters release on October 9, 2013, concluded that, "When Ottawa blocked the sale of Manitoba Telecom Services' Allstream fiber optic network to a company backed by an Egyptian telecom tycoon this week, it telegraphed its resolve to make national security paramount when considering whether to allow a foreign firm to acquire what it considers a strategic asset. That warning may effectively limit the pool of would-be buyers of BlackBerry Ltd. or foreigners interested in Canada's telecom industry, and it could rule out all but a few well-established players based in North America." Senior government leaders, including the Prime Minister, have already been quoted as declaring that national security issues will be top of mind when any bid emerges for the national champion in mobile telephony handsets and technology.

Stanley Herbert Hartt, OC, QC is a lawyer, lecturer, businessman, and civil servant. He currently serves as counsel at Norton Rose Canada. Previously Mr. Hartt was chairman of Macquarie Capital Markets Canada Ltd. Before this he practised law as a partner for 20 years at a leading Canadian business law firm and was chairman of Citigroup Global Markets Canada and its predecessor Salomon Smith Barney Canada. Mr. Hartt also served as chairman, president and CEO of Campeau Corporation, deputy minister at the Department of Finance and, in the late 1980s, as chief of staff in the Office of the Prime Minister.

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Competing visions of the North

In this article, Tom Axworthy examines four contending visions of the North: military frontier, treasure trove, wilderness and homeland. He notes that the first three were largely formed by outsiders, whereas the fourth was conceived by northerners themselves. Axworthy writes that for far too long outsiders have decided which vision of the North should prevail and suggests that those who actually live North of 60 should have the real say in determining their own fate.

Thomas S. Axworthy

Glenn Gould, himself a Canadian cultural icon, said about The Idea of North in his Solitude Trilogy[1] of radio documentaries for the CBC:

> *"I've long been intrigued by that incredible tapestry of tundra and taiga which constitutes the Arctic and sub-Arctic of our country. I've read about it, written about it and even pulled up my parka once and gone there. Yet like all but a very few Canadians I've had no real experience of the North. I've remained, of necessity, an outsider. And the North has remained, for me, a convenient place to dream about, spin tall tales about and, in the end, avoid."*[2]

Like Gould, I believe the idea of the North penetrates deep into Canadian consciousness, sometimes at the forefront, more often recessed in the back of our cranium, but always there. Happily for me, and unlike Gould, I travel frequently to the North and I am continually educated by northerners about their problems and opportunities. This article reflects some of that education.

My recollections of a recent trip to Yukon illustrate the different views of the North which Gould referenced in his 1967 documentary and which still frames the debate about the future of the North today. Driving along Yukon's Highway 1, for example, there were reminders that the Alaskan Highway was constructed during the Second World War for the purpose of connecting the continental US to Alaska through Canada. It was started in 1942 and built by the US army.[3] Highways were still a hot topic in Yukon in 2011 as Prime Minister Harper announced that the Dempster Highway from Dawson City to Inuvik would be extended another 140 km at a cost of $150 million,[4] to connect to Tuktoyaktuk, more than 50 years after John Diefenbaker first talked about "roads to resources."[5] But the history of Yukon's highway system reminds us that for most of our modern history the North was regarded as a military frontier.

Yukon was also bursting with economic activity. Deloitte's mining review for 2011 exclaimed that "history is repeating itself," as drilling activity reached record highs. Since the days of the Klondike, as Deloitte's report

Pictured: DEW line station

states, the North has been seen as a bonanza.[6] But concerns about the environmental impacts of mining remain high: the Yukon First Nations, for instance, have recently declared their territory to be "frack free."[7]

Lastly, there is the perspective of those who live there: the purpose of my trip to Yukon was to meet the young northerners of the Jane Glassco Northern Fellowship, an initiative of the Walter and Duncan Gordon Foundation. These young leaders wanted the skills and technology of 21st century life but not at the expense of neglecting the traditions of their peoples. "Listen to a hundred camp fires," we were told, meaning that listening and consensus, not competition and zero-sum games, are at the heart of the Indigenous value system.[8]

In making sense of these disjointed impressions of a single trip, I was greatly assisted by a framework articulated by Terry Fenge and Bernard Funston, two of Canada's foremost Arctic experts. In a paper entitled "Traditional Knowledge of Arctic Indigenous Peoples," prepared for the Arctic Governance Project in 2009, they wrote that four conceptualizations, each with their own set of embedded interests and values, characterize images or frames of the circumpolar Arctic.[9]

Their categories applied to all states with Arctic territory, but slightly adapted, I found their categories helped both to make sense of my Yukon trip, and to have relevance for the debate on Canada's northern policy as a whole.

Four perceptional lenses refract images of the North: military frontier, treasure trove, wilderness and homeland. As Fenge and Funston acknowledge, "this way of characterizing the Arctic is an oversimplification,"[10] but like them, I have found that these four perceptions contain within them clear policy priorities, so it is important for the North which perception most drives national policy.

A Military Frontier

During the Second World War, the Alaskan Highway was viewed as a means to help protect Alaska from potential Japanese invasion. As the subsequent Cold War emerged, Lester B. Pearson wrote in *"Canada Looks "Down North""* in 1946, that "not long ago this vast Canadian Arctic territory was considered to be little more than a frozen northern desert ... we know better now. Canada, like Russia, is looking to the North."[11] Canada's air defence was integrated with that of the United States in 1957 within NORAD to protect against Soviet bombers, identified by the DEW Line in the High Arctic.

That once dominant Cold War military frame still exists today: An American strategist, for example, wrote excitedly in Foreign Affairs in 2008 that Russia "has a fleet of 18 icebreakers ... Washington cannot afford to stand idly by."[12] Our own media and government were just as excited by a routine Russian Arctic air exercise near our borders in 2009, despite NORAD assurances that Russian aircraft had not entered Canadian or American airspace. This military security frame of the Arctic is now totally outdated. Rather than a threatened frontier we enjoy in the felicitous phase of Mikhail Gorbachev's "a zone of peace."[13] Russia recently amicably settled its dispute with Norway over jurisdiction in the Barents Sea, and any future disputes over Arctic economic zones will be settled by the provisions of the United Nations Convention on the Law of the Sea (UNCLOS).

Today, when Russian, Canadian or American Chiefs of Staff think about the Arctic, it is not about war-planning, but rather how national assets and procedures can be co-ordinated to provide better search and rescue capabilities. In April 2012, for example, Canada's chief of defence staff hosted at Goose Bay, Labrador, his fellow chiefs from the Arctic Council states, including Russia, to discuss emergency management.[14] How to better prepare collectively for the rising risk ratio threatening the North is now the priority of Arctic states, not military standoffs.

Agnico-Eagle's Meadowbank Gold Mine, Nunavut

Treasure Trove

Men's eyes gleam when they think of the North's riches. As the poet Robert W. Service wrote:

"There are strange things done in the midnight sun
By the men who moil for gold." [15]

The US Geological Survey estimates that the Arctic contains approximately 13 percent of the world's undiscovered conventional oil resources and 30 percent of undiscovered conventional natural gas.[16] This has led to headlines like, *"Untold Riches in the North Pole."*

Less frequently mentioned is that it is one thing to have resources in the ground, another to move them to market. Shipping seasons are short, infrastructure is limited and logistics are increasingly difficult. In the Agnico-Eagle Meadowbank mine in Nunavut, for example, temperatures plunge to –50 degrees Celsius. In much of the North infrastructure for economic development is very limited. Baffinland Iron Mines Corporation hopes to develop the huge Mary River iron deposit, but it has to build its own railway and ports since none currently exist in the area. The total cost of the project is estimated at over $4 billion.[17] Skilled labour is an issue too, as local workers must either be trained or experienced workers flown in and out from the South. So there is indeed treasure in the Arctic, but it will take years to develop, requires huge capital outlays and an enlightened attitude on corporate social responsibility.

Tom Paddon, the President of Baffinland Iron Mines Corporation, for example, in speaking about the Mary River Project recognized that "the Inuit too must make a well-considered decision regarding their own significant investment in the Mary River Project. To Inuit, the land and the values that their way of life has given them are of utmost importance." And to quote Paddon further on social investment:

"My preference is that this project is seen as an opportunity, an opportunity to adjust to the wage labour economy that is growing in importance in the north, an opportunity to improve education levels, an opportunity to provide a diversity of employment opportunities that otherwise can only be found by the young leaving the North..." [18]

Paddon was right to emphasize education, as only 4 percent of Inuit and of First Nations people in the North have a university degree, compared to 23 percent of the Canadian population as a whole.[19] Amongst all the issues in the North, the Glassco Fellows chose edu-


Photo: Shutterstock

cation as the priority area for their group report, recommending 69 actions to improve education in the North.[20] One reason for high school drop-out rates in excess of 75 percent, according to the Glassco Fellows, is that "many Aboriginal people continue to experience exclusion in the education system, in northern and southern schools alike, which can have lifelong repercussions for individuals and northern communities."[21]

Established figures, as well as young leaders, highlight education. Mary Simon, Canada's first ambassador for circumpolar affairs and two-term president of Inuit Tapiriit Kanatami (ITK), the national Inuit organization in Canada, heads up the Inuit Education Accord, which argues that the key priority of the Arctic is education, in part because high school drop-outs cannot become the skilled labour that companies like Baffinland and Agnico-Eagle need. The goal, says Simon, should be:


Photo: BC Gov Photos

Pictured: Mary Simon

"(W)hen all Canada's Inuit children will not only be as successful in their studies as their southern counterparts, but exceed every expectation for any student as they grow into full participants in the modern knowledge based culture and economy, with the abiding respect for this good earth that their ancestors have passed on ..."[22]

The Wilderness Park

The Arctic is not Antarctica, a fact that eludes many, especially in Europe. The Antarctic is a large polar continent surrounded by the ocean. The Arctic is an ocean surrounded by continents and islands. The Antarctic is uninhabited. The Arctic and sub-Arctic has millions of inhabitants, including over 100,000 in Canada. Therefore, when the European Union bans seal products, it hits at the very livelihoods of Inuit, who have long harvested seals for food, clothing and income.

Few people are more in tune with what Franklyn Griffiths has called the ethic of "stewardship" than Canada's northerners.[23] In the 2011 public opinion survey of all the Arctic Council states mentioned above, 33 percent of northern Canadians unprompted stated that the environment was the most important issue facing the Arctic region.[24]

Canada's northerners have an almost spiritual relationship with the land and water. Many people don't realize that much of Canada's fresh water flows, not south to the United States, but north to the Arctic Ocean. Northern waters often become contaminated by the activities of those in the south: As Joanne Barnaby, the long-time executive director of the Dene Cultural Institute, states: "As northerners, we have virtually no say about what is put into our water. There is something fundamentally wrong with this."[25] Northerners in the Northwest Territories and the Peel River region of Yukon want to preserve the water quality in the great Mackenzie River Basin, Canada's Northern Amazon. That is why preserving the Mackenzie is a core priority for the Government of the Northwest Territories.[26] People have camped beside the Mackenzie and enjoyed its bounty for thousands of years. And that brings us to our last vision: the North as a homeland.

Homeland

In her book, Inuit: One Future, One Arctic, Mary Simon eloquently writes about her homeland: "Inuit and other northern indigenous peoples are ancient societies using and occupying vast traditional territories."[27] This vision of the Arctic as a homeland implies that the people who live there, not outsiders, should have the most impact on deciding what goes on there.

The Arctic as a homeland therefore puts a pressure on policies that promote devolution and local engagement. Yukon achieved a devolution agreement in 2003, as has the Northwest Territories this year, and, at last,

after stalling for several years, the Government of Canada has appointed a negotiator to discuss devolution with the Government of Nunavut. A basic lesson of federalism is that with resources and jurisdictions, comes responsibility and few things are more essential than ending the dependence of northerners on decisions made by the departments of Finance and Aboriginal Affairs and Northern Development Canada. The same principles apply internationally: one of the great recent successes of Canadian foreign policy was to initiate, along with the Finns and Russians, the idea of an Arctic Council. Created in 1996, the Council began as an inter-governmental body to discuss Arctic issues, encourage multi-polar cooperation and promote Arctic science.

But lately it has become a negotiating forum in which treaties like the 2011 Agreement on Aeronautical and Maritime Search and Rescue in the Arctic, are signed, with more agreements on the way. This is a quantum leap in significance. The breakthrough with the Arctic Council, and what sets it apart from other international organizations, was the international recognition of the status of Indigenous groups, as "Permanent Participants," to have a seat at the Arctic Council table. As John English writes in Ice and Water, his history of the Arctic Council, "for the Canadians the major concern had become indigenous peoples."

Now, the revolution was complete — at least on paper."[28] But as English acknowledges, formal status is not the same as real influence. With Canada having become the chair of the Arctic Council earlier this year, how best to fund, support, and acknowledge the expertise of the Permanent Participants should be a goal of our two-year chairmanship.[29] Prime Minister Harper made an astute move by appointing Minister Leona Aglukkaq, from Nunavut, as chair. What an achievement it would be for an Inuk woman to ensure that the original inhabitants of the Arctic not only have a formal place at the table, but have the actual means to influence circumpolar governance.

Conclusion

Visions contend because behind every image of a hoped-for place or an idealized construction is a set of assumptions and interests. I have discussed four contending visions of the North, three largely formed by outsiders, one by northerners themselves. Glenn Gould, at least, recognized that he was an outsider, and did not attempt to impose his conception of the North on anyone. But for far too long outsiders with power have decided which vision of the North should prevail. Yet the vision of the North as a homeland, long-promoted by the Inuit and First Nations, is more just and reflects the realities on the ground. Today's answer to Gould's question about "the idea of the North" should be a vision of a homeland where those who actually live North of 60 have the real say in determining their own fate.

Thomas S. Axworthy is a Senior Distinguished Fellow at the Munk School of Global Affairs and a Senior Fellow at Massey College.

Endnotes

1. The place of the North in the Canadian identity has been well-described in Victor Rabinovitch, "The North in Canadian Identity," Queen's Quarterly 118 (Spring 2011): 16-31. This article first made me aware of Glenn Gould's documentary referred to in the text.
2. Glenn Gould, "Solitude Trilogy: The Idea of North," CBC Radio, December 28, 1967, http://www.cbc.ca/player/Radio/More+Shows/Glenn+Gould+-+The+CBC+Legacy/Audio/1960s/ID/2110447480/
3. A good account of the construction of the Alaska Highway and its impact on Aboriginal communities in the Yukon is found in Julie Cruikshank, "The Gravel Magnet: Some Social Impacts of the Alaska Highway on Yukon Indians," in The Alaska Highway: Papers of the 40th Anniversary Symposium, ed., Kenneth Coates (Vancouver: University of British Columbia Press, 1985), 172-87. Like the Yukon Gold Rush, the huge influx of military personnel and southern workers into the Yukon had a tremendous impact on Indigenous societies. Cruikshank illustrates how a "cash" economy changed life dramatically for Yukon aboriginals. The same phenomenon is occurring today in Nunavut, for example, which is also trying to adapt to the impact of large-scale developments.
4. "Federal budget promises $150M for N.W.T. highway," CBC News, March 22, 2011, http://www.cbc.ca/news/canada/north/story/2011/03/22/north-fed-budget-highway-reax.html
5. Department of Northern Affairs and National Resources, Editorial and Information Division, "Major Road Programme for the North," news release March 26, 1958.
6. "Extracting Value — Yukon Mining 2011," Deloitte & Touche LLP, November 2011, http://www.deloitte.com/assets/Dcom-Canada/Local%20Assets/Documents/EandR/ca_en_energy_Yukon_mining_2011_113011.pdf
7. "Yukon First Nations declare territory is 'frack free'," CBC News, July 3, 2013. http://www.cbc.ca/news/canada/north/yukon-first-nations-declare-territory-is-frack-free-1.1368095
8. The Jane Glassco Northern Fellowship Program was created by the Walter and Duncan Gordon Foundation in 2010. The Program is aimed at young northerners, especially Aboriginal northerners, aged 24-34, who want to build a strong North guided by northerners by providing skills training and networking opportunities to enable Fellows to better articulate and share their policy research and ideas publicly. It also aims to create dialogue to bring about a more healthy, self-reliant and sustainable North. More information on the Fellowship Program can be found at http://gordonfoundation.ca/north/jane-glassco-northern-fellowship
9. Terry Fenge and Bernard W. Funston, "Arctic Governance: Traditional Knowledge of Arctic Indigenous Peoples from an International Policy Perspective," The Arctic Governance Project, December 12, 2009, http://www.arcticgovernance.org/arctic-governance-traditional-knowledge-of-arctic-indigenous-peoples-from-an-international-policy-perspective.4667262-142902.html. Charles Emmerson, The Future History of the Arctic, New York: Perseus Book Group, 2010., also a pan-Arctic survey, has five organizing themes — visions, power, nature, riches and freedom.
10. Ibid.,
11. L. B. Pearson, "Canada Looks "Down North"," Foreign Affairs 24 (1945-1946): 638.
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Will a pan-Canadian approach to drug purchasing save the provinces money?

In 2010, during a meeting of the Council of the Federation, provincial and territorial premiers announced the Pan-Canadian Pricing Alliance (PCPA), an initiative aimed at facilitating multi-jurisdictional negotiations on prices for brand name drugs. The Premiers believed that combining the purchasing power of the public drug programs would help provinces and territories achieve economies of scale and cost reductions.[1] *The authors examine the PCPA from three angles — policy, legal and business — and offer recommendations to help establish a more consistent, predictable and sustainable process.*

William Dempster, Adrienne Blanchard & Johanne Chambers

Three years have now gone by, and although the Premiers recently confirmed that the Pan-Canadian Pricing Alliance is one of their joint priorities[2] we still know relatively little about the initiative. This is largely due to the fact that the PCPA process, until now, has remained largely undefined. This, however, will likely change, as the provinces and territories are now working with a consultant, IBM Healthcare Solutions (IBM), to recommend options for the development of a permanent model that will facilitate negotiations under the PCPA. IBM is conducting consultations in the fall of 2013 with provincial/territorial governments, the Canadian Agency for Drugs and Technologies in Health, the pan-Canadian Oncology Drug Review, selected manufacturers, industry associations and patient organizations, and is expected to report back to the provinces and territories with its recommendations before the end of December 2013.

It is therefore timely to consider how the PCPA has evolved to date, in terms of objectives, process and implications. In this context, we examine the PCPA from three angles — policy, legal and business

— with the hope that policymakers and stakeholders can be better informed when interacting on specific product negotiations and on the permanent negotiation model to be developed for PCPA.

We end the article by providing recommendations to help establish a more consistent, predictable and sustainable PCPA process.

Background

The PCPA, which is co-lead by the governments of Ontario and Nova Scotia, has the following objectives:

- increase access to drug treatment options;
- improve the consistency of drug listing decisions across the country;
- capitalize on combined buying power of jurisdictions;
- achieve consistent pricing and lower drug costs; and
- reduce duplication of negotiations and improve utilization of resources.[3]

Initially, the provinces and territories agreed to jointly negotiate on selected brand name drugs to determine if the PCPA approach was feasible on a broader scale.[4]

As of September 1, 2013, the provinces and territories had successfully completed negotiations for 16 brand name drugs and were engaged in jointly negotiating 16 additional drugs under the PCPA.[5] Drugs that have gone through the PCPA process include oncology products, drugs for rare disorders and primary care products.

Based on the successes of the PCPA in the initial trial period, the drug plan managers in the provinces and territories have established an informal process to determine the applicability of PCPA to every drug coming out of the national drug review process (i.e., the Common Drug Review and the pan-Canadian Oncology Drug Review).[6]

Although there is no formal negotiation process in place at the present time, some negotiations under the PCPA have followed these steps:

- once a drug has gone through the national drug review processes (i.e., the Common Drug Review or the pan-Canadian Oncology Drug Review), provinces/territories determine whether PCPA negotiations should take place;
- if provinces/territories are interested in PCPA negotiations, they send a request to the manufacturer to initiate negotiations;
- one "lead" province/territory is identified to represent participating provinces/territories in the negotiations with the manufacturer;
- once an agreement has been reached, the terms are reflected in one "Letter of Intent" signed by all participating provinces, which is not a legally binding document; and,
- based on the terms of the Letter of Intent, the manufacturer proceeds to execute a product listing agreement with each participating province/territory in order for the drug to be listed on the individual provincial/territorial public drug plan.

Québec, the federal government and private plan sponsors are not participating in the PCPA.

Considerations

A. Policy Considerations

Equity of pricing and access

When provinces negotiate individually, prices and eligibility criteria for drugs may vary across Canadian jurisdictions. The confidentiality of the rebates in Canada and globally make it difficult for provinces to assess whether they are getting a "good deal" compared to other jurisdictions. By negotiating jointly through the PCPA, provinces/territories are trying to ensure that drug prices and access criteria are consistent across Canada.[7]

One of the potential downsides, however, of striving for consistency in pricing/access is that there may be less flexibility for provinces/territories to address specific health concerns of their beneficiary populations. In addition, there is a risk that PCPA will lead to no access to patients for life-saving medicines that do not make it through a successful PCPA negotiation, highlighting the need for exceptional access policies that allow for case-by-case adjudication, approvals and province-specific listings.

Administrative Efficiency

On the one hand, administrative efficiency could be achieved for both governments and manufacturers by having only one negotiation process in place for Canadian provinces/territories.

On the other hand, however, joint negotiations could end up requiring more time and resources than individual negotiations, given that they involve many parties with varying decision-making processes, policy objectives and political pressures.[8] It remains to be seen whether the permanent negotiation model to be developed for PCPA will be sufficiently streamlined and cost-effective to achieve administrative efficiencies.

Timelines

PCPA negotiations have the potential to further delay the time it takes for a new drug to access the Canadian market given that there are multiple parties involved, no mandated or target timelines around the PCPA process and that drugs must still go through the federal pricing review (Patented Medicine Prices Review Board) and the national and provincial health technology assessment processes. With the development of a permanent negotiation model for PCPA, provinces/territories have the opportunity, however, to put in place a more streamlined, efficient process that leads to timely drug coverage decisions across the country.

Structural Challenges

Provinces/territories face a number of challenges in implementing joint negotiations for pricing. One of the major hurdles is that provinces/territories have different public drug plans, revenue bases, demographics, political priorities and "pressures." These differences mean that the provinces/territories may come to the negotiation table with different and even divergent priorities and goals.[9]

Autonomy of Provinces/Territories

The PCPA process assumes that the provinces/territories be willing to give up some of their autonomy in order to collaborate on joint coverage and pricing decisions. This may prove to be challenging, as the provinces/territories are each responsible for operating their respective public drug programs and remain accountable for pricing decisions that often have important impacts on their budgets and health systems.[10]

Lower Prices

Provinces and territories have estimated that the prices of drugs negotiated under the PCPA will result in savings of approximately $60-70 million annually,[11] although it is not clear if these figures are in addition to the savings that provinces would have achieved if they were negotiating product listing agreements individually.

By leveraging resources from all participating jurisdictions and by achieving savings through PCPA negotiations, governments expect they will be in a position to increase access to, and fund, more drugs, which would be beneficial for all stakeholders.[12] In order to achieve this, however, governments will need to tread carefully and consider the risk of focusing primarily on lowering drug prices.

If PCPA is too focused on obtaining low drug prices and fails to produce acceptable agreements for manufacturers, companies could decide not to introduce, or delay the introduction of, certain products into the Canadian market. If this occurs, there is a risk that it could lead over time to:

- Higher drug prices: fewer products on the market within a given therapeutic class could undermine competition and lead to higher drug prices;[13]
- More restricted access: this would likely have a negative impact on patients' health outcomes, and patients may have to revert to other health interventions such as surgery and hospitalization, thereby increasing spending elsewhere in the health care system;[14] and
- Drug supply problems: the reduced number of suppliers of drugs could lead to lower drug supplies within a therapeutic class.[15]

Finally, it is interesting to note that cost savings achieved through the PCPA may not be shared equally among all provinces/territories. Smaller jurisdictions have the most to gain from joint negotiations, as they have less leverage than larger jurisdictions when they negotiate individually, due to the size of their population and revenue base. They may therefore benefit from greater savings than larger jurisdictions.[16]

Value of New Pharmaceuticals

On a related issue, if the PCPA focuses primarily on reducing costs, it could result in prices that do not reflect the value of medical innovation. Pharmaceuticals allow patients to live longer and healthier lives. They can also allow patients to return to work earlier, reduce absenteeism and improve productivity, which has real economic value and contributes to a stronger Canadian economy. Further, studies have demonstrated that for each dollar spent on prescription drugs, overall health care expenditures have decreased by an amount between $2.06 and $2.65.[17] In PCPA negotiations, the value of new drugs should be considered in the context of long-term health system cost savings from these investments.

B. Legal Considerations

Fairness

There is no "legal" structure that exists within the PCPA that gives rise to specific obligations for manufacturers and the provinces/

territories. There are also no governing rules that establish obligations among provincial/territorial governments and how they interact with each other.

That said, overriding administrative law principles — such as fairness — do have application to governmental bodies. In the case of Boehringer Ingelheim,[18] the Common Drug Review process was found to be subject to "judicial review."

Similarly, the conduct of any formal body dealing with PCPA would presumably be subject to a duty of procedural fairness. Accordingly, manufacturers may be able to seek judicial review of certain actions of the PCPA where they can show there was a lack of due process.

Confidentiality

Confidentiality of information is an issue that manufacturers will have concerns about as they move through the PCPA process. If the agreement reached in the context of PCPA negotiations results in a rebate payable to a province/territory (in the form of a rebate off of the list price) companies will wish to know the extent to which the information will be kept confidential. To disclose what might be cast as "effective" pricing could put at risk the pricing of the product in other Canadian jurisdictions or countries given the degree of price cross-referencing that occurs on a national and international level.

It is possible to execute a non-disclosure agreement with a given provincial/territorial government providing that the manufacturer's information shared in the negotiations and the eventual product listing agreement will be kept confidential. In addition to allowing the manufacturer's information to be shared within the province/territory to which it is provided, a non-disclosure agreement could also allow the information to be shared among all participating provinces/territories.

It should be stressed, however, that even if a non-disclosure agreement has been signed, provincial/territorial access to information legislation would still apply. As such, whether the confidentiality of the information is in fact maintained will depend on the nature of the information, the scope of the provincial/territorial legislation and how it has been interpreted. Access to information legislation generally provides for a right of public access to government-held information, subject to certain exemptions, such as the exemption for third party confidential information, the release of which could cause the third party prejudice or harm.

Legal Obligations on the Parties during Negotiations

There are a number of issues that arise in PCPA negotiations, in part due to the lack of a formal negotiation framework and to the non-legally binding nature of the Letter of Intent.

A manufacturer may not know who is at the negotiation table at a given point in time. As the manufacturer is dealing with only one lead province for the negotiation of a given product, it is not always clear what other jurisdictions that lead province is also representing. There is nothing to legally bind a given province/territory to opt into the PCPA process. Further, it is not prohibited for a province/territory to opt in at the outset but decide to later opt out. More importantly, there is no apparent requirement for provinces/territories to inform manufacturers of which jurisdictions are participating at the outset of the negotiations and of any subsequent "opt-ins" or "opt-outs".

Although there is no doubt good faith on all sides of the negotiation, there is still a risk that a given province/territory could opt in to the PCPA process and sign a Letter of Intent, but be unable to list the product within a reasonable timeframe. There is no redress for a manufacturer if there are delays in listing a product or, worse, if a province/territory fails to list the product at all. This is because the agreement between the pan-Canadian group and the manufacturer is only captured in a Letter of Intent, which has no legal binding effect.

(O)verriding administrative law principles — such as fairness — do have application to governmental bodies. In the case of Boehringer Ingelheim, the Common Drug Review process was found to be subject to "judicial review."

Similarly, the conduct of any formal body dealing with PCPA would presumably be subject to a duty of procedural fairness. Accordingly, manufacturers may be able to seek judicial review of certain actions of the PCPA where they can show there was a lack of due process.

Finally, there is a risk that a province/territory could sign the Letter of Intent but subsequently decide to negotiate different terms with the manufacturer in the product listing agreement. A province/territory could also conclude a product listing agreement based on the terms of the Letter of Intent, but subsequently decide to amend the terms of the product listing agreement with the consent of the manufacturer but without notifying the other jurisdictions involved in the PCPA negotiations.

C. Business Considerations

Industry Revenues

Decreases in drug prices could result in lower revenues for the pharmaceutical industry, unless PCPA negotiations lead to greater sales volumes that can offset the price reductions. Loss of revenues would affect the ability for manufacturers to conduct research and development into new therapies, and would provide manufacturers with less incentive to do so in Canada.

Further, declining revenues for industry may also affect the ability for manufacturers to continue investing in various programs/services currently in place, including those that support the appropriate use of medication and that contribute to health system efficiency. These programs and services will either be lost or the costs will shift onto other health systems stakeholders and patients.

Business Uncertainty

The PCPA has given rise to a significant degree of business uncertainty, which makes it very challenging for manufacturers to accurately forecast if and how their products can be commercialized in Canada.

As mentioned previously, manufacturers may not know which provinces/territories are participating in the negotiations. This makes it difficult for manufacturers to accurately determine the size of their market and the volume of sales it could generate, so as to be able to decide on an acceptable price point.

As also mentioned previously, there is a risk that a province/territory that signed the Letter of Intent could later decide to change the terms of the deal or even decide not to conclude a product listing agreement to list the product on its formulary.

Finally, in addition to "new drugs," it appears that the PCPA may now be re-visiting drugs that have already been listed on provincial formularies and that may have already been the subject of bilateral negotiations with some of the provinces.

Looking Ahead

Given that the PCPA will have impacts on patient health outcomes and many facets of the health care system, securing the support of stakeholders will be essential to the success and sustainability of the PCPA process.

The consultations undertaken by IBM in fall 2013 offer an opportunity for governments to meaningfully consider the input of all stakeholders (i.e., pharmaceutical industry, citizens, healthcare professionals and patient groups). Providing opportunities for future stakeholder engagement will also be important.

(I)n addition to "new drugs," it appears that the PCPA may now be re-visiting drugs that have already been listed on provincial/territorial formularies and that may have already been the subject of bilateral negotiations with some of the provinces.

Based on our review of the various policy, legal and business considerations, we have formulated a number of recommendations that governments and stakeholders may want to consider in the context of developing a permanent negotiation model for PCPA:

1. Implement a clear and consistent framework to guide negotiations. This framework would include:

- criteria used to determine which drugs would be subject to PCPA negotiations;
- timelines for notice to be delivered to a manufacturer as to whether or not the product will go through the PCPA process;
- requirement to inform manufacturers of which jurisdictions are participating at the outset of a negotiation;
- issues to be negotiated as part of the Letter of Intent (in addition to price and volumes, parties to a Letter of Intent could include other considerations, such as criteria for sub-populations, adherence programs, patient registries or health research commitments, outcomes-based reimbursement criteria);
- guidelines on how provinces/territories can opt in or out of a negotiation, including notification to the manufacturer when this occurs, and rules about using information gained in PCPA negotiations in other contexts;
- policies and increased capacity to address surges in the number of products subject to PCPA negotiations at a given time;

- timelines for both parties to respond to an offer or counter-offer; and;
- timelines for product listings following the conclusion of a Letter of Intent.

2. Provide an opportunity to negotiate a Letter of Intent that includes incentives for parties to meet their commitments (e.g., include milestones for implementation such as better prices as more provinces reimburse the product according to a time schedule).

3. Ensure that the new PCPA structure is adequately resourced in order to promote timely decisions.

4. Ensure there is a clear and consistent process in place for approving negotiation mandates and Letter of Intent to promote timely completion of negotiations.

5. Revisit the roles of existing processes such as the Common Drug Review, the pan-Canadian Oncology Drug Review, the Patented Medicine Prices Review Board and the provincial health technology assessment committees and processes, to ensure they serve complementary and not duplicative roles in the context of PCPA negotiations.

6. Ensure that negotiation positions take into account the value of new drugs for the health care system.

7. Unless there is a compelling reason to do so, avoid applying the PCPA process to products that have already been listed, as this creates significant business uncertainty for manufacturers and could lead to inequitable treatment for older products.

8. Ensure the process allows sufficient flexibility for provinces/territories to address specific health concerns of their beneficiary populations.

9. Include periodic evaluations of the process that incorporate the input of stakeholders.

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Endnotes

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6. Supra note 3.
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10. See Dempster B., Provincial Purchasing Alliances — Drivers, Challenges and Implications, Provincial Reimbursement Advisor, February 2011, p. 15 and Morgan S. et al., supra note 8.
11. Council of the Federation news release, July 26, 2013: http://www.councilofthefederation.ca/phocadownload/newsroom-2013/health_care_july26-final.pdf. These savings were based on the 27 drugs that had been negotiated or that were in the process of being negotiated at the time of the Council of the Federation news release.
12. Increasing access to drug treatment options is one of the publicly stated goals of the PCPA. See presentation by Diane McArthur, supra note 3.
13. This risk has been mentioned in the context of tendering systems, which undermine the competitive market over time. See Hollis A. et al., "Tendering generic drugs: what are the risks?," Paper commissioned by the Canadian Generic Pharmaceutical Association, October 2012 cited in Labrie Y., Wrong Prescription — The Unintended Consequences of Pharmaceutical Cost Containment Policies, Montreal Economic Institute, June 2013: http://www.iedm.org/files/cahier0613_en.pdf, pp. 26-27.
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16. Supra note 8.
17. These figures are based on American studies. It was also found that spending on more recent patented drugs have resulted in even more significant savings elsewhere in the health care system.
Economists have found that this is also true in Canada. See Lichtenberg F.R., "Do (more and better) drugs keep people out of hospitals?," American Economic Review, Vol. 86 (1996), No. 2, pp. 384-388; Shang B. et al., "Prescription drug coverage and elderly Medicare spending, National Bureau of Economic Research, Working Paper No. 13358," September 2007; Lichtenberg F.R., "Benefits and costs of newer drugs: an update, Managerial and Decision Economics, Vol. 28" (2007), pp. 485-490; Civan A. et al., "The effects of newer drugs on health spending: Do they really increase the costs?, Health Economics," Vol. 19 (2010), pp. 581-595; Crémieux P.-Y. et al., "Do drugs reduce utilization of other healthcare resources?, Pharmacoeconomics, Vol. 25" (2007), No. 3., pp. 209-221; all sources cited in Labrie Y., supra note 13, p. 16.
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Pictured: Bob Paulson, the Commissioner of the Royal Canadian Mounted Police

When law enforcement acts outside the law, who polices?

At a news conference when she released her annual report in mid-October, Information Commissioner Suzanne Legault said "there are unmistakable signs of significant deterioration in the federal Access to Information system." She called upon leaders of government departments and institutions to ensure compliance with legislative requirements. In this timely commentary, Guy Giorno recounts the stonewalling he encountered when trying to access information from the RCMP — an institution that should know a thing or two about the importance of complying with the law — and wonders why deputy-level bureaucrats who preside over departments or agencies that receive failing grades on access requests don't seem to face any consequences.

Guy W. Giorno

When the federal Information Commissioner, on October 17, 2013, lambasted the Royal Canadian Mounted Police for failing to abide by the *Access to Information Act*, she brought full circle a process that I set in motion one year ago.

I observed the tabling of her annual report from a unique vantage point because I had been a requester to the RCMP and, consequently,

a complainant to the Information Commissioner. Indeed, I was the whistleblower who first informed the Information Commissioner's office that the RCMP was blithely ignoring access to information requests.

The Information Commissioner used strong language, explaining that the conduct of our national police force was "what really made [her] sound the alarm"[1] about widespread non-compliance with the *Access to Information Act* because the RCMP's behaviour was "against the law."[2]

The RCMP's non-compliance indeed deserves harsh criticism, but so too does the Information Commissioner's inconsistency in condemning the RCMP when her own office, whether by ineptitude or intention, initially acted to insulate the RCMP from scrutiny.

Ms Legault would subsequently tell CTV's Don Martin that she was deeply concerned by the problem that I brought to her attention. "But at that time, when this first happened, we actually were not aware of the situation at the RCMP," she said on the news show Power Play, referring to my revelation. "It's when we realized that we couldn't even actually have a file number to figure out which file we would have to investigate when this happened, and we realized it was actually systematic."[3]

In fact, the problem implicates her own office more than the Commissioner is perhaps willing to admit. As much as the RCMP was acting outrageously, so too was the Commissioner's staff when it tried to thwart my complaints about the RCMP.

Through my firsthand experience as a requester, I knew, long before the Information Commissioner revealed it to the public,[4] that the RCMP was disregarding *Access to Information Act* deadlines. In September 2012, I made a series of access to information requests to the RCMP. For good measure, thinking that he would care (and, given the nature of the requests, I thought he would care), and thinking that he would want to make sure his organization complied with the law, I copied the Commissioner of the RCMP.

I had anticipated either refusals or notices of time extension. I was surprised, however, to receive nothing. By nothing I mean no reply, no acknowledgement, no opening a file or assigning a file number.[5]

The RCMP is responsible for law enforcement across Canada, and Canadians trust it to provide community policing in eight of ten provinces. Members of the RCMP are required by statute to maintain the integrity of the law and the administration of justice.[6] At the opening of a new session of Parliament, the RCMP Commissioner marches in the vice-regal procession as a symbol of the constitutional order and the rule of law. The fact that the RCMP itself does not comply with a law — whether the *Access to Information Act* or any other — is deeply troubling.

The RCMP's disregard for an Act of Parliament undermines the principle of equality before the law. (Ordinary citizens who disregard a law will find themselves subject to investigation by the RCMP and to the laying of charges.) It also contravenes the *Royal Canadian Mounted Police Act* and has the potential to erode public confidence in the operation of the force.

The RCMP's non-compliance with the *Access to Information Act* should have been particularly troubling to the Commissioner of the RCMP and the Government of Canada. In my case, the RCMP Commissioner had been copied on the access requests, and thus he had the opportunity to instruct that they be processed in compliance with the law. Regardless of any specific or general instruction issued by Commissioner Paulson, the RCMP's disregard for the Act is a matter of fact.[7]

Top 15 Institutions with administrative complaints, 2012–13

	2011-12	2012-13
Canada Revenue Agency	49	109
RCMP	24	76
Foreign Affairs & International Trade	21	35
Transport Canada	14	34
Citizenship & Immigration	35	33
National Defence	22	31
Privy Council Office	5	31
Health Canada	18	25
CBSA	12	23
Correctional Services of Canada	20	21
Public Works	20	21
Cnaadian Food Inspecition Agency	7	19
Environment Canada	8	14
Department of Justic	10	11
Treasury Board	4	11

Source: Information Commissioner of Canada Annual Report, 2012-13

As for the Government's response, nothing on the public record indicates that the Minister of Public Safety, or any senior Government official, has taken the RCMP Commissioner to task for his organization's non-compliance with this vital law. Nor has any parliamentary committee summoned Mr. Paulson to explain why the man at the apex of national law enforcement does not ensure that his own organization obeys the law.

The problem is not, however, unique to the RCMP and Commissioner Paulson. More generally, no publicly available data suggest that the Access to Information compliance records of heads and deputy heads affect their upward career mobility. Indeed, the evidence suggests that failure to comply with the Act does not hinder individual advancement.[8]

Granted, one particular weakness is the federal Information Commissioner's inabaility to adjudicate and to issue orders binding on institutions such as the RCMP. At best, she can offer mere recommendations. To obtain binding results she must apply to Federal Court.[9]

In contrast, most provincial freedom of information regimes — including those in Canada's four largest provinces — operate on the basis of binding adjudication.[10] Independent officers, usually styled information and privacy commissioners, can and do order recalcitrant government institutions to release records and to comply with

Pictured: Treasury Board President Tony Clement is the Minister responsible for the *Access to Information Act*

the law.[11] These provincial systems work well. In fact, nothing focuses the mind of a government institution like the prospect of a commissioner's order. The federal Information Commissioner should possess the same statutory powers as many provincial counterparts, not for her own sake, but in the public interest. Canadians should be able to vindicate their federal right to know just as easily as they exercise their rights to information about provincial governments.

That said, if Parliament were to give the Information Commissioner the order-making power she needs, then her office team would require the expertise and competence to assume new powers. My personal experience, of being rebuffed when I blew the whistle on the RCMP, confirms the need for improvement.

When the the RCMP chose not to acknowledge my *Access to Information Act* requests, it was deemed, under subsection 10(3) of the Act, to have refused access. On the basis of these deemed refusals by the RCMP, I filed complaints with the federal Information Commissioner under section 30. More precisely, I tried to file complaints with the Commissioner's office.

What happened next resembled a Joseph Heller plotline more than discharge of the responsibilities of an Officer of Parliament. My complaints were that the RCMP had not acknowledged my access requests. However, according to the Information Commissioner's own Catch-22, my complaints would not be processed until the RCMP had first acknowledged my access requests.

The voice mail message that I received, November 14, 2012, from a representative of the Commissioner, was unmistakably clear in content, though lacking in logic:

"Yes, this is (name) with the Office of the Information Commissioner of Canada. I'm calling about your letters to our office from October 25th, complaining about the lack of response to 14 requests you have submitted with the RCMP. Unfortunately there is an insufficient amount of information in your letters to register your complaints. What we need specifically is the RCMP file numbers for your access to information requests. That will allow us to confirm that the RCMP did in fact receive your requests, and are treating them as requests under the Access to Information Act. *If you have this information could you please give me a call at (phone numbers)."*[12]

A subsequent discussion with this employee confirmed the same information as the message. My complaints arose from the fact that the RCMP had not acknowledged my requests or issued file numbers, but the Information Commissioner's office was unwilling to process the complaints until the RCMP had acknowledged my requests and issued file numbers. I was also told that the Commissioner's office could not determine whether it had jurisdiction over the matter until it knew that the RCMP had accepted the request and was treating it as a request under the *Access to Information Act*.

Thinking that the junior employee had erred, I appealed over his head to the Commissioner's intake director, Sandra George. Rather than agree with me, she adopted the same inflexible position:

"*Before we register a complaint, we must confirm the validity of the complaint. … With respect to your particular access requests, you may contact the general phone number of the Access to Information Office of the RCMP at (613) 843-6800 to obtain your file numbers. Once we have this information and we can confirm our jurisdiction to investigate, please rest assured that we will register your complaints expeditiously."*[13]

In law, government institutions are not entitled to decide whether to comply with the *Access to Information Act*. Despite the Kafkaesque arguments of the Information Commissioner's staff, an institution's action or inaction does not control the Information Commissioner's

jurisdiction over complaints. It was both legally erroneous and nonsensical for her office to suggest the contrary. Eventually, the Assistant Commissioner confirmed that the office would accept jurisdiction over my complaints that the RCMP had ignored my access requests. That assurance, and the Commissioner's subsequent and very public chastisement of the RCMP, suggested that the Commissioner's office would in future be open and responsive to citizens whose information requests are ignored by institutions.

Unfortunately, the practice of the Information Commissioner's office appears to be unchanged. On September 27, 2013, I spoke again to the employee who had left the voice mail message and with whom I had discussed jurisdiction ten months earlier. The employee clearly remembered communicating with me and taking the position that the Commissioner will not accept a complaint unless an institution chooses to accept the access request and assign a file number. He told me that his practice is still the same, based on instructions that remain unaltered.

What this meant is that, despite public hand-wringing over the RCMP's conduct, and assurances to me that other complainants would not be turned away, nothing has changed. The intake unit of the federal Information Commissioner will not process a complaint about an access request that an institution has failed to acknowledge. This position is contrary to law, it undermines the public's right of access, and it permits institutions to evade their legal responsibilities by simply ignoring access to information requests. Further, the Commissioner's very public criticism of RCMP intransigence[14] is hypocritical if her office will not process complaints about institutional intransigence.

Presumably would-be complaints are still being turned away by the Information Commissioner's office. My complaints were eventually processed because I knew the law and I persisted. I worry, however, about the fate of other requesters, including ordinary citizens who are less tenacious or less aware of their rights. They, too, deserve justice when they blow the whistle on institutions that will not acknowledge access requests.

On the issue of the RCMP's non-compliance with the *Access to Information Act*, therefore, the RCMP is wrong, but the Information Commissioner is both right and wrong. Ms Legault is right to criticize the RCMP, but wrong not to correct her staff's Kafkaesque interpretation of how to handle citizen complaints.

Until she does, it would be premature for Parliament to grant her additional statutory powers.

Guy Giorno is a Partner at Fasken Martineau DuMoulin LLP. His comments reflect his experience practising freedom of information law since 1991, and his decade-long government experience working in the Office of the Prime Minister of Canada and the Office of the Premier of Ontario. The opinions expressed are entirely his own.

Endnotes

1 Suzanne Legault, (2013, Oct. 17). Interview on CTV's Power Play. Video retrieved from: http://kitchener.ctvnews.ca/integrity-of-canada-s-access-to-information-system-at-risk-info-commissioner-1.1501330

2 Amy Minsky. (2013, Oct. 17.) RCMP still working through information request backlog, hasn't hired all approved staff. Retrieved from Global News: http://globalnews.ca/news/907905/rcmp-still-working-through-information-request-backlog-hasnt-hired-approved-staff/

3 Suzanne Legault. CTV's Power Play, note 2.

4 The Information Commissioner first discussed the RCMP's conduct publicly in late summer, when she told the media that the issue would be addressed in her upcoming annual report: Amy Minsky. (2013, Aug. 16.) RCMP stops responding to people using access to information laws: information commissioner. Retrieved from Global News: http://globalnews.ca/news/785556/rcmp-stopped-responding-to-information-requests-information-commissioner/

5. The RCMP ultimately acknowledged receiving my requests, long past the statutory deadline for doing so, and only after I had complained to the Office of the Information Commissioner.

6. *Royal Canadian Mounted Police Act*, R.S.C., 1985, c. R-10, para. 37(b).

7. In my case, the Office of the Information Commissioner found that my complaints against the RCMP were "well founded, resolved without having made recommendations to the head of the institution."

8. On April 13, 2010, the then-interim Information Commissioner of Canada issued a special report that gave five institutions grades of F (unsatisfactory) in Access to Information compliance. See Canada, "Office of the Information Commissioner, Out of Time: 2008–2009 Report Cards and Systemic Issues Affecting Access to Information in Canada (2010)," at 21. Of the five deputy heads who had managed the institutions' operations during all or most of the 2008-09 reporting period: two remained in their positions indefinitely (through 2013), one was subsequently appointed to operate a much larger department, and two subsequently received diplomatic postings. According to the public record, none of them appears to have been adversely affected by an F (unsatisfactory) grade in Access to Information compliance.

9. *Access to Information Act*, R.S.C. 1985, c. A-1, s. 42.

10. *Freedom of Information and Protection of Privacy Act* (Alberta), R.S.A. 2000, c. F-25, ss. 72-74; *Freedom of Information and Protection of Privacy Act (British Columbia) R.S.B.C. 1996*, c. 165, ss. 58-59.01; F*reedom of Information and Protection of Privacy Act (Manitoba), C.C.S.M.*, c. F175, ss. 66.8-66.9; *Freedom of Information and Protection of Privacy Act (Ontario), R.S.O. 1990*, c. F.31, s. 54, clause 61(1)(f); *Freedom of Information and Protection of Privacy Act (Prince Edward Island),* R.S.P.E.I., c. F-15.01, ss. 66-67; *An Act respecting access to documents held by public bodies and the Protection of personal information (Québec), R.S.Q.*, c A-2.1, ss. 141, 144.

11. Orders are made by the Information and Privacy Commissioner in Alberta, British Columbia, Ontario, and P.E.I., by the Information and Privacy Adjudicator in Manitoba and by the Commission d'accès à l'information in Québec. In the first five provinces, an order is final, and can only be challenged through judicial review. In Québec, the Commission's order is subject to appeal to the Court of Québec. Further, in Québec (s. 145) the provincial Cabinet has the power to suspend an order to produce a record. In the Manitoba system, matters come before the Information and Privacy Adjudicator only upon request from the Ombudsman (s. 66.3). Otherwise a disaffected requester or third party has the right to appeal the institution's decision to the Court of Queen's Bench (s. 67).

12. Voice mail message sent to the author from employee in the Office of the Information Commissioner (November 14, 2012). Audio posted online at http://t.co/yQi1BtNM9y

13. Email to the author from Sandra George, Director, Intake and Early Resolution Unit, Office of the Information Commissioner (November 14, 2012).

14 In her most recent annual report, the Information Commissioner criticized the RCMP for "failing to meet basic obligations under the Act," including its failure to acknowledge receipt of access requests or assign file numbers. Canada, Information Commissioner (October 17, 2013). Annual Report 2012-2013, at 17.

Pictured: A rusting steel bridge

Municipalities lose clout as politicians focus on fight for middle class votes

Not so long ago, municipalities had the attention of federal politicians. Indeed, the competition to serve the needs of evolving urban centres was a boon to municipalities under the Chrétien, Martin and Harper governments. But, the times are changing and as political parties rush to gain political advantage by addressing issues affecting the middle class, the needs of municipalities seem to be dropping down the priority list.

Massimo Bergamini

> "Most important of all, I want to discuss how we can work together to build a national partnership — which includes federal, provincial and municipal leaders — to move beyond the status quo, to summon a new attitude. To set in motion a process that must succeed in securing the goals we all share."
>
> *—Paul Martin speaking about a New Deal to the Federation of Canadian Municipalities Annual Congress, Hamilton, May 2002.*

It started in 1993 with the first federal municipal infrastructure program, a sometimes-strained relationship between the Liberal Party and the country's municipalities that for the next 20 years would define the federal role in cities and signal a subtle shift in the power structure of the Canadian federation.

It was a relationship born of political pragmatism: Jean Chrétien's Liberals saw in the municipal call for a federal program to repair and build crumbling municipal infrastructure an opportunity to give some substance to their campaign slogan of jobs, jobs, jobs. It also created some unlikely political alliances for the Liberals such as that with Montreal's sovereigntist mayor, Jean Dore.

While federal political calculus was always at its core, this relationship evolved to embrace more robust public policy undertones reflecting the increasingly urban nature of Canada. Now, two years removed from a federal election and the Liberal party has been pushing a middle class narrative with few linkages to the state of our cities or urban Canada. As a result, that relationship is in doubt. To understand what this might mean for the future of the federal role in cities, it is instructive to trace back the high points of this relationship and what it meant for federal policies.

The New Deal for Cities

While the Chrétien government had the distinction of putting Ottawa back in the cities business two decades after the failed federal venture in urban affairs, it was Paul Martin's 2004 signature policy — the New Deal for cities — that appeared to signal the real paradigm shift.

Martin's New Deal was predicated on the notion that city governments would be partners in the federation, with a real say in the development of policies that concerned them and their residents.

While the public centrepiece of the New Deal was the so-called gas tax transfer which now flows over $2B a year into the coffers of cash-strapped municipalities, it was the promise of a new intergovernmental partnership that was seen in municipal circles as holding the promise of real change.

In this offer of partnership, municipalities saw an opportunity to start tackling some of the issues that play out on their streets and neighbourhoods and that defy jurisdictional niceties. In the past, these issues — homelessness, public safety, crumbling infrastructure, extreme weather adaptation — had been met with promises of short-term federal cash.

The New Deal held the promise of a coordinated policy response from all governments. And the new municipal mantra became: the New Deal is about more than money.

But if this federal commitment was well aligned with Canadian mayors' longstanding demand of a "seat at the table", it also served to raise the hackles of provincial governments who viewed the New Deal with suspicion. To its credit, thanks in large part to some deft stickhandling by then-Infrastructure and Communities minister John Godfrey, the Liberal government was able to assuage provincial fears while easing municipal concerns of federal backsliding. By 2005 the New Deal was generally as well regarded in provincial capitals as it was in Council chambers.

Provincial governments welcomed the inflow of federal dollars to help them deal with the infrastructure crunch they all faced, and cities welcomed the federal government's new willingness to engage them directly in the development of government policies.

A new sheriff in town

The Liberal-municipal relationship was not always a love-fest. Often, municipal leaders complained about the pace of change or a disconnect between federal promises and on-the-ground reality. But if there were moments of tension — such as in 2003 when then-Finance minister John Manley delivered what the Federation of Canadian Municipalities termed "a doomsday Budget" — few in the municipal sector ever doubted that the Liberal party was the party of cities.

That relationship began to change with the election of the Harper government in 2006. First, the governing Conservatives began to appropriate some of the language from the Liberal narrative. They later went on to initiate some of the largest municipal infrastructure spending initiatives in the history of the country.

At the same time as the Conservatives were literally building bridges with Canada's mayors, the Liberal Party was shifting away as it struggled for a fresh narrative. From Stephane Dion's "Green Shift" to Michael Ignatieff's "Family Pack," the Liberals' election platforms broke little new ground in the area of urban policy and offered barely anything more than token gestures for Canada's cities.

But if the Harper government delivered unprecedented federal investments in municipal infrastructure and even made the gas tax transfer permanent, it's approach to federal municipal relations differed substantively from that of the Martin government.

Where the New Deal was predicated on the formal recognition of the growing importance of cities in the national landscape, the Harper government's approach with its focus on tightly controlled federal spending on infrastructure was more closely aligned with that of the early Chrétien governments. Gone was substantive talk of partnership. Municipal efforts at creating space for a larger discussion of the federal role gained little traction. With Ottawa firmly committed to continued infrastructure spending many — including in the municipal sector — dismissed such concerns.

What does this mean for a federal cities agenda?

But settling for the status quo carries with it two serious problems for Canada's cities: first it would mean reducing the federal role and interest in cities to investments in infrastructure and would place the multitude of cross-jurisdictional issues that play out in cities on the backburner; second, it would signal a return to a 19th century vision of federalism that belies Canada's urban present and future.

The greatest gains made by municipal governments over the last two decades came as a result of a competitive political environment where the parties saw value in articulating a narrative that addressed the challenges faced by cities lest they be seen as unresponsive to their needs and those of their residents. But you don't have competition if you're alone in the game, and at this point, as narrowly defined as it is, only the Conservative party has a meaningful cities narrative.

With the dominant political narrative now apparently geared to making inroads among the middle class, the question is whether there will be sufficient political room and appetite for the kind of programs needed to address the needs of an evolving urban Canada.

For the municipal sector and for its standard bearer, the Federation of Canadian Municipalities (FCM), time is running out. It must build bridges with the Opposition Liberals, just as it did in 2005 with the Conservatives and create the conditions for true competition around a vision of urban Canada and the federal role in cities.

Massimo Bergamini is president of InterChange Public Affairs an Ottawa-based consulting firm. He has written and spoken extensively about urban affairs. He was Director of policy, advocacy and communications at the Federation of Canadian Municipalities at the time of the New Deal for cities.

Ending cross-border airfare discrimination: could a new policy in air transportation lie ahead?

Mary-Jane Bennett

In the recent Speech from the Throne, the Government committed to ending "geographic price discrimination against Canadians." With five million Canadians a year crossing the border to the United States to take advantage of cheaper flights, will Ottawa's promise to end price discrimination against Canadians mean a new policy in air transportation lies ahead?

The reason millions of Canadians travel to the US for air travel is that airline tickets in the United States are cheaper — by well over an average $400 per round-trip ticket. For a family of four, this amounts to a large saving simply by choosing a US departure.

Placing a US ticket alongside a Canadian ticket reveals the reasons for the passenger drain to the States. Both the tax portion, at close to three times that of a US ticket, and the base fare portion, higher again by about one third, are the reason. To close the gap and end the "geographic price discrimination" a new policy on each is required. Not only is an improved policy achievable but the benefits of a new strategy could be enormous. Economists claim that a reduction in even the tax portion of the ticket would return about two million travellers to Canadian airports.

Ottawa collects close to one billion dollars a year from travellers. There are a number of taxes by Ottawa - security tax (Canada's are the highest in the world), air navigation fees, fuel excise tax and airport ground rents. Not only is each excessive in comparison to the US but a compelling narrative lies behind each as to why a change in policy is fair. For example, should travellers in Canada pay the full price of security? The thinking in the States is that 9-11 was an attack on the United States, not on its aircraft.

With airport rents at about $300 million and the air travellers' security tax at about $400 million, it is understandable how Canada gets the unenviable ranking (according to the World Economic Forum) of 125 out of 139 countries for competitive air ticket taxes and airport charges. There is plenty of room to manoeuvre new policy.

As to the base fare portion, a number of factors feed into the increased Canadian ticket, including Canada's higher labour costs, lower productivity and more restrictive tax policies. Canada's inherently anti-competitive air policy is a major reason for the difference in the base fare.

The US realized early on that the economic best interests of its country aligned with those of its travellers. Each benefitted from increased competition. By the early 1990s, the administration of President George

Pictured: Buffalo Airport

H.W. Bush introduced the "Underserved Cities Program" to ensure that a trading partner would have access to US cities if there was no domestic airline serving that city. This liberalization of the skies proved a large benefit to the United States economy as secondary cities like Charlotte, North Carolina were transformed by the influx of air traffic. The Kurth Report linked the benefit of daily access to a city economy at between $265 and $720 million annually, depending on aircraft size and the wealth of the city market.

Canada has the reputation of having the most restrictive and protectionist attitude to reciprocated air agreements in the developed world. Before a foreign carrier is allowed access to Canada, it must meet the test of being 'a net benefit to Canada.' The secrecy behind this test, the lack of transparency and the weighting of 'benefit' instead of 'opportunity' would simply not be tolerated in the United States, according to former Assistant Deputy Secretary of Transportation, Andrew Steinburg in 2009.

As Canadians continue to flock to the United States in pursuit of cheaper flights, it is worth recalling that without a policy change to stabilize the price difference, the loss to Canada is large — in jobs, GDP and tax revenue. It affects Canada's airports and will ultimately result in increases in travel time.

While the Throne Speech's pledge to reduce "geographic price discrimination" may seem vague and difficult to realize for diapers and cars, concrete steps could be taken to reduce the discrimination in air travel tickets between the two countries.

Mary-Jane Bennett is a transportation consultant and a Research Fellow at the Frontier Centre for Public Policy (www.fcpp.org).

CREATING BETTER WAYS TO MOVE THE WORLD

Cities are the world's future. By 2050, more than 70 per cent of the global population will live in an urban area. But the success of these expanding social and economic hubs rests on re-defining the way people move within cities and between them: We need smart transportation networks that offer inter-connected mobility – fast, efficient and seamless connections.

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Let the market determine where oil refining takes place

MLI senior fellow Philip Cross suggests that, with the situation now already largely back to normal, it's already hard to remember the concern that gripped some pundits and even governments just six months ago over the price discount for oil sands bitumen. According to Cross, the oil industry is undergoing an intense phase of globalization and it is the global market, not local forces, that should determine where refining takes place.

Philip Cross

Already it is hard to remember the concern that gripped some pundits and even governments just six months ago about the state of Canada's oil industry. The discount for oil sands crude reached a record high of $40 a barrel last winter. The Alberta government blamed this "bitumen bubble" for its falling revenues and rising deficits, emphasizing the importance of building more upgrader capacity in Alberta and pipelines to new markets. The Canadian Centre for Policy Alternatives cried for the need to rein in oil sands production and to process more crude oil here in Canada, the result of the "unplanned and largely unregulated strategy for developing this resource." The implication clearly was that the petroleum sector could not be trusted to manage itself responsibly in the best interests of Canada's economy.

How quickly things have changed. The discount for oil sands bitumen returned to normal levels over the summer, shrinking to $10 in July, reflecting the end of temporary factors that aggravated it and of more fundamental shifts in the market place. It turns out that the solution lay in more transportation and not more processing in Canada. The short-term fix in transportation originated in the completely unanticipated agility of rail and barge transport, not the building of pipelines requiring regulatory approval from an indecisive White House (pipelines will be important to the long-term solution, since they remain the most efficient and safer mode of transport).

The unearthing of innovative strategies for transporting oil confounded the predictions of Monday Morning Quarterbacks with little expertise but lots of self-interest in either discouraging resource development or finding a scapegoat for budgetary bumbling. The ability to find creative and unforeseen solutions to what appear to be intractable problems is a hallmark of market-based economies, something its critics will never understand no matter how many times it happens when an interesting sum of money is at stake.

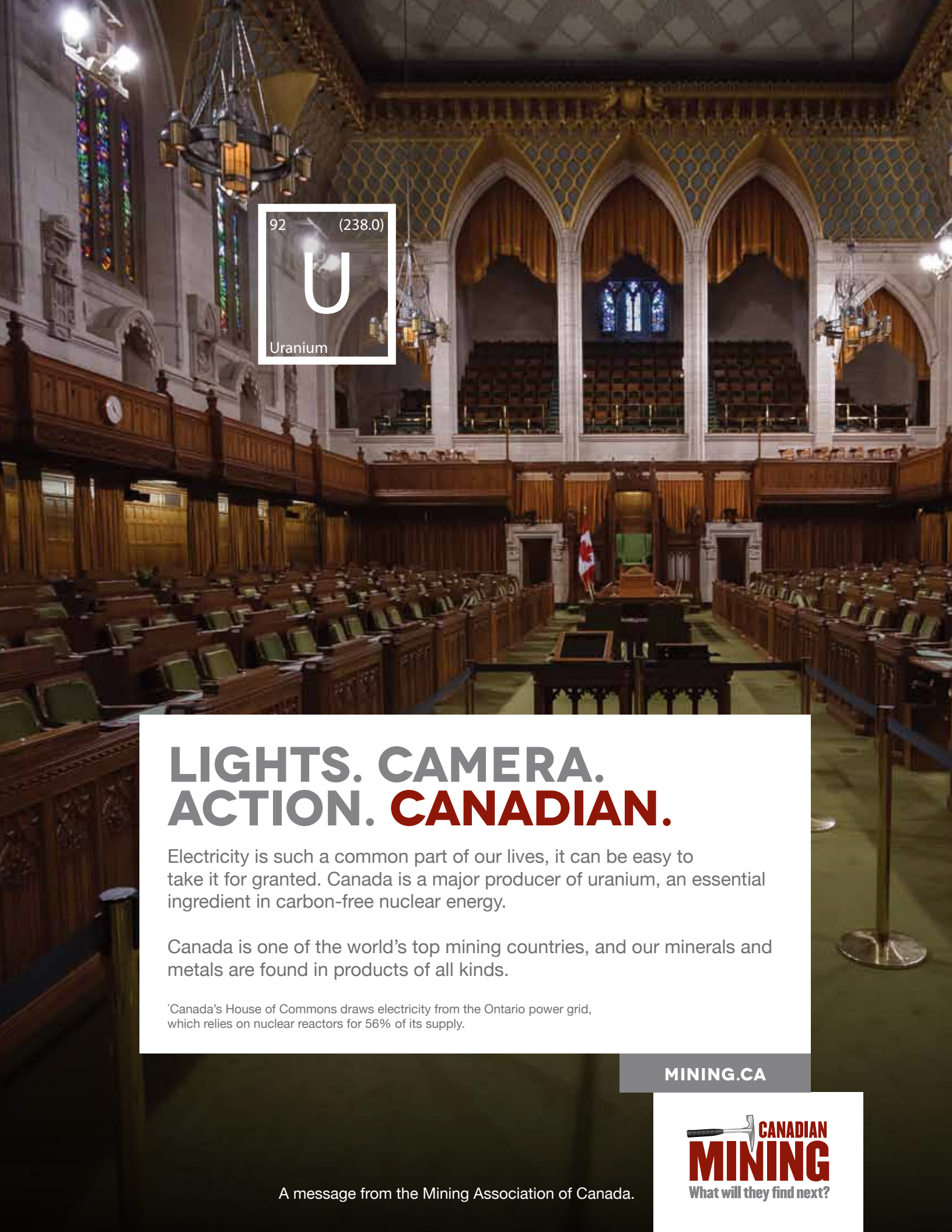
There is so much money to be made from petroleum in Canada that all sectors involved in its production and distribution are growing and investing at or near record rates, as shown in my recently-published report for the Macdonald-Laurier Institute. By far the most investment and growth is directed to the extraction and transportation of petroleum, driven by the development of the oil sands. This is where profitability is the highest. Canada exports more crude than refined oil because that is where the most value is to be found.

All the other petroleum-related sectors are expanding, from refining to wholesaling and even retailing — Canada is the only major developed country where gasoline consumption has risen since the recession. However, growth is not uniform within all of these industries. For example, the refining industry increasingly is divided between plants that can process the growing domestic supply of crude (including bitumen) and those that refine imported crude, which usually is more costly. This reflects that even with the surge of crude oil output and better transportation, more refining in Canada will not follow automatically. The determinants of refining are increasingly driven by global, not local, forces.

This uneven growth within refining partly reflects that the industry is undergoing an intense phase of globalization. In the 1990s, there was little international trade in refined petroleum products, unlike crude oil which has long been an integrated global market. Today, trade has risen several fold. Europe has converted much of its light vehicle fleet to diesel fuel, allowing it to export a surplus of gasoline to the US in return for diesel. Canada exports large amounts of gasoline to the US, but nevertheless last year Canada imported more refined petroleum products than it exported for the first time ever. Some of this reflects how some refineries in Eastern Canada are losing competitiveness because of their reliance on high-priced imports, a disadvantage compared with refineries that can use lower-priced crude from North America as their main feedstock. Meanwhile, large refineries are being built in Asia to compete in world markets (one in India has the capacity of over half of all Canada's refining industry).

One proposed solution to the competitive disadvantage of some refineries in Eastern Canada is to supply them with more bitumen from the oil sands. This is unlikely to work, as converting these refineries to process bitumen would cost billions at a time when North America already has a surplus of refining capacity, especially for heavy oil. Another proposal is to upgrade the bitumen to the synthetic crude oil that these refineries can process, but rising construction costs have rendered building new upgraders uneconomic in Alberta. However it is accomplished, the goal should be to extract the maximum value from our petroleum resources.

Philip Cross is a Senior Fellow with the Macdonald-Laurier Institute. This article is a slightly updated version of a column originally published in the Financial Post on October 2, 2013. Visit the MLI website to view a recently released report entitled "Extracting the most value from Canada's petroleum."



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Electricity is such a common part of our lives, it can be easy to take it for granted. Canada is a major producer of uranium, an essential ingredient in carbon-free nuclear energy.

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*Canada's House of Commons draws electricity from the Ontario power grid, which relies on nuclear reactors for 56% of its supply.

MINING.CA

A message from the Mining Association of Canada.

CANADIAN MINING
What will they find next?

Andrew Griffith, author of *Policy Arrogance or Innocent Bias: Resetting Citizenship and Multiculturalism*

Policy arrogance or innocent bias: Resetting citizenship and multiculturalism

Ministers draw heavily on anecdotes, stories and what "people on the ground" are saying. In contrast, the bureaucracy draws more on impersonal, large-scale studies and research. This excerpt from a book by former public servant Andrew Griffith illustrates how this dynamic worked during renewal of multiculturalism, particularly with respect to racism and discrimination. Officials learned to accept anecdotes as part of the evidence, given the extent and breadth of the Minister's outreach. The challenge to public servant expertise and advice resulted in better policy outcomes.

Andrew Griffith

Reading Daniel Kahneman's *Thinking, Fast and Slow*, his book summarizing his research on automatic versus deliberate thinking, provoked reflection on political and bureaucratic decision-making. In general, ministers draw heavily on anecdotes, stories and what "people on the ground" are saying, with the impressions largely formed under what Kahneman calls System 1 (automatic thinking).

A professional bureaucracy draws on more impersonal, large-scale studies and research, or evidence-based policy, to have a wider base of information (Kahneman's System 2, or deliberative thinking).

The challenge was to find a positive way to combine Ministerial anecdote with bureaucratic evidence, rather than considering the two in opposition.

As officials looked to refresh the government's approach to multiculturalism, racism and discrimination, the first step was understanding where Minister Kenney and the government were coming from. This required officials to listen to Ministerial anecdotes and challenge their evidence base, which

while solid, was overly comfortable, reflected the priorities of earlier governments, and the System 1 internalized beliefs and biases of officials.

The initial challenge came through the Minister's review of grants and contributions proposals. Staff would work with non-governmental organizations to develop project proposals based upon existing — i.e., previous — government priorities.

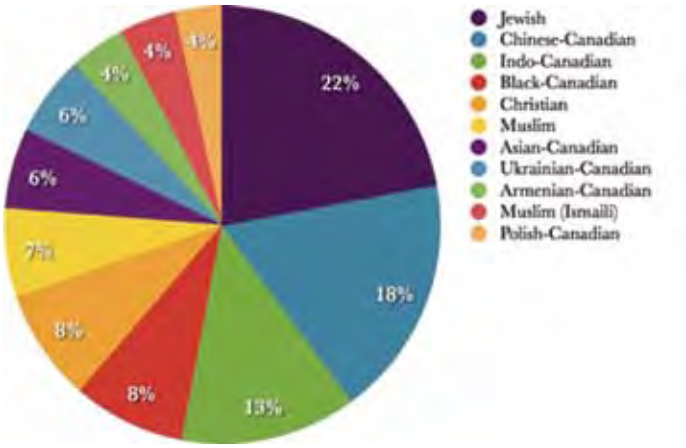
Not surprisingly, — even if officials at the time were surprised — the Minister refused to sign most projects submitted. Officials did not fully appreciate the change in direction and orientation and were not agile enough shifting gears.

Secondly, the Minister was also sending strong signals on his overall approach:

- Distrust over UN processes related to racism, discrimination and human rights, exemplified by the government pulling out of the follow-up conferences to the Durban UN conference;
- Skepticism over large-scale surveys, such as the 2002 Ethnic Diversity Survey (EDS), which showed comparatively high levels of self-reported racism, prejudice, and discrimination;
- Aversion to any terms like "white power," "racialized communities" or equivalent language, particularly among organizations applying for grants and contributions;
- Concern over racism, prejudice and discrimination among and within ethnic communities, not just between the "mainstream" and visible minorities;
- Greater acknowledgement and awareness of religion as a legitimate part of multiculturalism and diversity
- A more extensive outreach to the various religious communities in Canada;
- Rejection of employment equity, expressed publicly in a case involving a CIC competition, leading to a government review of employment equity in federal government hiring.
- Odd language in annual press releases on the International Day for the Elimination of Racial Discrimination, raising the question of what would be "just" racial discrimination;
- Sensitivity to the concerns of individual communities, such as the Chinese Canadian community's concerns about assaults of Chinese Canadian anglers at Lake Simcoe in 2007;
- A preference for activities and events which were easier to tailor to the government's messages, such as Black History Month and Asian Heritage Month;
- Creation of the Paul Yuzyk Award, tailored to the integration theme, recognizing a Conservative pioneer of multiculturalism, and appropriating multiculturalism as a Conservative, rather than Liberal, initiative;
- Emphasis on Holocaust awareness and antisemitism rather than general racism and discrimination issues; and,
- More attuned to the practical concerns of the suburban ethnic communities, and less so of the downtown activists that traditionally had worked with the Multiculturalism Program.

Thirdly, the Minister signalled the relative importance that the government attached to communities, including faith-based communities, through his outreach. While there is no publicly available list of all community events the Minister attended, the public record of official speeches and statements from 2007-11 is revealing:

Chart: Ministerial Outreach by Community



Officials had to learn to listen to — and respect — the key messages and insights coming from the Minister, reflecting his anecdotes and conversations from his extensive community outreach, generally some 20 events three weekends out of four.

This was beyond mere anecdote, given the extent of his interaction with communities. The line between evidence and anecdotes became less definite, and officials could not deny the validity of some Ministerial messages.

In contrast, traditional evidence amassed by officials, drawing on large-scale surveys such as the 2003 Ethnic Diversity Survey, did not resonate with the Minister.

Whether it was justified or not, officials had to find other kinds of evidence beyond general surveys, evidence that would resonate more with the messages that the Minister was hearing.

Given the Minister's (and the government's) general skepticism about social policy research, the need to find convincing, practical evidence that demonstrate ongoing racism and discrimination in Canada challenged officials who came primarily from a social policy background, and who saw the existing methodologies and approaches as unimpeachably reliable.

Fourthly, officials held a number of national and regional roundtables to test out some themes that responded to the Minister's views. These results were surprising to the expert officials.

In contrast to some of the reactions from longtime multiculturalism staff, the recommendations were largely compatible with what the Minister was hearing:

- Expand the racism and discrimination strategy to include interfaith initiatives;

- Make targeted interventions for specific groups when needed;
- Include focus on relationship between Aboriginal peoples and newcomers;
- Address tensions between and within ethnocultural communities; and,
- Use positive language (move away from "antiracism") — emphasize commonalities rather than focusing on differences.

Once having this improved understanding of Ministerial thinking, and confirmation that his themes resonated with the roundtables, officials could identify more practical forms of evidence that were sound yet had resonated with the Minister's "practicum."

Even within CIC, there was skepticism that racism and discrimination remained serious issues in Canada, and practical evidence was also helpful in overcoming bureaucratic objections.

This included:

- Hate Crimes: The hate crimes statistics compiled by Statistics Canada were considered the most reliable statistics available, as these reflected hate crimes reported to police. The statistics had the advantage of highlighting antisemitism, one of the government's priorities, while including other groups. While the statistics likely reflected under-reporting from some groups, they were credible and had been compiled for a number of years.
- Correlation: Drawing on work of Michael Orenstein, officials compiled the cumulative evidence of different outcomes by religious and ethnic communities in the following tables. While these did not prove causality — were these difference in outcomes caused by racism and discrimination? — they did demonstrate a strong correlation between ethnic origin, economic disadvantage, discrimination, settlement challenges

Table: Ethnic Community Specific Challenges

Visible minority group (% total population)	Economic disadvantage		Discrimination (% hate crimes based on race/ethnicity	Settlement challenges for foreign-born and immigrants (2001-2006)		Diaspora politics, inter-community imported conflicts
	Unemployment rate	Low-income incidence*		Foreign-born	Immigrants	
Non-visible minority: 2.5 %	6.2%	12%	N/A	12%	1.2%	European conflicts
Black: 2.5%	10.7%	29% (62% Somali)	40%	71%	15.6%	Somalia; gang violence
Aboriginal: 3.8 %	13.9%	17%	3%**	N/A	N/A	Gang violence
Arab /West Asian (WA): 1.3 %	12.1%	39% (48% Afghani; 21% Egyptian)	9%	83% (Arab); 92% WA	31.2% (Arab); 40.5% WA	Middle east; Afghanistan
Chinese: 3.9 %	7.5%	28%	8%***	82%	17.2%	Human rights; Tibet, enclaves
South Asian: 4.0 %	8.5%	21%	12%	84%	22.7%	Sri Lanka; India/Pakistan
Latin American: 1.0 %	9.0%	28%	N/A	80%	24.7%	N/A

Table: Religious Group Specific Challenges

Visible minority group	(% total population)	Economic disadvantage (% of families earning <$30k/year	Discrimination (% experienced hate crimes based on religion)	Accommodation issues	Diaspora politics, inter-community imported conflicts
Control Group: Christians	74.8%	16%	Hutterites photo ID issues	European conflicts	European conflicts
Muslims	2.7%	36%	Niqab & burqa issues (voting, language classes)	Middle East, India/Pakistan, Somalia, 9/11 and related	Somalia; gang violence
Jews	1.1%	10%	Hasidim issues ("YMCA")	Middle East	Gang violence
Sikhs	1.2%	26%	Kirpan and turban issues	Punjab	Middle east; Afghanistan
Buddhists	1.1%	27%	N/A	Tibet	Human rights; Tibet, enclaves
Hindus	1.2%	25%	N/A	India (internal)	Sri Lanka; India/Pakistan

and diaspora politics. Taken together, the difference in outcomes across a range of income and social indicators suggested a link to racism and discrimination.

- Blind CVs: Once this correlation was established, it was harder for officials to dismiss racism and discrimination as possible causes for differing outcomes and integration challenges. Still, officials needed evidence of practical barriers. The most convincing example found was the blind CV test, whereby researchers would submit identical CVs, controlling for education and experience, but with different names. The results were striking: Canadians with foreign-sounding names were 40% less likely to be called back for a job interview than those with identical resumes and non-foreign (English) sounding names.
- The cumulative effects of hate crimes statistics, correlation of outcomes with ethnic origin or religion, and the blind CV test helped at both the official and political levels to demonstrate that racism and discrimination were ongoing issues.
- To address any remaining objections from senior officials, and pave the way for ministerial approval, drafters combed through Ministerial speeches and statements. A number of the most helpful quotes:

> *I do acknowledge the ongoing reality of racism in our society. I suspect that it is something that will never be eliminated. It is something that we can hopefully, as a society, diminish over time and we should make every reasonable effort to do so...*

> *And my primary concern in this regard ... is that as Canada maintains the highest relative levels of immigration in the world, ... we find increasingly that the most virulent and sometimes violent forms of xenophobia, intolerance and prejudice come and are experienced between new Canadians who come from the same country or region of origin.*

This strategy worked for getting beyond whether racism and discrimination continue to be issues in contemporary Canada, worthy of government attention.

As to the question of what the government's role should be, the approach built on the themes of the Minister, maintaining a racism and discrimination focus, but largely silent on any remaining "mainstream" visible minority discrimination.

The themes included:

- "Improving interfaith/intra-faith understanding;
- Addressing tensions and pre-existing prejudices within minority communities; and,
- Specific initiatives for targeted communities."

To demonstrate just how this approach would be different, officials used the standard before/after approach.

The new approach de-emphasized the provisions of the *Canadian Multiculturalism Act* on removing barriers. However, the themes kept analysis and language on racism and discrimination, expanded the issue beyond mainstream/minority relations, and further brought faith issues into discussion, while recognizing the need for differentiated approaches based on community needs.

Table: Comparison Between Current and Proposed Programming

What we are doing now	What we want to do in the future
Responding to first World Conference on Racism in Durban, South Africa (2001)	Align with evolution in government's approach to addressing discrimination
Broad horizontal approach but with a diffuse and weak impact	Critical mass of capacity within CIC to generate a more measurable impact
"One size fits all" programming	More targeted, evidence-based initiatives that address specific challenges facing communities at higher risk of discrimination
Limited interfaith programming	Address emerging issues in interfaith/ intra-faith understanding
Limited programming aimed at imported conflicts and imported discrimination	Address tensions and pre-existing prejudices within minority communities
Heavy focus on short-term integration programming (99% versus 1% for long-term)	More balanced approach to building an integrated, socially cohesive society

More importantly, working through the combination of Ministerial anecdotes and official-level evidence and analysis, required officials to challenge their assumptions and confirmation biases. Finding evidence that resonated with the political level proved it could be done.

Building in this internal challenge function may prove to be a lasting legacy; it was sobering for a number of officials to realize just how much previous analysis had been internalized, hampering their ability to provide neutral and impartial advice, and be more objective in their selection of evidence.

While evidence should have greater weight, anecdotes are also part of the picture and should be viewed as complementary; neither the political or official levels have a monopoly on the truth.

Andrew Griffith is the former Director General for Citizenship and Multiculturalism at Citizenship and Immigration Canada (CIC). He has worked at Canadian Heritage, Service Canada, Industry Canada and Privy Council Office, in addition to Foreign Affairs and International Trade Canada, where he had a number of domestic and international assignments.

The MLI Leading Indicator

"Look a little ahead, my friends."
SIR JOHN A. MACDONALD

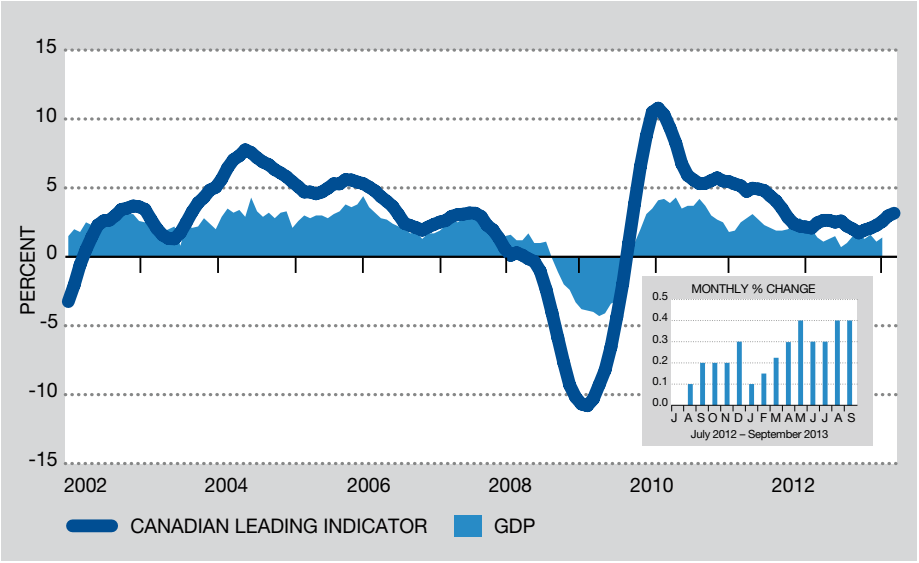
OCTOBER 2013 A MACDONALD-LAURIER INSTITUTE PUBLICATION VOLUME 2 ~ ISSUE 10

La version française suit la version anglaise

The Macdonald-Laurier composite leading index rose 0.4 percent in September, matching its gain in August. All nine components contributed to the increase, the first across-the-board advance since March 2011. These gains point to a pick-up in economic activity extending into 2014.

Leading Indicator September 2013

FIGURE 1 Year over year percent change



The housing index continued to lead growth, with a 2.7 percent hike due to higher housing starts and existing home sales. This was the fifth straight month of sizeable advances in housing, but the level of the housing index remained below its peak attained in the summer of 2012.

The two manufacturing components continued to strengthen. New orders rose 1.3 percent, their largest gain of the year after orders fell in five of the previous seven months. The average workweek lengthened for the third straight month, its longest string of increases since January 2012, although this data recently has been susceptible to large revisions. Together, the upswing in both the manufacturing components suggest that this sector is poised to end the year on a strong note, after treading water in the first half of 2013.

Among the financial components, prices on the Toronto stock exchange turned up by 0.5 percent after declining for most of the summer. Higher commodity prices boosted the stock market, with gains for energy outweighing further losses for metals. The interest rate gap between the private and public sectors dipped below 200 basis points for the first time since August 2010, reflecting

higher investor confidence in the ability of the private sector to pay its debts.

Elsewhere, claims for employment insurance resumed their decline. The improved tone of the labour market was evident in the unemployment rate, which fell below 7.0 percent for the first time since early in the recession in 2008.

The analytical model underlying this MLI Leading Indicator is the creation of Philip Cross Economics and is used here with his permission.

Leading Indicators

	Apr-13	May-13	Jun-13	Jul-13	Aug-13	Sep-13
Canadian leading indicator (January 2002=100)	**134.6**	**135.1**	**135.5**	**135.9**	**136.5**	**137.0**
% change	0.3	0.4	0.3	0.3	0.4	0.4
Housing index (January 2002=100)	90.7	92.2	94.7	97.2	99.5	102.2
% change	-0.4	1.7	2.7	2.6	2.4	2.7
US Conference Board leading indicator (2004=100)	97.0	97.4	97.7	97.9	98.4	na
% change	0.3	0.4	0.3	0.2	0.5	na
FINANCIAL						
Money supply, M1 (millions, 2002)[1]	576,352	579,368	581,992	583,699	584,842	586,239
% change	0.8	0.5	0.5	0.3	0.2	0.2
S&P/TSX stock price index (1975=1000)	12,630	12,673	12,562	12,495	12,475	12,541
% change	0.3	0.3	-0.9	-0.5	-0.2	0.5
Interest rate gap	-2.04	-2.03	-2.02	-2.00	-2.00	-1.99
change[2]	0.00	0.01	0.01	0.02	0.00	0.01
MANUFACTURING						
Average workweek (hours)	37.0	37.1	37.1	37.3	37.4	37.5
% change	0.0	0.3	0.0	0.5	0.3	0.3
New orders, durables (millions, 2002)	25,870	25,673	25,610	25,637	25,978	na
% change	-2.1	-0.8	-0.2	0.1	1.3	na
Commodity price index, all (US dollar terms)	633.8	639.5	644.0	648.6	652.0	653.4
% change	1.1	0.9	0.7	0.7	0.5	0.2
Employment insurance claims received	230,190	229,836	227,702	230,572	229,528	na
% change	-0.2	-0.2	-0.9	1.3	-0.5	na
Unsmoothed version	**135.6**	**136.8**	**136.1**	**136.5**	**137.6**	**137.9**
% change	0.7	0.9	-0.5	0.3	0.8	0.2

1 Deflated by the Consumer Price Index for all items.
2 First difference.

The Macdonald-Laurier Institute's monthly Leading Economic Indicator series provides unique and valuable insights into the future course of the Canadian economy – giving advance warning of recessions and upturns. The next release date is November 29, 2013.

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